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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

% *Date of decision: 03rd May, 2023*

+ W.P.(C) 10790/2016

CEAT LIMITED

..... Petitioner

Through: Mr. Gautam Narayan and
Ms. Asmita Singh, Ms. Harshi
Goel, Ms. Akriti Arya,
Advocates.

versus

INDIAN OVERSEAS BANK AND ORS Respondents

Through: Mr. Krishnan Kumar and
Mr. Nitin Pal, Advocates for
R-1.
Mr. Rajiv Kapur, Mr. Akshit
Kapur, and Mr. Tushar Bagga,
Advocates for SBI.

CORAM:

HON'BLE MR. JUSTICE NAJMI WAZIRI

HON'BLE MR. JUSTICE SUDHIR KUMAR JAIN

NAJMI WAZIRI, J. (ORAL)

The hearing has been conducted through hybrid mode (physical and virtual hearing).

1. The appeal impugns the judgment of the Debt Recovery Appellate Tribunal, Delhi (DRAT) dated 02.11.2015 in OA No. 1226/1995, whereby it upheld the judgment dated 17.12.2012 passed by the Debt Recovery Tribunal (DRT) and dismissed the appeal preferred

by the appellant.

2. By way of order dated 31.08.1990, the Board for Industrial Financial Reconstruction (BIFR) directed the merging of M/s. Murphy India Limited ('Murphy') with the petitioner. The respondent no.1/Indian Overseas Bank claimed Rs.26,05,161.40/- against the petitioner apropos discounted bills and alleged outstanding dues of the predecessor Murphy.
3. The learned counsel for the petitioner contends that the impugned orders of DRAT and DRT have erred in as much as they have turned the onus of proof on the petitioner. It is settled law that the person who makes a claim has to prove and establish it. To establish the claim of Rs.26,05,161.40/-, as claimed in the opening sheet of the plaint, the respondent no.1 would need to lead evidence. The learned counsel for the petitioner submits that, interestingly, the list of documents filed on behalf of the respondent no.1 had two important documents scratched out, i.e. the Statement of Accounts and details of Letters of Credit (LCBR). The Statement of Accounts would ordinarily establish discounting and settling of each bill by the Bank. In the absence of such

statement of accounts, the basis of the claim of Rs.26,05,161.40/- cannot be established.

4. However, the order of the DRT noted that since Murphy merged into CEAT, the latter would be deemed to have knowledge and records of the Ledger Books and accounts of the former, therefore, CEAT should have presented such documents to show that there are no outstanding amounts towards the respondent no.1 bank. This reasoning is inherently flawed and incorrect because it was not for the petitioner to facilitate respondent no.1-bank to establish a case against the petitioner. How can there be duty on anyone to incriminate oneself in the absence of any proof of wrongdoing shown by the accuser.
5. The learned counsel for the respondent no.1 bank submits that the original bills were produced and were admitted by the petitioner. Reliance is placed upon two letters issued on 09.12.1989 and 16.10.1990, they are reproduced as under:

MURPHY

MURPHY INDIA LIMITED

MILD : 1989

9.12.89

M/s. Indian Overseas Bank
Palika Bhawan
Sec. 13-A, R.K. Puram
NEW DELHI.

Dear Sir,

This is in receipt of your letter dated 7.12.89 and the subsequent discussions the undersigned had with Mr. C.V. Prasad Rao / Mr. Koorse G. Venkatraman. We assure you the payment of the bills will be made shortly.

Thanking you,

Yours faithfully

For MURPHY INDIA LIMITED

Sd/-

A.C. MATHUR

ASST. MANAGER


//TRUE COPY//

MURPHY INDIA LIMITED
Regd. Office, Ceat Mahal, Dr. Annie Besant Road, Worli, Bombay
400025, Phone 4939995

JAGRAJ MEHTA
_____ (Illegible) OPERATIONS

October 16, 1990

Indian Overseas Bank
R.K. Puram Branch
NEW DELHI

Dear Sirs,

OUTSTANDING HUNDIES OF MAGNAVISON ELECTRONICS TO BE
HONORED BY MURPHY INDIA LTD.

I have been approached by Mr. Gopal K. Saxena of Manavision
Electronics Ltd., regard outstanding hundies to be cleared in his
account by Murphy India Limited.

