
(2006) 03 NCDRC CK 0093

In the National Consumer Disputes Redressal Commission

GEEKAY AGROPACK (P) LTD.

APPELLANT

Vs

State Bank Of Mysore

RESPONDENT

Date of Decision : 07-03-2006

Acts Referred:

Citation : 2006 2 CPJ 204

Hon'ble Judges : M.B.Shah , Rajyalakshmi Rao J.

Final Decision : Complaint partly allowed

Judgement

1. THE short question which requires consideration in this appeal is - "Was there any deficiency in service by the State Bank of Mysore (respondent No. 1, Exporter's Bank/Seller's Bank) or the Citibank (respondent No. 2, Importer's Bank/Purchaser's Bank) in not collecting the export proceeds from the consignee, in a case where goods were to be released by giving 45 days credit facility to the consignee"?

2. IN the facts of such a case, the purchaser, in our view, bank cannot be held responsible for non-payment of the value of the goods, but the bank is required to take action against the consignee and deal with papers such as bill of exchange, etc. promptly. Facts: Appellant, M/s. Geekay Agropack Pvt. Ltd. appellant, is an exporter in spices. On 21.4.1994 M/s. Ask Ingredients Inc. of USA placed a purchase order with the appellant for supply of 1.110 kgs. of oleoresin capsicum and 925 kgs. of Red Chillies seed oil. For the export of the goods on 11.5.1994 the appellant furnished the necessary documents such as, bill of lading, invoice, bill of exchange, details of the purchaser to the State Bank of Mysore, respondent No. 1 (hereinafter referred to as S.B.M.), along with a covering letter (Collection Order) according to which the respondent No. 2 was required to collect the proceeds from the purchaser. On 25.5.1994 the respondent No. 1 sent two sets of all the documents to the respondent No. 2 (Citibank NA), New York, for collection. As the respondents failed to collect the sale proceeds from the purchaser complaint No. 12 of 1996 was filed before the State Consumer Disputes Redressal Commission, Karnataka at Bangalore, for

recovering the value of goods, with interest and expenses amounting to Rs. 14,37,000. By judgment and order dated 30.4.1997, the complaint was dismissed by the State Commission. Hence, the complainant has preferred this appeal.

For appreciating the contentions we would first refer to the admitted facts. It is not disputed that the appellant has furnished the documents, such as bill of lading, invoice, bill of exchange, and details of the purchasers and his bank with a covering letter (collection order) to the S.B.M. to collect the sale proceeds from the purchaser. The said documents were sent to respondent No. 2 for collection (opposite party No. 2 Citibank) by the respondent No. 1. It is an admitted fact that the documents were accepted on 7.6.1994 by the importer. It is also not disputed that the collecting bank delivered the goods to the purchaser. As per the documents the amount was payable after 45 days of its presentation. That means, the importer was required to pay the amount on or before 22.7.1994. On the date of maturity for payment, i.e., 22.7.1994 the amount was not paid by the importer.

3. THEREAFTER, by letter dated 10.10.1994 by one Mr. Kripalani, on behalf of the importer, informed the appellant company that the amount would be paid after sometime. The said fax message reads thus: "Message Apologize for not having responded in a timely manner Things have been crazed out here. My wife finally is of the critical care and we have finally moved back home from Manhattan where she was hospitalized. I am fully aware of my responsibilities and the payments shall be made to along with interest not later than 15.11.1994. I am just catching up on my billings and collections. I need an additional 2-3 weeks and rest assured your payment will be made. Sorry to put you through this crisis, it has been an emotional roller coaster for me and my family and hopefully we are completely out of the woods now. The timing absolutely stinks. Please feel free to contact me. The best time to reach me is between 7-8 a.m. US time at 201-236-1783 from Wednesday 10.12.1994. In any event I will talk to you on Wednesday afternoon your time."

Submissions: In view of the said letter, it is contended by respondents No. 2 Bank that the bank would not be liable for non-payment by the importer. If the consignee/importer fails to honour the bill of exchange the only course open to the appellant was to proceed against the defaulter consignee and not against the Bank. Respondent No. 2 bank is only a collecting bank.

