

(2007) 09 NCDRC CK 0020

In the National Consumer Disputes Redressal Commission

ICICI Bank Ltd.

APPELLANT

Vs

Quality Foils India (P) Ltd.

RESPONDENT

Date of Decision : 21-09-2007

Acts Referred:

Citation : 2008 1 CPJ 418 : 2008 1 CPR 168

Hon'ble Judges : S.N.Kapoor , B.K.Taimni J.

Final Decision : Appeal dismissed

Judgement

1. -THE appellant was the opposite party before the State Commission, where the respondent No. 1, M/s. Quality Foils Pvt. Ltd. had filed a complaint alleging deficiency in service on the part of the appellant Bank of Madura Ltd. now merged with ICICI Bank on 26.2.2001 under a scheme of amalgamation under Section 44(a) of the Banking Regulations Act, 1949.

2. UNDISPUTED facts of the case are that the complainant M/s. Quality Foils India (P) Ltd. is a manufacturer of stainless steel strips, which they supply to different people in various parts of the country. The complainant M/s. Quality Foils India (P) Ltd. had also been dealing with second respondent M/s. Neeka Tubes Ltd. at Ahmedabad. The complainant, i.e., the manufacturer of steel got into a contractual arrangement for supply of certain quantity of steel strips to M/s. Neeka Tubes Ltd., Ahmedabad on whose instruction two separate "Letters of Credit" (L.C.) were issued by the Appellant Bank amounting to Rs. 19 lakh and Rs. 8,50,000. It is not in dispute that three separate consignments were sent by the manufacturer of the unit amounting to Rs. 8,16,092.16 + another consignment of Rs. 8,17,382.50 in relation with the L.C. of Rs. 19 lakh and another consignment amounting to Rs. 8,46,620.84. with regard to the second L.C. of Rs. 8.5 lakh. After receipt of the consignment by the second respondent M/s. Neeka Tubes Ltd. usance drafts were issued and the documents were submitted through the Bank by the supplier, namely, M/s. Quality Foils India (P) Ltd., but they were returned on the plea that they are not in conformity with the terms of L.C. Subsequently, the purchaser, namely, M/s. Neeka Tubes Ltd. sent a

letter to the appellant Bank waiving all the defects / discrepancies found in the document and asking the appellant Bank to make payment to the beneficiary, i.e., M/s. Quality Foils India (P) Ltd. On 13.5.1993 Bank of Madura received the document through Abu Dhabi Bank, Mumbai from M/s. Quality Foils India (P) Ltd., which were returned due to certain discrepancies found in the document. Again on 14.6.93, M/s. Neeka Tubes Ltd. sent a letter with documents enclosed to Bank of Madura asking them to draw the documents on collection basis and requested the Bank to pay M/s. Quality Foils India (P) Ltd., directly. On 23.6.1993, M/s. Quality Foils India (P) Ltd. sent the documents through their bank, i.e., State Bank of Patiala as per advice given by the Bank of Madura vide their letter dated 17.6.1993. On 30.6.1993 Bank issued a letter stating that it was not liable to honour the "Letter of Credit" as L.C. has expired on 31.5.1993. It is in these circumstances a complaint was filed by M/s. Quality Foils India (P) Ltd. before the State Commission of Haryana at Chandigarh. The complaint was returned to the complainant on the ground of lack of territorial jurisdiction by the Haryana State Commission, against which the complainant M/s. Quality Foils India (P) Ltd. filed an appeal before the National Commission. The National Commission after hearing the parties at length through a detailed order dated 30.5.1996, allowed the appeal and remanded the case back to the Haryana State Commission for trial of the complaint on merits in accordance with law.

On remand the State Commission after hearing the parties, allowed the complaint and directed the appellant Bank to release the payment as claimed by the complainant within one month from the date of passing of the order, i.e., on 29.5.1998 along with cost of Rs. 5,000. Aggrieved by this order this appeal has been filed by Bank of Madura Ltd.

3. WE heard the learned Counsel for the parties at considerable length. In the Memo of Appeal filed by the Bank of Madura Ltd., only three grounds have been taken - firstly, L.C. was time-barred, by the time the documents as per requirement of law were sent to them. Second plea relates to the question of territorial jurisdiction and third is that of non-consideration by the State Commission of the fact that the respondent No. 2, M/s. Neeka Tubes Ltd. was already before BIFR under SICA. Dealing with the points raised in the memo of appeal in reverse order, we find that the second respondent is before the BIFR will have no relevance as the complaint was filed for deficiency in service on the part of the Bank of Madura, in view of which, as rightly held by the State Commission the factum of M/s. Neeka Tubes Ltd. being before the BIFR will have no bearing on the merits of this case one way or the other. We see no merit in this plea.

