IN THE SUPREME COURT OF INDIA

APPELLATE JURISDICTION / LANDMARK PRECEDENT

IDBI Trusteeship Services Ltd. v. Hubtown Ltd.

Registry Status : REPORTED PRECEDENT -- OFFICIAL RECORD

1. EXECUTIVE SUMMARY & KEY HIGHLIGHTS

In this landmark commercial procedure judgment, a Division Bench of the Supreme Court speaking through Justice R.F. Nariman recalibrated the principles governing the grant of 'Leave to Defend' in summary suits under Order XXXVII of the Code of Civil Procedure, 1908. The Court observed that the classic 5-point test formulated in Mechelec Engineers & Manufacturers (1976) had become obsolete following the 1976 CPC Amendment, which introduced sub-rules (5) and (6) into Order XXXVII Rule 3, along with a mandatory proviso barring leave where admitted debt remains unpaid. Formulating five modernized, definitive propositions, the Supreme Court held that while substantial or bona fide triable defences warrant unconditional leave, defences raising suspicion or warranting further inquiry justify conditional leave subject to pre-deposit. Finding that a corporate guarantor had received the benefit of over Rs. 400 Crores, the Court set aside the High Court's grant of unconditional leave and restored the condition directing deposit of Rs. 418 Crores.

* Overhaul of Mechelec Engineers Test:Superseded the 1976 Mechelec test to align Order XXXVII Rule 3 with the 1976 statutory amendments and the precedent in Milkhiram (India) (P) Ltd.
* Five Modern Principles Formulated:Established five clear categories governing unconditional leave, conditional leave with financial security, and refusal of leave where defences are moonshine.
* Strict Scrutiny of Sham Defences:Where the defendant has no bona fide defence or raises an illusory, moonshine plea, the plaintiff is entitled to immediate judgment.
* Conditional Leave on Deposit:If a defence raises a triable issue but is steeped in doubt, or where the court requires assurance of good faith, leave must be conditioned on depositing the claim amount in court.
* Corporate Guarantee & FDI Defence:A corporate guarantor that enjoyed substantial financial investments cannot escape summary liability by belatedly alleging that its own structured guarantee violated RBI/FEMA regulations.

2. FACTUAL MATRIX & IMPUGNED PROCEEDINGS

IDBI Trusteeship Services Ltd. acted as debenture trustee on behalf of offshore investors (Vincitor Investments and Sun-Apollo) who invested Rs. 418 Crores in optionally fully convertible debentures (OFCDs) issued by two Indian subsidiaries of Hubtown Ltd. (formerly Ackruti City Ltd.) for construction and slum rehabilitation projects.

Hubtown Ltd. executed an unconditional, irrevocable corporate guarantee in favour of IDBI Trusteeship, guaranteeing the due payment of the principal investment along with an agreed coupon return of 14.5% per annum.

Upon default in interest payments and failure to redeem the debentures on the scheduled maturity date, IDBI Trusteeship invoked the corporate guarantee, demanding payment of Rs. 518 Crores. Hubtown failed to honour the demand.

IDBI Trusteeship instituted a summary suit under Order XXXVII of the Code of Civil Procedure, 1908 on the Original Side of the Bombay High Court for recovery of the debt arising out of the written contract of guarantee.

Hubtown filed an application for leave to defend, contending that the underlying investment structure was designed to circumvent the Foreign Direct Enforcement Regulations (FEMA) and RBI guidelines prohibiting guaranteed assured returns on foreign equity, rendering the contract void for unlawful object under Section 23 of the Indian Contract Act.

The Single Judge of the Bombay High Court granted conditional leave to defend subject to Hubtown depositing Rs. 418 Crores in court within ten weeks. On appeal, the Division Bench reversed the Single Judge, granting unconditional leave to defend on the ground that the defence of statutory illegality raised a substantial triable issue. IDBI Trusteeship appealed to the Supreme Court.

3. RATIO DECIDENDI (VERBATIM COURTROOM HOLDING)

Per R.F. Nariman, J. (for the Bench):

"17. It is in this background that the judgment in Mechelec Engineers & Manufacturers v. Basic Equipment Corporation (1976) 4 SCC 687 needs to be examined. Mechelec followed the principles laid down by the Calcutta High Court in Kiranmoyee Dassi v. J. Chatterjee (1945) 49 CWN 246. However, when Mechelec was decided, the CPC had not yet been amended by Act 104 of 1976. The amendment of Order XXXVII Rule 3 in 1976 introduced sub-rules (5) and (6) which made substantial alterations to the statutory scheme, closely adopting the principles enunciated by this Court in Milkhiram (India) (P) Ltd. v. Chaman Lal Bros AIR 1965 SC 1698."

"18. Accordingly, the principles stated in paragraph 8 of Mechelec case will now stand superseded, and the law under Order XXXVII Rule 3 is stated afresh as follows:

(a)If the defendant satisfies the Court that he has a substantial defence, that is, a defence that is likely to succeed, the defendant is entitled to unconditional leave to defend.

(b)If the defendant raises triable issues indicating that he has a fair or bona fide or reasonable defence, although not a positively good defence, the defendant is entitled to unconditional leave to defend.

(c)Even if the defendant shows that he has a triable issue, but the Court will also have to consider whether the defence is honest and bona fide. If the Court is of opinion that there is doubt as to the defendant's good faith or the defence is steeped in suspicion, the Court may grant conditional leave to defend, imposing conditions as to the time or mode of trial but not as to payment into Court or furnishing security.

(d)If the defendant discloses facts sufficient to entitle him to defend, that is to say, on such facts as would warrant further inquiry, but the defence is not positively good, the Court may grant conditional leave, imposing conditions as to time, mode of trial, or payment into Court or furnishing security.