4. SIMILARLY, the S.B.M., respondent No. 1, submitted that the role assigned to it is limited to transfer of the documents to the importer through the Citibank NA BR., USA. It has discharged its duty and there was no deficiency in service on the part of it. As the amount for the bill was payable after 45 days, after its acceptance, it had no role to play thereafter, and, therefore, there is no deficiency on the part of the respondent No. 1. It is also submitted that the complainant himself was dealing with the importer and the consignee had promised to pay the amount and, therefore, it was for the complainant to recover

the said amount from the consignee by filing proper proceedings. Therefore, the bank would not be liable. Learned Counsel for the appellant submitted that opposite parties did not inform the complainant with regard to delivery of the documents and action taken by them for recovery of the amount from the importer. Further, it is contended that banks were required to deliver the documents such as bill of lading to the consignee against the payment mentioned in the invoice. Subsequently, the complainant came to know that the first opposite party had delivered the documents to the second opposite party on 31.5.1994. Findings : In the facts the following two questions require consideration: (i) Whether there is any deficiency on the part of the respondent Banks in not acting promptly in handling with the documents, such as, bill of exchange, etc. ? And, (ii) Whether the Citibank or the S.B.M. is liable for not recovering the amount from the consignee?

5. AS against the first issue regarding failure/deficiency on the part of the banks in not promptly dealing with the documents, the learned Counsel for the appellant submitted that: (a) the consignee had obtained the delivery of the consignment and as per the terms of bill of exchange the opposite party No. 2 was duty-bound to issue notice to the purchaser to make the payment on the maturity date and if the consignee did not make the payment, opposite party No. 2 was bound to issue a notice of dishonour and ought to have made a noting and obtain a Protest Note from the Notary and return the bill of exchange to the opposite party No. 1 which in turn would enable the appellant to initiate the recovery proceedings; (b) it was the duty of the opposite party No. 2 to inform the complainant that consignee has not honoured the bill of exchange within 45 days. It was also their duty to return the documents with an endorsement that the consignee has failed to honour the documents.

Law on the subject and relevant rules:

6. THE complainant/appellant has placed reliance on Articles 10 and 20 of ICC-UCP-500- Uniform Customs and Practice of Documentary Credits (1993) which are as under: Article 10. "In respect of a documentary collection including a bill of exchange payable at a future date the collection order should state whether the commercial documents are to be released to the drawee against acceptance (D/A) or against payment (D/P)".

In the absence of such statement, commercial documents will be released only against payment. Article 20: "Collecting banks are to advise fate in accordance with the following rules: Form of advice - All advices or information from the collecting bank to the bank from which the collection order was received, must bearing appropriate detail including, in all cases, the latter banks reference number of collection order.

Method of Advice-In the absence of specific instructions the collecting bank must send all advices to the bank from which the collection order was received by quickest mail but, if the collecting bank considers the matter to be urgent,

quicker methods such as cable, telegram, telex or communication by electronic systems etc., may be used at the expense of the principal. (a) Advice of payment-THE collecting bank must send without delay advice of payment to the bank from which the collection order was received, detailing the amount or amounts collected, charges and/or disbursements and/or expenses deducted, where appropriate, and method of disposal of the funds.

(b) Advice of acceptance-THE collecting bank must send without delay advice of acceptance to the bank from which the collection order was received.

(c) Advice of non-payment or non-acceptance-THE collecting bank must send without delay advice of non-payment or advice of non-acceptance to the bank from which the collection order was received.

THE presenting bank should endeavour to ascertain the reasons for such non-payment or non-acceptance and advise accordingly the bank from which the collection order was received. On receipt of such advice the remitting bank must, within a reasonable time, give appropriate instructions as to the further handling of the documents, if such instructions are not received by the presenting bank within 90 days from its advice of non-payment or non-acceptance, the documents may be returned to the bank from which the collection order was received."

For the deficiency on the part of the Bank, we would first refer to the International Rules.

By notice dated 17th February, 2006 we have asked the parties to furnish "Uniform Rules for Collection" by the International Chamber of Commerce as well as other relevant documents and the matter was directed to be listed on 28th February, 2006. In response to the above notice Citybank-respondent No. 2 has submitted the Uniform Rules for Collection of 1979 and we have referred to Rules of 1995. As such there is not much difference in the relevant Rules, which we have quoted in the judgment.

