

UCO Bank Vs. National Textile Corporation Ltd. & Anr.

Civil Appeal No. 2046 of 2020 arising out of SLP (Civil) No. 15914 of 2014
2020-03-05 | A.S. Bopanna,J.
Repository ID: F2J-C-1891

Full judgment text

UCO Bank Vs. National Textile Corporation Ltd. & Anr.

[Civil Appeal No. 2046 of 2020 arising out of SLP (Civil) No. 15914 of 2014]

[SLP (C) No. 20527/2014]

A.S. Bopanna,J.

1. Leave granted.

2. The instant appeal has been filed assailing the judgment dated 10.2.2014 passed by the High Court of Delhi at New Delhi in LPA No. 808/2012 wherein the High Court allowed the LPA filed by Respondent No1/ National Textile Corporation Ltd. and inter alia restrained the Arbitral Tribunal from proceeding with the arbitral claim made by appellant herein.

3. As per the averments made by the appellant, M/s Shree Sitaram Mills Ltd. was taken over by National Textile Corporation Ltd./Respondent No. 1 under the Textile Undertaking (Takeover of Management) Act, 1983 and was nationalised w.e.f. 01.04.1994 under the Textile Undertakings (Nationalisation) Act, 1995. Said Shree Sitaram Mills Ltd. was enjoying credit facilities with the Appellant Bank and Respondent No. 2, i.e. Ministry of Textiles was the guarantor in respect of the said credit facilities. The last guarantee was issued by the Ministry of Textiles on 23.2.1995, valid up to 31.3.1996.

4. The Appellant filed a recovery suit bearing Suit No.3961/1988 against Respondent No. 1 seeking recovery of an amount of Rs. 3,19,09,000/which was transferred to the Debts Recovery Tribunal on coming into force of the Recovery of Debts Due to Banks Act ('RDDDB Act' for short) renumbered as O.A.No.2526/1999. On 05.08.2004 - DRT I issued a recovery certificate against one of the Company - Shri Sitaram Mills Ltd. for a sum of Rs.11,70,78,726.69. The recovery proceedings are adjourned sine die in view of the application filed by the Respondent that it has been declared a sick company under the provisions of the Sick Industrial Companies (Special Provisions) Act, 1985.

5. The Appellant then submitted its claim with the Commissioner of Payment on 17.1.2002 which was registered on 4.7.2005. A sum of Rs. 1,05,35,86,783.47 was claimed towards post takeover liability under the Textile Undertakings (Nationalisation) Act. Vide award dated 13.3.2006, the Commissioner of Payment allowed a part of the claim under category 1 of the Textile Undertakings (Nationalisation) Act to the tune of Rs. 70,23,025/towards principal.

Claim of Rs. 1,18,80,098/was relegated to category II (b) being an outstanding liability against unserviced interest. The balance claim of Rs. 103,46,83,660.47 towards interest beyond appointed date was rejected. By a subsequent award dated 28.3.2007 a further sum of Rs. 89,59,609/was awarded by the Commissioner of Payment towards pending liability of interest till the appointed date. Thus, in all, the appellant received a sum of Rs. 1,59,82,634/against total claim of Rs. 1,05,35,86,783.47.

6. In the meantime, the Government of India issued an Office Memorandum dated 22.1.2004 for settlement of commercial disputes between Public Sector Enterprises inter se and Public Sector Enterprises and Government Department through Permanent Machinery of Arbitrators.

7. Claiming that it was entitled to the balance amount also, the Appellant lodged its request for initiation of arbitration with the Union of India/Respondent No.2 vide communication dated 30.8.2004. The appellant sought recovery of balance sum of Rs. 103,76,04,149.47/from Respondent No.1 and Shree Sitaram Mills Ltd. Vide notice dated 17.10.2011, the Joint Secretary and sole arbitrator who was appointed under the Permanent Machinery of Arbitration (PMA) directed the appellant, Respondent No. 1 and Shree Sitaram Mills Ltd. to submit their statements of claim as well as counter reply. Parties were informed that the forum had been constituted in compliance of the directions of the Apex Court in ONGC vs. Collector of Central Excise, Mumbai 1995 Supp (4) SCC 541.

The Appellant thereafter filed its statement of claim before the PMA, New Delhi claiming award of payment of Rs. 103,76,04,149.47 by Shree Sitaram Mills Ltd. and Union of India jointly and severally.

8. Respondent No. 1 filed an application for discontinuation and cessation of arbitral proceedings in light of the judgment of the Supreme Court in Electronics Corporation of India Ltd. vs. Union of India (2011) 3 SCC 404 wherein this Court recalled the orders reported in 1995 Supp (4) SCC 541. Thus, it was averred that the arbitral procedure is not based on any statute or consent.

