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(2013) 12 NCDRC CK 0028

In the National Consumer Disputes Redressal Commission

EXPORT CREDIT GUARANTEE CORPORATION OF INDIA LTD — APPELLANT

Vs

M.S.Creations — RESPONDENT

Date of Decision : 13-12-2013

Acts Referred:

Citation : 2013 0 NCDRC 843 : 2014 1 CPJ 81

Hon'ble Judges : VINEETA RAI , VINAY KUMAR J.

Advocate : BHARAT SANGAL , R.R.KUMAR , Saumya Agarwal , HIMANSHU GUPTA , U.C.MITTAL

Judgement

1. THE appellant Export Credit Guarantee Corporation of India Ltd. (ECGC) has filed this appeal against the order of Haryana State Consumer Disputers Redressal Commission in Complaint Case No.15 of 2003. The Complainant, M/s. M.S. Creations had filed the complaint through its owner proprietor, Mrs. Meenakshi Saxsena of Panipat, Haryana. The matter arose out of transaction of export of handloom goods by the Complainant to Society Ivoirienne De Commerce ET DE Representation (hereinafter called SICOREP), under a contract of 18.10.2001. Under this contact, the payment was to be made 60 days from DA i.e. within 60 days from acceptance of the documents. The entire financial transaction on behalf of the Complainant firm was handled by OP -3/Punjab National Bank Panipat.

2. THE case of Complainant was that the risk in this export was covered under a policy obtained from OPs -1 and 2/ ECGC. Accordingly, the failure of the buyer to pay the insured within four months from due date, was protected under the policy. On 7.11.2001, ECGC had accorded specific approval for export of goods under the contract with SICOREP up to a sum of Rs.64.86 lakhs (US$135125). The first consignment worth Rs.925538/ - was sent on 16.11.2001, followed by a second shipment on 07.1.2002 worth Rs.1361874/ -. Necessary declarations of these two shipments were also sent to ECGC on 19.12.2001 and 18.1.2002 respectively. The Haryanan State Consumer Disputes Redressal Commission allowed the complainant to the extent of 90% of the two shipments, less the

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amount already released by ECGC to the complainant. ECGC has now challenged the award in the present appeal, impleading OP -3/Punjab National Bank as the second respondent. We have carefully considered the records submitted by the two sides and heard their respective counsels.

3. AS per the Complaint before the State Commission, a letter dated 18.01.2002 was received from SICOREP requesting for change of their bank from one in France to another in Abidjan, Ivory Coast. The complainant forwarded it, with a request to ECGC, seeking their permission for change of the Bank. This permission was given by ECGC, Panipat, in a letter signed by Vasantha Srinivas, Branch Manager. The complainant petition stated that the entire documents were accordingly sent to its bank / O P -3, to enable it to send the same to the buyer ''s bank.

4. THE buyer, SICOREP was to make payment to its bank i.e. BHCI at ABIDJAN and get documents for getting the goods released from the port authorities. The Buyer ''s bank was to send the letter of acceptance to respondent no.3 bank to complete the transaction. But, as stated in the Complaint, ''''Unfortunately for the reasons best known to SICOREP and the Foreign Bank, the goods were got released by SICOREP without making any payment. This was probably a result of some sort of fraud having been played by SICOREP causing massive loss to the complainant firm for which as per the terms and policy of Insurance Policy of Opposite Party No.1 and 2, a claim was lodged vide two separate claim forms for both the shipments worth Rs.9,25,538/ - and Rs.13,61,874/ - respectively. ''''

It is claimed by the Complainant that once the entire documents had been sent to OP -3/Bank the role of the Complainant was over. OP -3 sent the documents to the buyer ''s bank. It was for the buyer ''s bank at Ivory Coast to get the acceptance from the buyer and send that document to the Opposite Party No.3 for completing the transactions which however did not happen, though the goods were got released by the buyer from the port after getting the documents from the foreign bank and as far as the complainant firm is concerned the transaction stood completed after it deposited the documents with its bank and if any failure has occurred on the part of foreign bank or on account of the omission and commission on the part of the buyer, the said risk as far as the complainant is concerned stands covered by the policy and specific approval issued by ECGC. The foreign bank is not an agent of the complainant firm nor did the complainant have any control over it. Therefore, action against the buyer/buyer ''s bank should have been taken by the ECGC after paying the claim of the complainant firm, as per Clause 23 and 24 of the policy.

5. IN response, OP/ECGC agreed that they had in their letter dated 7.11.2001 approved the credit limit within which the complainant could make shipments to the buyer, SICOREP. However, it contended that a third party namely one Reda Ali of Presta Comci, not the buyer, had taken the original documents from the foreign Bank. However, OPs 1 and 2 did not dispute that the opposite party No.3 had written to the foreign Bank that they had acted negligently in handing over

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the documents to a stranger and that it should have returned the papers to the Bank or sought their instructions. OPs 1 and 2 accept that the loss had occurred due to the negligence of the foreign Bank to whom the complainant ''s Bank had sent the documents but contend that it was not covered under the SCR policy issued by them. It was further stated that Risk Covered by the policy was refusal or non -payment by the foreign buyer but not on any other ground.