7. IT is also the duty of the opposite party Nos. 1 and 2 to follow "Uniform Rules for Collection Publication No. 522" (1995) published by International Chambers of Commerce, particularly Articles 7 and 26, which is as under: Article 7: Release of Commercial Documents Documents Against Acceptance (D/A) v. Documents Against Payment (D/P) "(a) Collections should not contain bills of exchange payable at a future date with instructions that commercial documents are to be delivered against payment. (b) If a collection contains a bill of exchange payable at a future date, the collection instruction should state whether the commercial documents are to be released to the drawee against acceptance (D/A) or against payment (D/P) In the absence of such statement commercial documents will be released only against payment and the collecting bank will not be responsible for any consequences arising out of any delay in the delivery of documents. (c) If a collection contains a bill of exchange payable at a future date and the collection instruction indicates that commercial documents are to be released against

payment, documents will be released only against such payment and the collecting bank will not be responsible for any consequences arising out of any delay in the delivery of documents."

"Article 26 Advices Collecting banks are to advise fate in accordance with the following rules: (a) Form of Advice All advices or information from the collecting bank to the bank from which the collecting instruction was received, must bear appropriate details including, in all cases, the latter bank's reference as stated in the collection instruction. (b) Method of Advice IT shall be the responsibility of the remitting bank to instruct the collecting bank regarding the method by which the advices detailed in c(1), c(2) and c(3) are to be given. In the absence of such instructions, the collecting bank will send the relative advices by the method of its choice at the expense of the bank from which the collecting instruction was received. (c) 1. Advice of Payment The collecting bank must send without delay advice of payment to the bank from which the collection instruction was received, detailing the amount or amounts collected, charges and/or disbursements and/or expenses deducted, where appropriate, and method of disposal of the funds. 2. Advice of Acceptance The collecting bank must send without delay advice of acceptance to the bank from which the collection instruction was received. 3. Advice of Non-payment and/or Non-acceptance The presenting bank should endeavour to ascertain the reasons for non-payment and/or non-acceptance and advise accordingly, without delay, the bank from which it received the collection instruction. The presenting bank must send without delay advice of non-payment and/or advice of non-acceptance to the bank from which it received the collection instruction. On receipt of such advice the remitting bank must give appropriate instruction as to the further handling of the documents. If such instructions are not received by the presenting bank within 60 days after its advice of non-payment and/or non-acceptance, the documents may be returned to the bank from which the collection instruction was received without any further responsibility on the part of the presenting bank."

On this aspect in para 218 of the Halsbury's Laws of England, 4th Edition, Part 3(1) under the heading of Duties and liabilities of banker collecting bills, it is, inter alia, stated that if a banker undertakes the collection of bills for a customer, he is bound to present them for acceptance and payment in accordance with the provisions of the bills of Exchange Act, 1882 and must give notice of dishonour to his customer if they are dishonoured.

8. FURTHER, the law is that documents of such transactions are required to be handled by the banks, and they have to be taken up or rejected immediately and without any opportunity to prolong injury. In the case of Federal Bank Ltd. v. V.M. Jog Engineering Ltd. & Ors., IV (2000) CLT 265 (SC)=I (2001) BC 521 (SC)=VII (2000) SLT 245=(2001) 1 SCC 663, the Apex Court held that Uniform Commercial Practice of Documentary Credits (1983) has been formulated by the International Chamber of Commerce. In the absence of its incorporation, UCP will not apply but it can be taken into account as part of mercantile custom and

practices and most of it is also treated as part of common law, barring a few differences. If an express term in the contract contradicts UCP terms, the contract prevails. The Court held that Article 10 of the UCP of Documentary Credits (1983) refers to the duty of the bank to honour the commitment. In Para 37 the Court held: "37. In the absence of incorporation, UCP will not apply but it can be taken into account as part of merantile custom and practices and most of it is also treated as part of common law, barring a few differences. If an express term in the contract contradicts UCP terms, the contract prevails. Mustill, J. in *Royal Bank of Scotland plc. v. Cassa Di Risparmio Delle Provincie Lombard*, (1993) [Financial Times 21.1.1992 (CA)], said:

"...it must be recognised that (UCP) terms do not constitute a statutory code. As the title marks clear, they constitute a formulation of customs and practices, which the parties to a letter of credit can incorporate into their contracts by reference. If it is found that the parties have explicitly agreed to such a term, then the search need go no further, since any contrary provision in UCP must yield to the parties expressed intention."

