



IN THE HIGH COURT OF DELHI AT NEW DELHI

% Judgment delivered on: 29.08.2023

+ **W.P.(C) 3527/2016**

STATE BANK OF INDIA Petitioner

versus

STEPHEN ARANHA & ORS. Respondents

Advocates who appeared in this case:

For the Petitioner : Mr. Sanjiv Kakra, Senior Advocate with Mr. Bheem Sain Jain, Ms Shmeta Saini, Mr. Abhishek Batra, Mr. Ishaan Aggarwal Advocate.

For the Respondents : Ms. Mani Chander, Yashawin Sripuram, Ms. Mudrika Bansal, Ms. Seema Rao, Mr. Harsh Singhal, Mr. Akash Gupta, Mr. Dushyant Arora Advocate.

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HON'BLE MR JUSTICE VIBHU BAKHRU

HON'BLE MR JUSTICE AMIT MAHAJAN

JUDGMENT

VIBHU BAKHRU, J

1. The petitioner (hereafter 'SBI') has filed the present petition impugning an order dated 20.10.2015 passed by the learned Debts Recovery Appellate Tribunal (hereafter 'the DRAT') in Appeal no. 220/15 captioned *Stephen Arhana v. State Bank of India & Ors.* The



aforesaid appeal was filed by the respondents impugning an order dated 30.06.2014 passed by the learned Debts Recovery Tribunal (hereafter '**the DRT**') whereby SBI's Original Application (OA), filed under Section 19 of the Recovery of Debts Due to Banks and Financial Institutions Act, 1993 for recovery of a sum of ₹42,83,11,137/- along with the interest, was allowed against the parties arrayed as respondent nos.1 to 4. Respondent no.1 was arrayed as respondent no.3 in the said O.A. filed by SBI and thus, in terms of the order dated 30.06.2014 passed by the learned DRT, was held to be liable to pay the amounts due to SBI.

2. SBI had extended financial assistance to respondent no.2 (M/s Altos India Ltd.) which was both fund based and non-fund based. It is SBI's case that the facilities extended to respondent no.2 were guaranteed by promoters and directors, including respondent no.1. The controversy, in the present appeal, is confined to the liability of SBI's claim against respondent no.1 as a guarantor for the financial facility extended to respondent no.2.

3. Respondent no.1 as well as the other parties, who were arrayed as parties before the learned DRT as guarantors for the loans/facilities extended to respondent no.2, had denied their liability on several grounds, including that the documents executed by them were secured by misrepresentation and were invalid. However, the said contentions were rejected. It is respondent no.1's case that he was an employee of respondent no.2 and had signed certain documents in his capacity as a director. He had no personal liability for the debts owed by respondent



no.2. The learned DRT rejected the aforesaid contention and found that respondent no.1 had executed the Deed of Guarantee as respondent no.1 had admitted his signatures on the said document.

4. Respondent no.1 appealed the order dated 30.06.2014 passed by the learned DRT before the learned DRAT. He urged several grounds in support of his contention that he was not liable for the financial loans granted by SBI to respondent no.2. However, respondent no.1's appeal was allowed on the sole ground that he stood relieved of the guarantee executed by him because it was limited till a collateral security was created in favour of SBI. Concededly, the collateral security was created subsequent to the execution of the Deed of Guarantee and therefore, respondent no. 1's liability under the Deed of Guarantee stood extinguished. SBI had relied on various letters of acknowledgment acknowledging the renewal of facilities, however, the learned DRAT found that further acknowledgment of debts by respondent no.1 were not made in his personal capacity but in the capacity of a director of the borrower (respondent no.2), and in any event could not extend the obligations as a guarantor.

5. It is not necessary for this Court to examine the various grounds of challenge urged by respondent no.1 to dispute his liability as a guarantor, as respondent no.1's appeal was allowed by the learned DRAT on the sole ground that he was relieved of his obligation as a Guarantor with the second charge in respect of assets of respondent no. 2 being created in favour of SBI, in terms of the sanctioned letter.



6. Mr. Kakra, learned senior counsel appearing for SBI submitted that the learned DRAT had erred in accepting the contention that respondent no.1 was absolved of his liability for repayment of debts owed by respondent no.2 as there were several documents whereby respondent no.1 had acknowledged the debt due to SBI. He pointed out that during the period from 27.12.1996 to 30.06.1997, the working capital limit, extended by SBI, has been re-aligned/revised in terms of the directions issued by the Reserve Bank of India (RBI). The terms and conditions governing the revision of the working capital facility were signed by respondent no.1 as a token of the acceptance of the aforesaid arrangement. He also submitted that respondent no.1 had executed the balance confirmation slips and acknowledged the same *vide* confirmation letters dated 12.11.1997 confirming his liability to SBI.

7. At the outset, it is relevant to note that the petitioner was not a promoter of respondent no.2. Respondent no.1 had joined respondent no.2 as a professional employee on a salary of ₹11,000/- per month. Respondent no.1 is a post-graduate from IIM, Kolkata. He claims that in August, 1993, he was employed as a General Manager (Production) on account of his professional acumen and distinguished academic record. Subsequently he was appointed as an Executive Director of respondent no.2. He was also offered an incentive of sales commission of maximum 5% of the annual profit of the company and was allotted 250 shares as equity in lieu of commission. The share was converted to 2500 shares and he continued to hold them.