9. Vide order dated 28.6.2012, the Arbitral Tribunal held that the practice of the PMA was to decide all the issues at one time and thus the parties were directed to submit their documents or evidence in support of their claim and counter claim.

10. Aggrieved, Respondent No. 1 filed a writ petition assailing notice dated 17.10.2011 and challenging the jurisdiction of the Arbitrator to proceed further with the matter. The learned Single Judge of the High Court dismissed the writ petition and opined that PMA was constituted by the decision of the Cabinet Secretariat of the Govt. of India as reflected in its Office Memorandum dated 22.01.2004. Though undoubtedly, the Committee of Disputes (COD) was formed based on the judgments of the Supreme Court it has been reversed by the Supreme Court by its subsequent judgment in the case of Electronics Corporation of India Ltd. It did not comment or deal with Constitution of PMA.

The PMA was constituted by virtue of an Office Memorandum dated 22.01.2004 issued by the Govt. of India, Ministry of Heavy Industries and Public Enterprises, Department of Public Enterprises. It is therefore, not a mechanism which stands effaced by virtue of dissolution of the COD. It cannot be disputed that both Respondent No. 1 and the Appellant are covered under the OM dated 22.01.2004; Respondent No.1 being a Central Public Sector Enterprise, while Appellant is a Nationalised Bank. If that is so, then no consent is required for initiation of arbitration proceedings under the PMA mechanism.

11. The Respondent No. 1 claiming to be aggrieved filed LPA. Vide impugned judgment, the Division Bench of High Court noted that on enquiring from the counsel for Respondent No. 1 as to what is there to show that the claim of Appellant before the Permanent Machinery of Arbitrators (PMA) is with respect to liability prior to 01.04.1994, the counsel for Respondent No.1 referred to the claim petition filed by the appellant before the PMA in which, "Sitaram Mills Ltd."

is referred to as respondent no. 2. It is stated therein that "respondent no. 2 was nationalised w.e.f. 01.04.1994 under the Textile Undertaking (Nationalisation) Act, 1995 and prior to the takeover of the management of respondent no. 2 under the said Act, a sum of money to the extent of Rs. 11,70,39,000/became due and payable by respondent No.2 to the claimant".

The Court opined that once it is not in dispute that claims of the appellant lodged before PMA are of the period prior to the appointed day, the liability therefor is not of Respondent No.1. As per the scheme of Textile Undertaking (Nationalisation) Act, the said dues, even though pertaining to the textile undertaking so acquired by the Central Govt. and transferred to respondent No.1, did not become the liability of the Central Govt. or respondent No. 1.

The same remained the liability of the earlier owner Company, which significantly was neither taken over under the Textile Undertaking (Nationalisation) Act nor had ceased to exist. The Division Bench held that the Single Judge fell in error in not appreciating the difference between "textile undertaking" and "textile company" and presuming that "Shree Sitaram Mills Ltd."

was taken over when only "Shree Sitaram Mills" i.e. the textile undertaking of "Shree Sitaram Mills Ltd." was taken over. Moreover, appellant has made the claim for the entire amount before the Commissioner of Payments before whom, as per Section 20 of Textile Undertaking (Nationalisation) Act, only the claims against the earlier owner company were to be made, thereby admitting the liability therefor to be of the earlier owner company only. Concluding that the dues claimed by the appellant being of the period prior to the takeover by the Central Govt. of the textile undertaking earlier owned by Shree Sitaram Mills Ltd., the Division Bench held that Respondent No. 1 cannot be said to be liable therefor and the arbitration proceedings before PMA for recovery thereof against Respondent No. 1 are misconceived. The appeal was accordingly allowed.

12. Heard Shri A.M. Singhvi, learned senior counsel for the appellant, Ms. Pinky Anand and Shri Vikramjit Banerjee, learned Additional Solicitor General for the respondents and perused the appeal papers.

13. It has been contended by the appellant before us that the High Court failed to appreciate that the Office Memorandum dated 22.1.2004 issued by the Central Government provides for a mechanism of PMA which has neither been quashed nor set aside by the Apex Court in *Electronics Corporation of India Ltd. vs. Union of India* (2011) 3 SCC 404.

The law laid down in said case deals with abolition of High Powered Committee on disputes and not abolition of PMA. Moreover, the Office Memorandum dated 22.1.2004 is an executive instruction issued by the Government of India as a policy decision, more particularly decision in economic matter which requires no judicial review.