Further, while discussing the banks liability the Court has quoted Article 16(c) and (d) and held that bank was required to act promptly and without any opportunity for prolonged injury. Relevant discussion in para 44 is as under: "44. Learned Counsel for the appellant Mr. Ganesh has contended that if the issuing bank does not certify the documents within reasonable time, it will be deemed that it had accepted the documents. Counsel relied on Clauses (c) and (e) of Article 16. Clause (c) states: "16(c) The issuing bank shall have reasonable time in which to examine the documents and to determine as above whether to take up or to refuse the documents."

9. IF the issuing bank does not return them within reasonable time, it may be deemed that it has ratified the genuineness of the documents. These clauses are based on principles of common law. Thereafter, the Court in paragraph 47 held as under: "47. Clause (d) of Article 16 of 1983 Revision states that, if the issuing bank decides to refuse, it must give notice to the bank from which it received the documents or to the beneficiary, if it directly received from him. Such notice must state the discrepancies in respect of which the issuing bank refuses the documents and must also state whether it is holding the documents at the disposal of or is returning them to, the presentator (remitting bank or the beneficiary, as the case may be). Sub-clause (e) reads:

"16. (e) IF the issuing bank fails to act in accordance with the provisions of paras (c) and (d) of this Article and/or fails to hold the documents at the disposal of, or to return them to, the presentator, the issuing bank shall be precluded from claiming that the documents are not in accordance with the terms and conditions of the credit."

10. THUS, where the issuing bank does not respond within reasonable time it cannot, under UCP, dispute the documents later. Clause 20(c) thereof specifically

provides that the collecting bank must send without delay advice of non-acceptance to the bank from which the collection order was received. It is admittedly not done, despite repeated letters by the S.B.M., as quoted above, there was no prompt response.

Further, in paragraph 14 of *Indian Bank v. Satyam Fibers (India) Ltd.*, (1996) 5 SCC 559, it is held that: "Acceptance" is dealt with in Article 15 which indicates that the responsibility of seeing that the Bill of Exchange is accepted, completely and correctly, is that of the "presenting bank".

11. ARTICLE 15 reads thus: "15. The presenting bank is responsible for seeing that the form of the acceptance of a bill of exchange appears to be complete and correct, but is not responsible for the genuineness of any signature or for the authority of any signatory to sign the acceptance.

On the basis of the aforesaid Rules, it was the duty of the second respondent, Citibank, to ascertain: firstly, the reasons for non-payment and/or non-acceptance of the bill of exchange without any delay; secondly, the Citibank ought to have sent the information without delay with regard to non-payment or non-acceptance to the bank from which it received the collection instruction; thirdly, it was the duty of the S.B.M. on receipt of such advice give appropriate instruction as to further handling of the documents; fourthly, in case of non-acceptance of the bill of exchange and if there was no instruction from the S.B.M. it was the duty of the Citibank to return the documents to the State S.B.M. within a period of 60 days. This is not apparently followed by the Citibank (respondent No. 2). The S.B.M. has also not taken appropriate steps in informing the complainant within a reasonable time.

12. IN our view, from the record, it is apparent that: (i) the Citibank has not responded to various letters written by the complainant or to the S.B.M.; (ii) the Citibank has not taken any action on the due date for recovering invoice amount. It is the duty of the importer's bank to approach the importer for payment, and if the importer pays money it shall remit the proceeds to the exporter's bank; (iii) the respondent No. 2 Bank has not initiated any proceedings against the purchaser nor returned the duly endorsed bill of exchange with a noting that the consignee has failed to pay the amount; and (iv) when the bill was not honoured on the due date the Citibank ought to have informed the dishonour of the bill to all the concerned including the respondent No. 1 Bank and ought to have issued notice of dishonour or got the bill of exchange noted and produced immediately for enforcement of recovery of the bill amount.