4. AS far as the second ground mentioned in the Memo of Appeal, i.e., relating to territorial jurisdiction, is concerned, this issue was settled by the National Commission vide order dated 30.5.1996 and since against that no appeal was filed by the appellant, hence this order had attained finality and appellant is estopped from raising this plea before us. Hence we see no merit in this plea as

well. Coming to the main issue involved, we see that there is no dispute that two separate L.Cs. were issued by the appellant. It is also not in dispute that the consignments were sent and received by the purchaser on whose behalf L.C. were issued without any protest! And when the documents were presented for payment before the appellant Bank, objections were raised vide their letter dated 17.5.1997 on three grounds, which are as under: "(1) Amendment L/C is considered as part of the L/C must be sent. (2) Supply of 9.5 M.T. of Prime quality C.R.S.S. Strips as per L/C 18/92-93 - But 9.845 MTs supplied and prime quality not informed. (3) Test certificate as per purchase order 270710 dated 25.1.1993 not enclosed."

Main plea of the appellant is that as per law, if the terms of L.Cs. are not adhered to, they are not obliged to honour the LCs. We are in full agreement with the plea taken by the appellant that as per law laid down by the Hon"ble Supreme Court in catena of Judgments that the Banks have to honour the L.C. in its letter and spirit. The objection Nos. 2 and 3 referred to above are part of the L.C. hence the appellant was right in raising these objections, but we cannot lose sight of letter dated 7.5.1993 issued by the purchaser, namely, M/s. Neeka Tubes Ltd. waiving all the defects discrepancies found in the documents and asking them to make the payment. This letter dated 7.5.93 reads as under: "Sub: Documents for Rs. 816092.16 and Rs. 817382.50 under L/C No. 17/92-93, dated 11.3.1993 for Rs. 19 lakh of your Bank. With reference to the above, we hereby accept all discrepancies in the documents. We hereby undertake to make payment on due date. Yours faithfully, For Neeka Tubes Ltd."

5. THE language itself makes it clear that the purchaser M/s. Neeka Tubes Ltd. accepted all the discrepancies and requested the appellant to make the payment on due date. On record filed by the parties, we do not see any document or any reply by the Bank to this letter, which, in our view, is a clear case of deficiency in service on the part of the appellant Bank.

6. AS per material on record, when the documents were sent on 13.5.1993 to the appellant Bank by M/s. Quality Foils India Ltd. through their Bank, i.e., Abu Dhabi Bank, Mumbai, they were returned on 17.5.1993 due to certain discrepancies found in the documents and when the corrected documents were sent to Bank, they returned the documents to the complainant on 17.6.1993 asking them to send the documents through collecting Banker. In response to this they were sent through the Bankers of Quality Foils Ltd., namely, State Bank of Patiala on 23.6.1993, which were returned on the plea that the letter of credit has already expired on 31.5.1993. The learned Counsel for the appellant has extensively argued on the basis of International practices followed in this regard as reflected/codified in the Uniform Custom and Practices (UCP) issued by the International Chambers of Commerce and Industry. We have gone through the UCP of 1993 and the UCP 400 and 500 as well. There is no dispute that as per law laid down by the Hon"ble Supreme Court in number of judgments, the Banks are expected to follow the terms of L.C. as they are dealing with documents and

not with commodities. There is absolutely no difference in this regard.

After going through the UCP as also the material on record, what we see is the salient features of the case in hand and the UCP, namely, the letter dated 7.5.93 by M/s. Neeka Tubes Ltd., who had obtained L.C. from Bank of Madura and writing to them on this date waiving all the defects, discrepancies and to make the payments and charge the same from them and the second instance is as late as 30.6.1993 returning the documents to the Bank of the complainant on the ground that the L.C. has already expired on 31.5.1993. While, themselves advising the complainant as late as 17.6.1993, i.e., after the expiry of validity of LC to send the documents through their Bankers.