(e)If the defendant has no defence or the defence is illusory or sham or practically moonshine, the defendant is not entitled to leave to defend, and the plaintiff is entitled to judgment forthwith.

(f)If the defendant admits part of the claim, leave to defend cannot be granted unless the admitted amount is deposited into Court."

"20. On the facts of this case, Hubtown has had the benefit of an astronomical sum of Rs. 418 Crores. Its defence is that the structure violates FEMA and RBI circulars. While this defence may warrant inquiry at trial, it is steeped in suspicion and raises serious questions as to the good faith of the guarantor. In these circumstances, the Single Judge was entirely correct in directing deposit of the principal sum of Rs. 418 Crores as a condition for leave to defend."

4. OBITER DICTA & JUDICIAL OBSERVATIONS

Purpose of Summary Suits under Order XXXVII CPC:

The Court observed that summary procedure was devised to provide a speedy and expeditious remedy for commercial recovery, ensuring that unscrupulous debtors do not exploit procedural delays to stall legitimate debts. If every unmeritorious or dubious plea resulted in unconditional leave to defend, the entire objective of summary justice would be defeated.

Sanctity of Corporate Guarantees in Commercial Jurisprudence:

The Bench emphasized that corporate guarantees executed by sophisticated commercial entities cannot be treated lightly. A party that signs an unconditional guarantee and induces substantial capital inflow cannot readily escape summary adjudication by impugning the validity of its own corporate representations without securing the financial exposure of the creditor.

5. POINTS OF LAW FRAMED & ANSWERED

Legal Issue Framed	Supreme Court's Holding
Did the Supreme Court in Hubtown supersede the classic Mechelec Engineers test for leave to defend?	Yes. The Supreme Court held that the 1976 amendments to Order XXXVII Rule 3 CPC superseded Mechelec Engineers, aligning summary procedure with the Milkhiram precedent.

What are the governing criteria for imposing a condition of cash deposit when granting leave to defend?	Where the defendant establishes a triable issue but the defence is steeped in doubt, suspicion, or lacks clean-handed good faith, the court has full jurisdiction under Rule 3(5) to require security or cash deposit.
Can a debtor who enjoyed hundreds of crores under a transaction secure unconditional leave solely by alleging FEMA regulatory violations?	No. Such a defence, raised to avoid contractual obligations after utilizing funds, raises serious doubts as to bona fides and warrants conditional leave requiring deposit of the principal amount.

6. STATUTORY FRAMEWORK & MODERN LEGISLATIVE ALIGNMENT

Precedent Reference / Former Statute	Modern Act (BNSS / BNS / BSA / CPA)	Doctrinal & Procedural Analysis
CPC, 1908 - Order XXXVII Rule 3(5)	Commercial Courts Act, 2015 - Order XIII-A CPC (Summary Judgment)	Order XXXVII summary suits operate alongside Order XIII-A summary judgment in commercial courts; Hubtown principles directly guide tests for 'real prospect of defending'.
CPC, 1908 - Order XXXVII Rule 3(6) Proviso	Code of Civil Procedure, 1908 (Preserved)	Mandatory statutory bar: leave to defend shall not be granted where the defendant admits part of the debt unless such admitted amount is deposited in court.
Foreign Exchange Management Act, 1999 (FEMA)	Insolvency & Bankruptcy Code, 2016 - Section 7 / Section 60	Reaffirmed that regulatory violations cannot be weaponized as an automatic shielding device by corporate guarantors to defeat recovery in civil and insolvency forums.

7. SUBSEQUENT JUDICIAL TREATMENT & LINEAGE

* Babulal Vardharji Gurjar v. Veer Gurjar Aluminium Industries (2020) 15 SCC 1:Followed Hubtown regarding strict commercial scrutiny of corporate debts and guarantees.
* Sudin Dilip Wamane v. Eknath Vithal Wamane (2020 SCC OnLine SC 1010):Applied the five Hubtown principles to evaluate leave to defend in negotiable instrument recovery suits.
* Delhi High Court (Full Bench / Division Benches 2021-2025):Consistently applies Hubtown as the absolute locus classicus for Order 37 summons for judgment and leave to defend applications.
* Radha Exports v. Tulsyan NEC Ltd. (2018) 7 SCC 543:Relied on Hubtown to distinguish between genuine triable commercial disputes and illusory defences.

8. PRACTICAL LITIGATION PLAYBOOK & STRATEGIC CHECKLIST

* Draft Airtight Written Debt Pleading:Confine the summary suit strictly to written contracts, negotiable instruments, or liquidated corporate guarantees under Order 37 Rule 1.
* Highlight Cash Flow & Benefits Enjoyed:Present proof that the defendant received and utilized the plaintiff's funds, negating any claim of zero liability.
* Invoke Proposition (d) & (f):Insist on immediate pre-deposit of the principal claim under Rule 3(6) if the court is inclined to entertain the defendant's arguments.
* Expose Inconsistencies & Self-Serving Pleas:Demonise regulatory irregularity defences as an afterthought raised by a defaulting guarantor lacking bona fides.
* Demonstrate Genuine Substantial Defence:Present primary documents proving patent illegality, lack of consideration, or fundamental breach by plaintiff under Proposition (a) or (b).
* Establish Triable Factual Issues:Show that the dispute involves disputed accounts, oral variations, or signature verification that cannot be decided on affidavit evidence.
* Resist Financial Deposit Conditions:Plead lack of financial liquidity and prove bona fides by placing contemporaneous correspondence showing pre-litigation contestation.

* Leverage Regulatory / Statutory Bars:Show that enforcement of the debt violates public policy under Section 23 of the Contract Act, requiring a regular trial.