This would be clear from the following undisputed documents. (a) By letter dated 11.5.1994, the complainant (consignor) handed over the following documents to the State S.B.M.: 1. Invoice : Five Nos. 2. Packing List : Five Nos. 3. Certificate of Original : Three Nos. (2 original 1 xerox copy) 4. Bill of Lading Original : Three Sets 5. Bill of Exchange : Three Copies 6. Quality Analysis Graph : Original 7. R.B.I. Code No. : Xerox Copy 8. Xerox copy of Imported and Exporter Code. 9.

Certificate of Registration as Exporter issued by Spice Board (xerox Copy)

The documents were sent with a request to receive and arrange to collect the proceeds. Thereafter, details of the importer are mentioned. Bill of Exchange was also sent. (b) There are number of letters written to the Citibank, New York by S.B.M. (i) By letter dated 6th July, 1994 (Exh. R-1) Citibank was informed by the S.B.M. to confirm receipt of documents and also advise the date of acceptance and due date over Telex 845 2008 S.B.M.M. IN. (ii) Reminder was sent by letter dated 12th July, 1994 (Exb. R-2) to the effect that "We had sent the Bill to you on collection basis. Till today we have not received acknowledgement from you. Kindly confirm receipt of documents and also advise the date of acceptance and due date over our Telex No. 845 2008 S.B.M.M. IN". (iii) Another reminder was sent in September, 1994 (Exb. R-3) to the effect: "Drawee: Ask Ingredients INC. 105, Surrey Court Ramsey No. 07448. We had sent the bill to you on collection basis. Till today we have not received acknowledgement from you. Kindly confirm receipt of documents and also advise the date of acceptance and due date over our Telex No. 845 2008 S.B.M.M IN". (iv) Thereafter another reminder was sent by S.B.M. to Citibank stating that, "Despite three reminders Your Branch has neither acknowledged nor remitted the proceeds to our account...." (v) Next letter is dated 15th November, 1994 (Exh. R-5) to S.B.M. by Citibank to the effect, "We acknowledge the receipt of your telex dated 12.11.1994. Our reference No. for the query is: F19411140277. Please quote this reference number in all future correspondence. We are investigating and shall revert to you as soon as possible."

(vi) On 5th December, 1994 (Exh. R-6), S.B.M. wrote to the City Bank to the effect: "With reference to your telex message dated 30th November, 1994 which was received mutilated/garbled, we furnish the full particulars of Airway Bill/B L : HOLLU 0624-BOM-NY-061 Hoegh Lines - Juper Shipping Agency. Branch : Citi Bank, Third Avenue, BR-232, 1675, Third Avenue, New York-NY- 101125. We have neither received acknowledgement nor payment so far. Please take up the matter with your third avenue branch and advise us the fate of our collection which is pending with them for more than five months". (vii) Thereafter, on 7th December, 1994 (Exh. R-7) a letter was written by S.B.M. to Citibank to the effect: "We have neither received acknowledgement nor payment so far. Please take up the matter with your third avenue branch and advise us the fate of our collection which is pending with them for more than five months." (viii) Subsequently, Citibank wrote letter (Exh. R-8) to S.B.M. to give the details of Airway Bill No., name of the consignor etc. That message was received on 30th November, 1994. (ix) Then, by letter dated 30th November, 1994 (Exb. R-9) Citibank informed the S.B.M. to give details regarding the name of the signatory who has accepted the documents. (x) Thereafter there is a message dated 20.5.1994 from the S.B.M. to the Citibank NA, Bombay Branch (Exb. R-11) to the following effect:

"We had sent two sets of the above documents to your Third Avenue Branch,

New York for collection on 25.5.1994. First set of documents was sent by Ups-Elbee Courier and second set by registered air mail to them. We have received your letter dated 10th May, 1995 with reference 12103061 duly returning the second set of documents stating that drawees did not accept documents despite numerous notices. Please let us know the fate of documents sent by courier to Citi Bank, Third Avenue, New York." Please also advise us as to how and when the second set of documents reached your office." Again S.B.M. sent a reminder dated 24.5.1995 (Exh. R-13) to the Citibank. (xi) Citibank, Bombay Branch wrote letter dated 25th May, 1995 (Exh. R-14) to S.B.M. to the following effect:

"We wish to inform you that our New York office would like to have following details to investigate further in this case: Date on which you have couriered the three sets of documents. Address to which the sets were sent. Proof of delivery. Also in spite of several follow ups by our New York office, the importer never came to review and purchase the documents. Kindly ask the exporters to contact the importer and settle the matter."