7. AS per UCP these contingencies are not covered under any provision. Hon"ble Supreme Court in the case of Federal Bank Ltd. v. V.M. Jog Engineering Ltd. & Ors., I (2001) BC 321 (SC)=VII (2000) SLT 245=IV (2000) CLT 265 (SC)=(2001) 1 SCC 663, had occasion to go into the applicability of UCP of documentary credits and held that although UCP does not apply unless it is incorporated in the contract, but it can be taken into consideration as part of the Mercantile Customs and Practice. It is also not in dispute that as per UCP, the Banks issuing the L.C. have to go by the documents. In the context of the instant case we like to make two observations in this regard - firstly, that UCP is not incorporated into the contract and secondly that these two contingencies referred to by us earlier do not find a mention in the "UCP of documentary credits". De hors the UCP, one has to see as to what are the implications of letter dated 7.5.1993 issued by M/s. Neeka Tubes as per record and admittedly there has been no response whatsoever on this letter, while admittedly this letter was issued within the life time of the L.C. which was valid till 31.5.1993. A question stares on us, as to will this not amount to deemed acceptance of modification of the terms of L.C. even though not documented by the Appellant? Will the silence not to deemed to be consent on the part of the appellant Bank? In our view, this was a request by M/s. Neeka Tubes Ltd. on whose behalf the L.C. were issued, to modify the terms with a clear undertaking that they would be willing to make the payment, having received the consignment from the complainant M/s. Quality Foils India (P) Ltd. As already stated no response to the letter, in our view, would amount to modification of the terms of L.C. We are fortified in our view by a judgment of the Hon"ble Bombay High Court in the case of Swiss Bank Corporation & Canara Bank v. Jai Hind Oil Mills Co. & Anr., Appeal Nos. 1155 of 1989 and 120 of 1990, brought before us by the appellant Bank and they held as follows: "Interpretation of documents in a letter of credit must be in accordance with the Uniform Customs and Practice and also in accordance with banking and commercial practice throughout the world. The interpretation should give commercial efficacy and consistency and workability to the letter of credit. It would not be proper to give a grammatical and technical interpretation to commercial documents, because the anxiety of the Courts should be to ensure that the commercial documents are so interpreted as to enable international trade to run smoothly. It is undoubtedly true that the banks dealing in commercial documents are required

to follow the principle of strict compliance while acting on the credits, but the Courts while interpreting the commercial documents must bear in mind the intention of the parties as well as the commercial world understands the expression used in the documents. The intention of the parties could well be gathered from the surrounding circumstances and the exercise of determining the meaning of the terms used in the documents should be with an object to give commercial efficacy and to sustain the transaction between the parties."

(Emphasis supplied)

8. A plain reading of this observation of the Hon'ble Bombay High Court leave us no doubt that in a dynamic situation the interpretation to a commercial document has to be consistent and workability of the L.C. More importantly, intention of the parties has to be given due weight. The purpose of L.C. is to enable the Bank to make the payment to the supplier on receipt of goods. In this case, there is no dispute that the goods were sent and they were received by the purchaser, i.e., M/s. Neeka Tubes Ltd. and it is they, who advised the bank to make the payment and recover from them. What else was required from the parties beside the authorisation from the purchaser having completely satisfied with the consignment? What was left for the Bank in such a situation was to make the payment to the seller and recover / raise a demand from the buyer. Not having done so is a clear case of deficiency in the given facts and circumstances of the case. We also like to make another observation that it is not in dispute that when the documents were sent again by the complainant M/s. Quality Foils Ltd. on 15.6.1993 under both the LCs to which reply has been given by Bank of Madura dated 17.6.1993, which reads as under: "Re: Documents under our L/C 17/92-93 and 18/92-93 Please present the documents under our L/ c thro" your Banker by the Advising Bank to make payment as per Banking Practice. We are returning 1. Usance Draft for Rs. 816092.16 with 14 enclosures. 2. Usance Draft for Rs. 817383.50 with 12 enclosures. 3. Usance Draft for Rs. 846620.84 with 15 enclosures."

In compliance with this request the documents were resubmitted on 29.6.1993 through State Bank of Patiala which was rejected by the Appellant Bank on 30.6.1993 on the ground that L.C. has expired. If we go through the correspondence chronology, we find that why could the Bank of Madura not mention in the letter dated 17.6.1993, itself that the LC has already expired on 31.5.1993. It is not their case that this was not so.

9. WE are further strengthened in our view by the fact, that lower Court has allowed the complaint precisely on this ground that the letter dated 17.6.1993 would be taken as a factum that the bank is deemed to have extended the expiry date of LC. Interestingly, there is no plea before us nor has this point been taken in the Memo of Appeal or written submissions as to under what circumstances they issued the letter dated 17.6.1993 to the complainant to generate their documents through a Banker without making any reference that the date of L.C. has already expired. Why it should not be deemed to have extended the expiry

date of L.C. has not been argued at all.

10. IN the aforementioned circumstances, we find that deficiency in rendering services on the part of the appellant Bank of Madura is writ large, in view of which we find that this appeal has no merit hence dismissed. Appeal dismissed.