The Division Bench of High Court also did not appreciate that the Appellant Bank is a public sector bank and cannot allow its funds to sink inasmuch as on the one hand DRT proceedings have come to a standstill because of the proceedings being adjourned sine die and on the other the Commissioner of Payments has rejected the balance claim of approximately Rs. 100 crores on the ground that it is beyond its jurisdiction in terms of Section 20 of the Nationalisation Act. In such a situation, the impugned judgment quashing the commencement of the arbitral proceedings amounts to thwarting the recovery proceedings of the Appellant Bank.

The High Court also did not appreciate that after takeover of the management of the borrower company by the Government of India in 1983 and after nationalisation of the owner company under the provisions of Nationalisation Act, 1955, all its rights and liabilities stood vested in the name of Respondent No.1 and as such Shree Sitaram Mills Ltd. as referred in the 1st schedule of the Nationalisation Act and Shree Sitaram Mills Ltd. are one and the same entity.

14. On the other hand, it has been submitted by Respondent No.1 that as per Section 4 (2) and 4 (5) of the Textile Undertakings (Nationalisation) Act, 1955, all liabilities pertaining to pre-nationalisation period, i.e. 01.04.1994 will be of the erstwhile owner and cannot be enforced against Respondent No.1. It is also the argument of respondent that Shree Sitaram Mills Ltd. had not been nationalised and in fact continued to retain its private existence. It was only the textile undertaking that was owned by Shree Sitaram Mills Ltd., namely, Sitaram Mills that had been nationalised. Further, as the appellant had already approached the Commissioner of Payments under the Textile Undertakings (Nationalisation) Act, 1955 therefore it could not have sought to maintain the instant claim.

As per Section 7 of Textile Undertakings (Nationalisation) Act, 1955, a claimant who is dissatisfied with the decision of the Commissioner may prefer an appeal against the decision to the principal civil court of original jurisdiction. Next, it has been argued that the arbitral notice dated 17.10.2011 intimated that the forum has been constituted by the cabinet secretariat in compliance with the mandate of the Supreme Court in *ONGC vs. Collector of Central Excise* 1995 Supp (4) SCC 541 which was recalled by the Apex Court in its order dated 17.02.2011 passed in *Electronics Corporation of India Ltd. vs. Union of India and Ors.* It has also been alleged that the appellant is forum shopping, having already traversed various courts/tribunals.

15. Though elaborate contentions are urged with regard to the claim put forth by the appellant Bank and the liability for the same being disputed by the respondents namely, Union of India and National Textile Corporation as according to them such liability was not taken over by them, on hearing the learned senior counsel for the parties the contentions would disclose that the consideration required herein is essentially with regard to the forum that is to be provided to the parties for the purpose of appropriate adjudication in that regard.

In such forum the liability of the parties and the mode of recovery, if any, is to be ultimately determined. Limited to this aspect an examination of the contentions would disclose that the appellant had initiated the arbitration proceedings before the PMA considering that both, the appellant and the respondent No.1 are Central Public Sector establishments/Bank and as such were governed under the guidelines stipulated in the Office Memorandum dated 22.01.2004.

The appellant Bank invoking the same initiated the arbitration proceedings pursuant to which a notice of arbitration dated 17.10.2011 was issued by the learned Arbitrator - Joint Secretary. By Order dated 17.10.2011, the arbitrator directed the parties to file their claims. The appellant Bank filed statements of claim and claimed Rs.103,76,04,149.47. In response to the notice dated 17.10.2011, NTC raised objection as to maintainability of the arbitration proceedings before PMA. By its order dated 13.02.2012, PMA directed the appellant Bank to file its rejoinder and also directed the respondent to file its reply to the rejoinder and

directed the parties to appear on or before 28.06.2012. On 17.02.2012, the NTC filed an application praying to decide on the maintainability of arbitral proceedings as a preliminary issue and thereafter, recall the arbitral notice dated 17.10.2011 and to discontinue the arbitral proceedings forthwith.

The appellant - Bank objected to the said application and prayed for dismissal of the said application. Rejecting the application filed by NTC dated 17.02.2012, the learned Arbitrator, PMA vide order dated 28.06.2012, directed continuation of the arbitral proceedings

16. The initiation of arbitration proceedings and the order passed by the Arbitrator triggered the present round of litigation since the respondent claiming to be aggrieved by the same, preferred the Writ Petition bearing WP(C) No.5527/2012 wherein the respondents herein as the writ petitioners had sought for quashing the notice of arbitration dated 17.10.2011 and to issue Writ of Prohibition to the appellant herein from proceeding further with the arbitral proceedings. The learned Single Judge by the order dated 22.11.2012 had dismissed the writ petition considering the same only as an issue with regard to the jurisdiction and on deciding in that regard.