6. THE main ground urged on behalf of the appellants is that the State Commission was wrong in holding that shipping documents were handed over by the BHCI, Ivory Coast to SICOREP. They were handed over to one Reda Ali and not to SICOREP. Learned counsel for the appellants sought to rely on the letter of 22.11.2002 (Annexure P -21), written by BHCI to OP -3/Punjab National Bank. In our view, the contents of this letter do not support the argument of the appellants. In the first para, BHCI categorically admits delivering the original documents of the two shipments to Mr Reda Ali. In the very next para, it states that Punjab National Bank had been informed about its refusal to accept the documents. If BHCI did not wish to accept these documents, the only option available would have been to return them to the sender i.e. Punjab National Bank. Further, the letter does not show how BHCI acquired the authority to deliver them to Reda Ali. If Reda Ali was a stranger, as claimed, the BHCI would have no authority to deliver the documents to him. On the other hand, if Reda Ali was the same person as MR Ali Reda, the documents would have been received on behalf of SICOREP, the consignee. Further, evidence before the State Commission clearly brings out that - a. OPs had full information of the proposed change in the buyer ''s bank. The letter of 18.1.2002, forwarded by the complainant on 21.1.2002, was itself signed by MR Ali Reda as Director of SICOREP. It clearly sought change of Bank to Abidjan on ''D/A 60 Day '' basis. He was also the person who had signed the purchase order of 21.11.2001 as Director, SICOREP for supply of goods by the complainant. If the action of its Director, MR Ali Reda was not authorised by the buyer i.e. SICOREP, there is nothing to show what action was taken against him. b. The change of buyer ''s Bank from Paris to Abidjan was made by the complainant with specific and prior approval of the OPs. The letter of Branch Manager, ECGC, Panipat gave the necessary permission for the change of Bank and terms of payment vide letter dated 7.2.2002 which said - ''''As the goods are incurring demurrage at Abidjan Port, the Corporation has agreed to your request for change in the Bank from Credit Lyonais, VK to BHCI at Ivory Coast, subject to RBI ''s approval and the demurrage charges being borne by the buyer. The rest of the conditions as per our earlier approval stands the same. '''' Therefore, any subsequent report that SICOREP was not its customer will not alter the specific approval already accorded. c. Before the State Commission, OP -3/Bank did not deny the claim of the complainant. It sought dismissal of the complaint only on the ground that Rs 6 lakhs released by the ECGC was already utilised by the complainant.

7. WE are therefore of the view that the State Commission was right in holding that the complainant cannot be held responsible for the events which led to the

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documents being released by the buyer ''s bank, without payment.

8. DURING the course of hearing of this appeal, appellants/ECGC referred to the three findings reached by the State Commission. It is argued that they show that there is some inter -mixing of facts which are not germane to the controversy. Therefore, for complete appreciation of the matter, Counsels for the appellants were permitted to file brief submission and counsel for the respondent given time to file its response thereto. The three findings are - a. The claim of the complainant has arisen on account of failure of the collecting bank; b. The OPs have paid Rs 6 Lakhs after admitting the loss caused to the complainant on provisional basis. The claim of the OPs that it was given only as post -shipment provisional payment, cannot be accepted, merely because the amount was recalled later. c. In its letter at Annexure C -21, ECGC had waived its right under Clause -22 and offered to settle the claim for the reduced amount of Rs 4,05,907. The offer, though not accepted by the complainant, totally nullifies the claim of the OPs 1 and 2.

We have considered their submissions and heard the two sides with respect to them. In the submission filed for the Ops it is stated that the 2nd and 3rd findings of the State Commission do not relate to the present dispute and that the counsel for the respondent has also accepted it to be so. On the finding mentioned at ''b '' above, it is stated that payment to OP -3/Punjab National Bank was under a separate policy called Whole Turnover Post Shipment Export Credit Guarantee (WPTCG) which is different from Shipment (Comprehensive Risks) Policy, taken by the exporter/complainant. The exporter is a stranger to the WPTCG. But, the records show that this argument is at best a half -truth. It does not explain whether there was any relation between the advance to the Bank and the claim of the exporter/complainant. We find that in the reply to the Appeal, the Bank/OP -3 has clearly answered this point by stating that, ''''It is further submitted that the answering bank had complied with all the formalities to be done on its part and the amount of Rs.6 lacs deposited by ECGC and utilised by respondent No.1 '''' Thus, the payment to OP -3/Bank was directly related to the claim of the complainant. Rs.6 lakhs was released after the claim under the SCR policy had already been made. We therefore, agree with the finding reached by the State Commission.

9. COMING to the finding at ''c '' above, in relation to the settlement offer of Rs 4,05,947.00, it is submitted on behalf of the appellants/OPs that it pertained to a another export by the respondent/complainant to a different buyer. The offer was communicated in the letter of 17.9.2004 (not 2000 as mentioned in the impugned order).The policy number mentioned therein is SCR0250000344 while the policy under which the present claim is made was numbered SCR0000093. Even the complaint of the respondent before the State Commission does not mention this offer of settlement and its rejection by the complainant. Therefore, this finding cannot be sustained. However, this will have no bearing on the sustainability of the other two findings.

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10. IN the result we agree with the State Commission that the complainant cannot be held liable for the conduct of the buyer ''s bank which resulted in the documents being released in violation of the terms of payment. The appeal is therefore, dismissed for want of merit and the order passed by the State Consumer Disputes Redressal Commission, in Complaint Case No.15 of 2003 is confirmed. No orders as to costs.

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