Please be assured that all outstandings due on account of
hundies will be cleared by our company in the 180 days following :

Yours sincerely

Sd/-


//TRUE COPY//

6. As is evident, the first letter dated 09.12.1989, extends an
assurance that monies will be paid, however it does not specify as

to what quantum of monies will be paid, under which head/account or against which dues. The second letter is non-est and of no consequence because Murphy had already merged into CEAT, therefore, it did not exist as a separate entity so as to have issued the said letter. Even if that were so, it would not by itself establish that bills had not been paid. To prove an outstanding amount, a Ledger Account or a Statement of Account ought to have been produced by the claimant showing as to which of the bills remained outstanding as on the day Murphy merged into CEAT. This was not done. In the absence of such proof shown or of the outstanding amounts being accepted either by Murphy or CEAT, no claim could have been deemed to have been established and no liability could have been fastened upon CEAT/petitioner for payments of the amounts for which the decree was passed.

7. The judgment of DRT dated 17.12.2012 of DRT reads *inter-alia* as under:

“... 34. The next objection raised by defendant No. 7 is that the applicant bank had dealings with Murphy India Ltd. and not with defendant No. 7 and that vide order dated 31.8.1990 passed by BIFR the said company was amalgamated with defendant No. 1 and was ordered to be dissolved without winding up as a result of which the

assets and liabilities of M/s. Murphy India Ltd. stood vested in defendant No. 7. It has been stated that in respect of invoices under which the material were supplied to M/s. Murphy India Ltd., payment in respect of the said directions has been made directly to the defendant No. 1 and no amount is due and payable by M/s. Murphy India Ltd. or the defendant No. 7. Mere alleging a thing without any attempt to substantiate the same cannot take the place of proof. After merger of M/s. Murphy India Ltd. with the defendant No. 7, the defendant No. 7 is expected to be in possession of the records of M/s. Murphy India Ltd. but has failed to produce on record any document showing that the payment had been made by M/s. Murphy India Ltd, directly to defendant No. 7. Hence the objection raised by the defendant No. 7 is rejected.

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37. With the merger of M/s. Murphy India Ltd. with the defendant No. 7 the assurance/acceptance given by M/s. Murphy India Ltd. becomes the assurance/acceptance given by defendant No. Hence the defendant No. 7 is required to pay the amount claimed on this account.

38. It has next been contended by defendant No. 7 that they do not admit that any of the returned bills were drawn on M/s. Murphy India Ltd., that the accounts were to be reconciled between the Defendant No. 1 and M/s. Murphy India Ltd. and that despite repeated calls by M/s. Murphy India Ltd., the defendant No. 1 has failed to do so. The defendant No. 7 has denied that it is liable to make any payment to the applicant bank. For the reasons mentioned in the preceding paragraph coupled with the fact that no letter of request for

reconciling the accounts or complaining that their such request has not been granted has been brought on record. Hence the contention of the defendant No. 7 is rejected being devoid of force...”

8. The finding of the DRT holding the petitioner accountable and liable for the claimed amount, on the assumption that it stood proven in the absence of records, which should have been produced by the petitioner, is erroneous and untenable in law. A Bank is a corporate entity. It is in the business of lending monies and discounting bills. For each bill so discounted or for outstanding amounts, the Bank would have detailed documentation and Ledger Books, which are to be maintained. No such documents or books of accounts were produced by the Bank to establish its claim. A liability cannot be fastened on a person on a mere assumption that the claimed monies are payable to the claimant. Accordingly, the said liability fastened upon the petitioner is set aside.
9. Similar would be the fate apropos the Cash Credit (Hypothecation) and LCBR for which too documents were not filed by the claimant Bank. Interestingly, the operative portion of the order of DRT and

DRAT fastens a liability upon the petitioner for Cash Credit (Hypothecation) and LCBR, for which amounts of Rs.38,46,847.94/- and Rs.19,17,342.00/- were claimed in the suit respectively. Such claim, if any, exists against the Principle Borrower and Guarantor i.e. the defendants no. 1 to 5 in the suit and not against the petitioner. Therefore, fastening such liability too was an error and the same is set aside.

10. In the circumstances, the decree is modified to the extent it fastens any liability upon the petitioner.

11. The petition is allowed and disposed-off in the above terms.

NAJMI WAZIRI, J

SUDHIR KUMAR JAIN, J

MAY 03, 2023

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