(xii) Citibank, Bombay Branch, by Exb. R-15 informed the S.B.M. to the effect. "Please advise our New York office the disposition of the accepted draft." (xiii) Thereafter, on two occasions, i.e., on 27.5.1995 (Ex. R-16) and on 29.5.1995 (Ex. R-17) the S.B.M. had repeatedly sent the same message which was sent on 20.5.1994 (Ex. R11). (xiv) Again, by letter dated 29th May, 1995 (Exh. R-18) S.B.M. wrote to the Citibank to the effect: "We had sent the first set of captioned documents for collection on 25.5.1994 to your Third Avenue Branch, New York by UPS-ELEBEE Courier Service and it was delivered to them on 31.5.1994 against acknowledgement of one Mr. Marone. The second set was sent by registered Air Mail. The.....period of Bill of Exchange was...from the date of receipt and... for payment during the last week of July, 1994. You have neither acknowledged the receipt of documents nor advised us the fate of documents on due date. We are shocked to note that you have returned the documents unpaid after a lapse of nine months after due date. The drawee has suffered loss due to your delay in advising the fate of documents. Please let us know the fate of first set of documents sent by courier to your Third Avenue Branch. Please acknowledge and advise us immediately the fate of documents sent by courier."

(xv) S.B.M. again sent a message dated 6.6.1995 (Exh. R-19) to Citibank to the following effect: "Please note that the documents returned by you on 10th May, 1995 were the second set of documents which were sent by registered air mail. The first set of documents were sent by Ups-Elebee Courier which was delivered to your Third Avenue Branch, New York on.....against acknowledgement of one Mr. Marone. We regret that your delay in advising acceptance of non-payment by due date has resulted huge loss to the drawer."

(xvi) To this Citibank, wrote letter dated 12.6.1995 (Exh. R-20) to S.B.M. stating: "We have noted with surprise that the above collection documents were addressed to CITI Bank N.A., III Avenue Branch 1675, New York. This branch does not have any facility/arrangement to handle Documentary Collections. By

wrongly addressing the documents to this branch, you have added to the risk which is already present in documentary collections. Further, from the photocopy of the Bill of Lading, we observe that the goods have been directly consigned in favour of M/s. Ask Ingredients, Survey Court, Ramsey, New Jersey, USA. This Bill of Lading does not provide for "restrictive endorsement" in favour of CITI Bank N.A., New York, which would have prevented the delivery of goods to the importer without our knowledge. In this context, we request you to ascertain the fate of the goods exported by Geekay Agro Pack Ltd., Bangalore. If the goods have been released to the consignee, we request you to forward us a photocopy of the "release Order: given by Citibank New York, against which the goods would have been released."

(xvii) To this S.B.M. replied by letter dated 19th June, 1995 (Ex. R-21) to the following effect: "While we agree that the bill of lading did not contain restrictive endorsement, we are certain that the first set of documents sent to Third Avenue Branch contained two original of Bill of Lading without which the shipping company would not have delivered the consignments to consignee. As the third original bill of lading sent by Registered Air-mail, which were returned by your Wall Street Branch is in our possession, it is amazing as to how the drawee was able to get the possession of I and II original Bill of Lading which was sent to the Bank. In fact, we have in our possession, photocopies of the Bill of Lading duly discharged received from supplying agent, who confirm that goods were delivered on surrender or surrender of original Bill of Lading."

(xviii) Finally by letter dated 20th July, 1995 (Exb. R-22) Advocate of the S.B.M. wrote to Citibank to the following effect: "Under the circumstances, we call upon you jointly and severally to make payment of US \$ 28490 together with interest at 18% for delayed period and Rs. 50,000 towards expenses incurred by our clients in this behalf within 15 days of receipt of notice to our clients under intimation to us."

