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SUPREME COURT REINFORCES TIMELINES UNDER RDB ACT

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INTRODUCTION

The Supreme Court has recently in its judgment dated 21 January 2020, in the case of Standard Chartered Bank v MSTC Limited [SLP (C) No 20093 of 2019], provided clarity on the interplay between the provisions of Recovery of Debts and Bankruptcy Act 1993 (RDB Act) and Limitation Act 1963 (Limitation Act). Supreme Court has in doing so refused to condone a delay of 28 days in filing of a review application by the government borrower entity against a decree in favour of the bank.

BRIEF BACKGROUND:

- Standard Chartered Bank (SCB) filed an interim application (IA) seeking a decree on admission against MSTC Limited (MSTC), in recovery proceedings pending before the Debts Recovery Tribunal, Mumbai (DRT). The DRT passed an order allowing the IA and ordering recovery of the outstanding due.
- MSTC preferred an Appeal against the Decree (Appeal) before the Debts Recovery Appellate Tribunal (DRAT). During pendency of the appeal, MSTC also filed a review application against the Decree before the DRT (Review Application).
- Rule 5A of the Debts Recovery Tribunal (Procedure) Rules 1993 (DRT Rules) prescribes a 30 day limitation period for filing of a review application and MSTC filed its Review Application with a delay of 28 days. Subsequently, the Appeal was withdrawn by MSTC and MSTC instituted an application to condone the delay in filing of the Review Application.
- DRT dismissed the application for condonation of delay holding that it did not have the power to condone delay in filing of a review applications under the RDB Act. MSTC challenged the Order of DRT by filing a writ petition before the Bombay High Court (High Court), which was allowed on 3 May 2019. SCB challenged the High Court's decision before the Supreme Court.

QUESTIONS OF LAW:

- Whether the DRT has the power to condone delay in filing of a review application?
- Whether a writ petition is maintainable against an Order of the DRT rejecting a review application?

WHAT THE SUPREME COURT HELD:

- Supreme Court set aside the judgment of the High Court and held that the Tribunal does not have the power to condone delay in filing of a review application. In arriving at this conclusion Supreme Court analysed the provisions of the RDB Act, DRT Rules and the Limitation Act:
 - Rule 5-A provides that a review application is to be made within 30 days from the date of the order (with no additional period prescribed thereunder). Supreme Court observed that this period was in fact 60 days, which was cut short to 30 days by way of an amendment with effect from 4 November 2016. This brings out the clear legislative intent that review applications must be filed within a shorter period of limitation. Supreme Court further held that the peremptory language of Rule 5A makes it clear that beyond 30 days there is no power to condone delay.
 - The Supreme Court further interpreted Section 5 of the Limitation Act, which enables a Court to condone delay beyond the prescribed period read with Section 24 of the RDB Act, which extends the application of the Limitation Act to an "application" made before the DRT. Supreme Court held that "application" is defined under the RDB Act to only mean original applications filed under Section 19 and will not include review applications which are filed under Section 22(2)(e) of the RDB Act read with Rule 5A.
 - The Supreme Court relied upon its judgment in *International Asset Reconstruction Company of India Limited v Official Liquidator of Aldrich Pharmaceuticals Limited and Others* [(2017) 16 SCC 137] where it was held that the only application referred to in section 24 is an application filed under Section 19 of the RDB Act.
- BHC had relied on Order XLVII Rule 7 of the Code of Civil Procedure 1908 (CPC) to hold that there is a bar against filing of an appeal from an order rejecting a review application, and hence the writ petition filed by MSTC against the order of DRT is maintainable. The Supreme Court differed with the High Court's view and held that:
 - The High Court had failed to appreciate that Section 20 of the RDB Act makes all orders passed by DRT subject to appeal; hence, a writ Petition is not maintainable against an order of DRT rejecting a review application.
 - RDB Act is a complete code and its provisions will have an overriding effect over CPC.

CONCLUSION:

At a time when creditors and other stakeholders have been apprehensive of the leniency shown by Indian judiciary towards enforcement of timelines, the decision of Supreme Court holding that the DRT does not have the power to condone delay of even 28 days in filing of a review application by the borrower, despite the stakes involved, is a welcome step. Further, a lot of certainty and clarity is provided by the Supreme Court on the challenge procedure against orders passed by DRT by holding that a writ petition is not maintainable against the Order of DRT rejecting a review application.

Khaitan & Co represented Standard Chartered Bank in the matter.

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