8. It is material to note that SBI had sanctioned financial facilities including cash credit limits, export packing credit, bill discounting facility and non-fund based limits to respondent no.2 on 01.02.1990. The said company had also executed a letter of agreement on the said date, thereafter respondent no.3 & 4 (Sh. Dadan Bhai since deceased and M/s Pertech Computers Ltd.) had, according to SBI, executed security documents.

9. The facilities extended were further enhanced in the year 1995. At the material time, respondent no.1 was a director of respondent no.2. The sanction letter dated 23.02.1995, whereby the working capital limits provided by SBI were realigned/enhanced, indicates that a copy of the terms and conditions was enclosed with the said letter. The said terms and conditions expressly contained provisions regarding providing of a collateral for the said facilities. The condition pertaining to the requirement of collateral in terms of the sanctioned letter is relevant and is set below:-

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|-------------|--|
| “Collateral | <ol style="list-style-type: none"> 1. Personal Guarantees of S/Shri - Dadan Bhai - Arjun Malhotra - A.S. Mittal - Stephen Aranha 2. Corporate Guarantee of PCL 3. 2nd Charge on fixed assets to be created whereafter guarantees of Shri. A. S. Mittal & Sh. Stephen Aranha. to be released.” |
|-------------|--|

10. As is apparent from the above, SBI had enhanced /realigned the working capital in terms of the letter dated 23.02.1995, *inter alia*, on



the conditions that respondent no.1 would provide a personal guarantee. However, the terms also specified that the guarantee furnished by him would be released after the second charge on the fixed assets was created.

11. In accordance with the terms and conditions of SBI's letter dated 23.02.1995, respondent no.1 executed a deed of guarantee jointly along with Sh. Dadan Bhai, Sh. Arjun Malhotra & M/s Pertech Computers Ltd. [respondent nos. 3, 5 & 4]

12. The working capital credit facilities, extended by SBI, were further renewed and enhanced in terms of the letter dated 17.01.1996. A copy of the said letter is on record. The terms and conditions as applicable also included the requirement of providing collateral in the similar terms as enclosed with SBI's letter dated 18.05.1995. Respondent no.1 executed a fresh Supplementary Deed dated 18.01.1996 jointly with Sh. Dadan Bhai, Sh. Arjun Malhotra & M/s Pertech Computers Ltd. [respondent no. 3, 5 & 4]

13. It is material to note that the second charge on the fixed asset of respondent no.2 was created in favour of SBI and thus, there is no dispute that respondent no.1 was entitled to release of his guarantee.

14. It is SBI' case that although respondent no.1 was required to be released of his guarantee in terms of the sanction letter(s) but SBI had not issued any communication or executed any document for releasing respondent no.1 of his liability as a guarantor.



15. In our view, the failure to execute any document of release, is not material. It is not disputed that respondent no.1 furnished the guarantee in compliance with the terms and conditions as stipulated by SBI. Thus, it was on a clear understanding that the guarantee would subsist till the second charge was created on the fixed asset. Since it is not disputed that that second charge was created, respondent no.1 would stand absolved of his liability as the guarantor.

16. SBI also relies on various letters confirming the balance outstanding as of the end of the financial year (years). The said letters were issued on the letterhead of respondent no.2 company. The contents of one such letter dated 12.11.1997 is reproduced below:

“State Bank of India
Industrial Finance Branch
6th Floor,
Vijaya Building
Barakhamba Road
New Delhi 110001

November 12, 1997

Dear Sirs,

We confirm that the balance of our Working Capital Demand Loan No. 01600005207/01 on the 31st March, 1997 was Rs. 13000000.00 (Rupees One crore thirty lacs only) due by us to the bank, as show in your statement of account as on that date.

We also acknowledge our liability to the Bank for interest accrued/to be accrued on the outstanding (s) from 1st April 1997 till payment.

For ALOTS INDIA LTD.

FOR ALTOS INDIA LIMITED

AUTHORISED SINGNATORY”



17. As is apparent from the above that the letter was issued for the purpose of confirming the balance outstanding against the working capital demand loan extended by SBI to respondent no.2. As noted above, the letter is on the letterhead of respondent no.2. It is also clear that it refers to the books of respondent no.2. The said letter also acknowledges the liability to the bank for payment of interest accrued or to be accrued. The tenor of the letter clearly indicates that it is an acknowledgment of the “outstanding(s)” by the debtor and does not purport to acknowledge the obligation of a guarantor. The liability of a guarantor would arise on the failure on the part of the principal borrower to honour its commitment; prior to that, it is a contingent liability. Indisputably, the books of the guarantor would not reflect any liability owed to SBI till a demand in this regard is raised.

18. The balance confirmation letters were signed by respondent no.1 who was also, at the material time, a director of respondent no.2. We do not find any infirmity with the decision of the learned DRAT in holding that the acknowledgement letters does not make respondent no.1 liable as a guarantor. We find it difficult to accept that notwithstanding that such liability had ceased on the second charge of the fixed asset of respondent no.2 being created in favour of SBI, respondent no 1 would be liable as a guarantor on the basis of the letters for confirmation of the outstanding balance.



19. We find no infirmity with the decision of the learned DRAT that any letter of acknowledgment of debt, as referred to above, would not revive respondent no.1's liability as a guarantor after he stood relieved.

20. The petition is, accordingly, dismissed.

VIBHU BAKHRU, J

AMIT MAHAJAN, J

AUGUST 29, 2023
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