The respondent herein claiming to be aggrieved preferred the appeal LPA No.808/2012. The Division Bench through order dated 10.02.2014 has set aside the order of the learned Single Judge and while quashing the notice dated 17.10.2011 of the Arbitral Tribunal under the PMA has also decided the aspect of liability and held against the appellant. The appellant, therefore, being aggrieved has preferred this appeal.

17. As noted it is contended by the learned senior counsel for the appellant the liability was that of M/s Shri Sitaram Mills Ltd. and the claim put forth by the appellant herein is due to the fact that the said Shree Sitaram Mills was taken over by the respondents and in that circumstance the liability also is taken over and is to be liquidated.

It is in that premise since the respondent is a Public Sector Enterprise and the appellant is also a Public Sector Bank which was nationalized under the Banking Companies (Acquisition & Transfer of Undertakings) Act, 1970 the Office Memorandum dated 22.01.2004 was applicable and, therefore, the claim was put forth before the PMA. The reason for which the PMA was brought into existence due to the observations of this Court in the case of ONGC vs. Collector of Central Excise was referred in detail.

However, in view of the subsequent observations in Electronics Corporation India Ltd. vs. Union of India & Ors., (2011) 3 SCC 404 wherein this Court having noticed that the mechanism suggested had outlived its utility and diluted the same, a Committee on Disputes ('COD' for short) was constituted which was in the nature to examine the claims being put forth. It is further brought to the notice that the present mechanism brought in through the Office Memorandum dated 22.05.2018 is the Administrative Mechanism for Resolution of CPSEs Disputes (AMRCD) wherein a similar consideration as was being made by PMA will be made.

18. The learned Additional Solicitor General while controverting the contentions insofar as the said Office Memorandum providing the forum would contend that the same would not be applicable in the present facts. In that regard it is contended that the very liability of respondent No.1 herein is in dispute as only the Textile Mill is taken over and, in such circumstance, the said mechanism which provides for adjudication in the case of claims inter se between two Public Sector Enterprises would not be applicable herein. In that light it is contended that the Division Bench of the High Court was justified in quashing the notice issued by the Arbitral Tribunal which was seeking to adjudicate the matter in the jurisdiction which it did not possess.

19. As already noticed, since the present examination herein is limited to the aspect relating to forum and when it is seen that the claim initially made by the appellant is against the Shree Sitaram Mills Ltd. and the Respondent No.1 herein is disputing the liability for the same by bringing about a distinction since the takeover was only of Shree Sitaram Mills and not of Shree Sitaram Mills Ltd., an adjudication on that aspect to be made cannot be considered as a dispute as involving only the two public sector establishments as contemplated under the Official Memorandum referred to above.

20. While stating so it cannot also be lost sight that the appellant herein had originally instituted the recovery proceedings against Shree Sitaram Mills Ltd. by filing Suit No.3961/1988 which was thereafter transferred to the Debts Recovery Tribunal I, Mumbai in O.A. No.2526/1999. The said proceeding had concluded by issue of Recovery Certificate dated 05.08.2004 against the other defendants except defendant Nos.3 (a to c) regarding which an appeal in DRTA Appeal No.271/2005 is pending before the Debts Recovery Appellate Tribunal, Mumbai. The said appeal is against the judgment and decree dated

29.03.2005.

In the recovery proceedings pursuant to the decree, if in the meanwhile certain change of status relating to the judgment debtor has taken place as in the instant case, namely, the takeover of Shree Sitaram Mills which was a part of Shree Sitaram Mills Ltd. is to be taken note. Upon consideration of evidence adduced by the parties it has to be determined in that light as to whether the Respondent No.1 Corporation has in fact inherited such liability making themselves liable for the decree in existence or on the other hand if such liability has remained and subsisted with Shree Sitaram Mills Ltd. It is a matter to be examined in such recovery proceedings by providing opportunity to the parties to adduce evidence.

Further in respect of post take over period a Suit No.4489/96 was filed which was transferred to DRT and registered as O.A.No.1114/2000 which has remained pending as respondent No.2 had proceeded to BIFR. No doubt in that circumstance if the appellant herein had chosen to initiate the proceedings before the PMA, keeping in view that the COD which was subsequently constituted is a mechanism in the nature of prelitigation mediation, it cannot be said that the step adopted by the appellant is wholly without basis.