(xix) To the above notice (Exb. R-22) Citibank gave reply dated 22.11.1995 (Exb. R-26) which is as under: "As in-house Counsel in Citibank's Consumer Banking Division, I have been asked to respond to your letter of July 20, 1995. In that letter, you contend that Citibank's branch located at 1675, Third Avenue, New York, New York received certain shipping documents for collection in May 1994, and thereafter, failed to timely obtain acceptance of the Bill of Exchange from the purchaser of the goods, ASK Ingredients, I respectfully submit that even if these assertions were correct, the fact remains that Citibank's actions or inactions were not the proximate cause of your client's alleged losses. As you know, ASK Ingredients, INC has refused payment to your client on the grounds that the goods purchased were not in accordance with the parties' contract. It is our understanding that your client is involved in a law suit with ASK Ingredients on this basis. As such, non-payment under the contract would have occurred regardless of Citibank's alleged failure to timely obtain acceptance of the documents."

13. THE aforesaid correspondence reveals that there was deficiency in service on the part of the respondent No. 2 in dealing with the documents which were forwarded by the S.B.M. to it. To that effect, there is implied admission in aforequoted reply to the notice dated 22.11.1995 given on behalf of the Citibank.

14. FOR the reasons best known the Citibank, from the beginning, there was no response from the Citibank despite several letters and reminders with regard to documents which were handed over to it. The Citibank was bound to respond to the communications and inform the S.B.M. as well as the complainant whether the amount was realized by it or not. If not realized, the Bill of Exchange with list of documents, was required to be returned with due diligence and with necessary note. FOR this deficiency in service, respondent No. 2 is liable to pay the damages to the complainant. Further, it was the duty of the respondent No. 1 Bank to take appropriate steps at appropriate time against the respondent No. 2, Citibank. In such cases, there would be joint and several liability of both the banks for the deficiency in service. Considering the facts of the case, we hold that the respondent Nos. 1 and 2 Banks are liable for the deficiency in service as stated above. FOR such deficiency in service they are to pay compensation which we assess at Rs. 5 lakhs payable to the complainant. For the second question, admittedly, in the present case, as per the bill of lading, the importer was given 45 days time for making the payment. Therefore, banks were required to deliver the original documents such as bill of lading, bill of exchange etc. After receiving the goods, the importer informed the complainant that the amount would be paid on or before 15.11.1994. In such a situation, it is not for the bank to take proceedings against the importer but it is for the consignor to take appropriate steps against the consignee. Further, in the present case, the importer is not joined as a party respondent to the proceedings, may be for some unknown reason, even though an objection was taken by the opposite parties.

Hence, even though we have arrived at the conclusion that there was apparent deficiency in service by the respondent Banks in dealing with the documents, such as bill of exchange, banks would not liable to reimburse the complainant for the loss suffered by it. Non-honouring of the bill of exchange was known to the complainant and this is made clear by letter dated 10.10.1994 which speaks for itself and reveals that the consignee was not responding to the complainant to various communications, It was open to the complainant to take appropriate proceedings against the consignee for non-payment of invoice amount without bill of exchange. The complainant has suppressed about the action taken by him against the consignee.

15. THIS is apparent from the reply dated 22.11.1995 by the Citibank to the Legal Notice issued by the complainant, quoted above. "Citibank received certain shipping documents for collection in May, 1994, and thereafter, failed to timely obtain acceptance of the Bill of Exchange from the purchaser of the goods, ASK Ingredients, Inc. "and it is stated: "I respectfully submit that even if these assertions were correct the fact remains that Citibank"s actions or inactions were

not the proximate cause of your client's alleged losses."

This also establishes that there was inaction on the part of the Citibank in dealing with the documents or rendering of service as contemplated. However, for the non-payment of money, Citibank/S.B.M. cannot be held liable on the ground of failure in recovering the amount, because the notice also indicates that the consignee refused payment on the alleged ground that the goods sent were not in accordance with the contract between the parties and that complainant was involved in a law suit with the consignee for non-payment.

16. HENCE, this complaint is partly allowed. Respondent Nos. 1 and 2 are jointly held liable to pay compensation of Rs. 5 lakh to the complainant. However, the major deficiency in service was on the part of the respondent No. 2, hence in case of payment of compensation to the complainant by the S.B.M., it would be open to it to recover the said from the respondent No. 2, Citibank. The Citibank also shall pay Rs. 50,000 as costs to the complainant within a period of six weeks from today. Complaint partly allowed.