

I. Case Reference

Case Citation	: (2023) ibclaw.in 45 DRAT
Case Name	: MSTC Ltd. Vs. Standard Chartered Bank
Appeal No.	: Appeal No. 10/2023
Judgment Date	: 07-Aug-23
Court/Bench	: DRAT Mumbai
Present for Appellant(s)	: Mr Gaurav Joshi Senior Counsel along with Mr Rohit Gupta, Ms Anamika Singh and Ms Nashrin Shaikh, Advocate for Appellant
Present for Respondent(s)	: Mr Dinyar Madon Senior Counsel along with Mr Tushad Cooper Senior Counsel, Ms Radhika Gupta and Ms Rashika Bajpai, i/b M/s Khaitan & Co., Advocate for Respondent Bank
Chairperson	: Mr. Justice Ashok Menon

II. Brief about the decision

Facts of the case

- The Appellant (MSTC Ltd.) impugns the order passed by the DRT-I, Mumbai directing the Appellant/Defendant to pay an amount of Rs. 222,51,00,000/-to the Applicant Bank within 30 days exercising jurisdiction under Rule 12 clause (5) of the Debts Recovery Tribunal (Procedure) Rules, 1994 allegedly being the admitted liability shown in the balance sheet of the Defendant company. The Appellant is aggrieved and hence the appeal.
- The Respondent Standard Chartered Bank (SCB) is the Applicant in the aforesaid O.A. which was filed for recovery of Rs. 191,03,54,070.96 allegedly due and payable by the Defendant as on 06/03/2012 together with interest thereon at the rate of 12.25% per annum with effect from 07/03/2012 till realisation.
- The Respondent contended that in the Annual Report pertaining to the financial year 2011-2012, Defendant had admitted its liability towards the Applicant to the tune of Rs. 186,03,00,000/-and has further shown a sum of Rs. 5,05,00,000/-as contingent liability pending the outcome of the legal proceedings. It is further alleged that in the annual report of the Defendant company pertaining to the financial year 2012-2013, a sum of Rs. 203,70,00,000/-has been shown as its liability towards the Applicant and also mentions a contingent liability of Rs. 13,85,00,000/-. Similarly, the annual reports of the Defendant company for the year 2013-2014 show the liability towards the Applicant as Rs. 245,74,00,000/-and the contingent liability is shown as Rs. 22,70,00,000/-. Likewise, the annual reports of the Defendant company pertaining to the financial years 2014-2015 and 2015-2016 mention a sum of Rs. 222,51,00,000/-as liability the contention of the Defendant/Appellant to this application for judgment on admission is that the application was filed at a belated stage when the O.A. was due for a final hearing after adducing of evidence.
- An interlocutory application of this nature at this stage of the proceedings is not maintainable particularly when there is a serious dispute with regard to the facts and maintainability of the O.A. itself. It is pointed out that there is, in fact, a categorical denial to the claim of the Applicant SCB in the balance sheets sought to be relied upon for the purpose of admission.

Decision of the DRAT

- For the statement in the balance sheet to be accepted as admission, it has to be clear, unambiguous and unequivocal. Admission, undoubtedly is the best form of evidence but where a party relies on the admission of the opposite side as evidence, it is essential that the whole admission must be taken into consideration. Any explanation or rider to that admission cannot be ignored.
- In the present case, the Appellant had challenged the claim of the Respondent before the civil court at Alipore. After having raised all these contentions in challenging the claim of the Respondent, it cannot be said that **the mere mentioning of the claim in the balance sheets as liability would amount to an unambiguous, unequivocal or clear admission on the part of the Appellant. The notes accompanying the statements of account has to be read together with the description of the liability highlighted in the balance sheets.**
- When the fact regarding the pendency of litigation before the D.R.T. and the Alipore court is explained in the note attached to the balance sheets, it can definitely be not stated that the admission is unequivocal. There is no such admission in the pleadings of the Appellant. The mentioning of the liability in the balance sheet with a rider that there is litigation pending between the Appellant and the Respondent would clarify that it is not a clear admission on the part of the Appellant. **An admission can always be explained by the party making it.**
- In the present case, the explanation follows the purported admission. The explanation for the alleged admission in the balance sheets comes in the form of a notes attached to it. The intention for incorporating a provision to grant a decree on admission is to hasten the disposal of matters where is is no possibility of a contest arising in view of the admission. In the instant case, the parties have been litigating for more than a decade now. Under the circumstances, I find that the Ld. Presiding Officer was not justified in admitting the recitals in the balance sheets as unequivocal admission of liability on the part of the Appellant to grant a decree on admission. The impugned order cannot, therefore, be sustained and requires to be set aside.
- Resultantly, the appeal is allowed in the impugned order of the D.R.T. dated 16/09/2017 is **set aside** and I.A. No. 302 of 2017 on the files of the D.R.T. is dismissed. The D.R.T. is directed to dispose of the O.A. as expeditiously as possible keeping in view the fact that it is more than a decade old. **(p17-18)**

III. Brief about the decision

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