21. However, when it is noticed that the Respondent No.1 has serious objections to the liability and nature of takeover of the Textile Mills is to be examined before recoveries are made, the adjudication of the matter in the recovery proceedings would be the appropriate course.

Therefore, to that extent the Division Bench no doubt was justified in setting aside the arbitral proceedings by quashing the notice dated 17.11.2011. However, we notice that the Division Bench while arriving at its conclusion has also referred to the decision of the High Court of Madras in Swadeshi Cotton Mills Company Ltd. vs. The Commissioner of Central Provident Fund MANU/TN/ 0532/1999 and the decision of the High Court of Allahabad in U.P State Sugar Corporation Ltd. vs. Dr. Kailash Behari Sharma MANU/UP/1055/1997 to hold that the liability would not transfer on takeover.

The said consideration is with regard to the Provident Fund dues towards the Provident Fund contribution. In the instant case, the claim is by the lender Bank towards which a decree had already been granted in respect of one claim and the other claim is pending consideration. The fact as to whether in the matter of take over, the liabilities were also included is one aspect of the matter.

Further, the aspect which may also require examination by the Court undertaking the recovery proceedings is as to whether in the process of takeover of Shree Sitaram Mills the secured assets for the loan transaction has been taken over by the Respondent No.1 or was it available with Shree Sitaram Mills Ltd. if it had retained its existence and identity after takeover of the Textile Mills and in that circumstance whether the recovery proceedings could still be resorted to against the Respondent No.1 in respect of the liability of Shree Sitaram Mills Ltd., and would the Union of India be liable as Guarantor. This is an aspect which is to be examined after providing opportunity to the parties, if need be, after tendering evidence in that regard.

22. Therefore, the question of liability could neither have been decided in the writ proceedings before the High Court nor in this appeal. If this aspect is kept in view, the conclusion reached by the Division Bench in paragraph 25 to hold that the respondent herein is not liable for the dues of Shree Sitaram Mills Ltd. and the proceedings is misconceived for such claim is an erroneous conclusion reached in a proceedings where such conclusion ought not to have been recorded. Hence the decision to that effect is liable to be set aside.

23. In view of the above conclusion, and on the reasonings we have recorded above we hold that the impugned judgment dated 10.02.2014 passed in LPA No.808/2012 to the extent of quashing the notice dated 17.10.2011 of the Arbitral Tribunal under the PMA warrants no interference. However, the conclusion reached by the Division Bench that the respondents are not liable for the amount claimed by the appellant herein is set aside.

The question of liability and the manner of recovery is left open to be considered by the appropriate forum. In that regard as noticed above, the proceedings in O.A. No.2526/1999 had concluded by issue of Recovery Certificate in O.A. No.2526/1999 and the R.C. No.269/2004 was initiated towards recovery of amount. Insofar as the rejection of the claim against defendant Nos.3 (a to c) the Appeal DRTA No.271/2005 is stated to be filed in the DRTA Mumbai and the same is said to be pending. In so far as the post take over claim, the proceedings in O.A.No.1114/2000 is pending before the DRT, Mumbai and is stated to be adjourned sine die.

The said proceedings shall now stand revived and are permitted to be taken towards its logical conclusion one way or the other in accordance with law. In the said recovery proceedings in R.C. No.269/2004 the

appellant herein is permitted to bring on record the respondents herein by filing an appropriate application seeking to bring them on record as judgment debtors/defendants for the reasons stated by the appellant in arbitral proceedings before the PMA and in the instant proceedings.

The respondents herein are reserved the liberty of putting forth their contentions to oppose the same, where after the Recovery Officer/Presiding Officer of the DRT in the respective proceedings shall if necessary, after providing opportunity for tendering evidence take a decision with regard to the liability if any, on the part of the respondents to satisfy the decree/recovery certificate issued against Shree Sitaram Mills Ltd. Such decision shall be taken by the Recovery Officer/Presiding Officer independently, based on the materials available on record without being influenced by any of the observations contained either in the order of the High Court or the order passed by this Court in this appeal. All contentions of the parties are left open.

24. The appeal is allowed in part without any order as to costs. In view of the judgment passed in Civil Appeal arising out of SLP (Civil) No.15914 of 2014, SLP (Civil) No.20527/2014 also stands disposed of. 25. Pending applications if any, shall also stand disposed of.

Source disclosure: Complete sanitized public judgment text retained for research. Official-primary replacement and later-history closure remain pending.

Disclaimer: This material is for general information and legal research. It is not legal advice. Verify current law, the operative order and later history, and consult a qualified professional before acting.