(1993) 08 NCDRC CK 0051

In the National Consumer Disputes Redressal Commission

INDU VIDEO FILMS (P) LTD. APPELLANT

Vs

Punjab National Bank RESPONDENT

Date of Decision : 17-08-1993

Acts Referred:

Citation : 1993 1 CLT 624 : 1993 2 CPJ 238 : 1993 3 CPR 271 : 1994 1 CPC 152

Hon'ble Judges : V.Balakrishna Eradi , A.S.Vijayakar , B.S.Yadav J.

Advocate : B.K.Sethi , Jagdeep Kishore , Arun K.Sinha

Final Decision : Dismissed

Judgement

1. THE /Company has filed this complaint against Nos. 1 to 3 who are Chairman & Managing Director and Regional Manager of Punjab National Bank, New Delhi respectively and Branch Manager, Punjab National Bank, East Patel Nagar Branch, New Delhi. According to the allegation contained in the complaint the / Company had an account with the branch of Punjab National Bank, East Patel Nagar (for short the Bank). THE Bank had agreed to provide working capital limit upto Rs. 5.00 lakhs, Inland/Foreign Letter of Credit facility equal to Rs. 5.00 lakhs and to operate a Special Account. THE working capital limit was sanctioned for one year but was cancelled only after three months of the sanction. According to the written submissions filed by the complainant, the complainant is not challenging this action of the Bank.

2. IT is in the discretion of a Bank to open a Foreign Letter of Credit (FLC). In the bona fide exercise of its discretion the Bank acting in good faith if it has not ''considered it a fit case for granting the facility, the Bank cannot be forced to do so. In fact in the present case disputes had arisen between the parties soon alter the transactions commenced between them. There is also no evidence that the Complainant/Company had complied with the conditions on which F.L.C. was to issued. Thus in this complaint we are really concerned with the Special Account only. The money which was received from Delhi Financial Corporation (for short DFC) was to be deposited in the Special Account in the name of the Complainant / Company with the Bank. It is necessary to reproduce the letter written by the

Bank to D.F.C. It is annexure-III with the complaint. It reads as follows : "With reference to the separate account opened with us by M/s. Indu Video Films (P) Limited hereinafter called the said Industrial Concerned styled as M/s. Indu Video Films (P) Limited "Special Account" into which money''s received by the said Industrial Concern from the Delhi Financial Corporation as loan against the mortgage deed for an amount not exceeding Rs. 33,20,000/- (Rupees Thirty three Lacs twenty thousand only) to be executed on behalf of the said Industrial Concern in your favour are to be paid, we confirm that it has been agreed that we shall not any time here after have or claim any lien on New the money sat any time lying in the said account nor shall we set off the money''s so received from the Delhi Financial Corporation or any portion thereof, against our present or future dues, if any from the said Industrial Concern or from any of the Directors/Partners of the said Industrial Concern or their allied or other concerns."

An amount of Rs. 12,61,400/was paid by the DFC vide Cheque No. 696104 dated 26th August, 1987 for crediting into the Special Account with the Respondent-Bank and to be utilised as and when the delivery of equipments required to start the production of Video Software from Gujarat Communications & Electronics Limited, Baroda (for short the Supplier) was ready. Out of this amount 25% of the invoice value amounting to Rs. 3,45,588.92 was released by the said Branch in favour of Gujarat Communication and Electronics Limited, Baroda on 27th August, 1987 to enable booking of the equipments covered by relevant invoices. On 7th December, 1987 another instalment of Rs. 4,47,000/- was released out of this Special Account in favour of the Supplier to take delivery of Editing Table supplied by them. On 7th December, 1987 the unit of the Complainant/Company was taken over by the DFC under Section 29 of the State Financial Corporation Act. On 12th December, 1988 (Annexure VIII) the Bank wrote to the Complainant that the DFC had advised vide their letter dated 9th December, 1987 that the aforesaid action had been taken on account of some doubts the property titles mortgaged as security on paripasu basis and that the Bank should not disburse any amount out of the ''No Lien account'' to the Complainant. (It may be mentioned here that vide Annexure R5 filed by the respondents the DFC had asked the Bank not to release any further amount out of the amount of Rs. 12,61,400/- without prior clearance from the DFC). On 11th February, 1988 vide annexure IX the DFC informed the Bank that the physical possession of the Complainant''s unit had been restored back lo the company on 14th January, 1988. Vide letter dated 19th February, 1988 the Supplier informed the Complainant /Company that the 2 Cameras would be ready for inspection and despatch around 15th March, 1988. Vide telegram (Annexure XI) dated 28th February, 1988 the aforesaid supplier asked the Complainant to depute a representative to inspect the Cameras on 16th March, 1988 alongwith the balance amount of 75% Plus Rs. 55,000/- by demand draft. On 11th March, 1988 vide letter annexure XIII the Complainant asked the Bank to release the required amount to the Supplier flrom the ''Special Account''. On the same date the Complainant/Company approached the D.F.C. to issue instructions to the

Bank to issue the Demand draft as the Cameras were to be delivered on the 16th March, 1988 by the Supplier. It may be mentioned here that the Complainant had earlier informed the Supplier that they would be corning to inspect the cameras on 16th March, 1988. On 22nd March, 1988 vide annexure XVIII, DFC wrote to the Bank to release the required amount to the Supplier out of the amount of Rs. 12,61,400/- (loaned by DFC in favour of the Complainant/ Company). On the same date the Complainant also wrote. a letter to the Bank for issue of the Demand Draft. Reference to DFC''s letter was also made in that letter. It is also the Complainant''s case that Bank''s Branch Manager first refused to accept the above letters dated 22nd March, 1988. The Complainant wrote a letter on 29th March, 1988 to the Branch Manger of the Bank to accept the letter issued by the DFC and in case it was not accepted then the Complainant would meet the Chairman. Only thereafter the letter was accepted by the Bank. In the meantime vide letter dated 23rd Ma rch, 1988 the Supplier informed the Complainant that as delivery of the cameras has not been taken by them till date those had been delivered to some other users and they would not be in a position to offer the cameras only in June, 1988. The Bank did not issue the demand draft for another six months and it was issued on 17th September, 1988. On January 1989 the Complainant issued notice to the Bank claiming damages amounting to Rs. 11,40,000/. Para No. 3 of this notice (Annexure XXV) reveals that out of the ''No Lien Account'' the balance amount has released by the Bank only after the Complainant had cleared the entire credit loan facility amount amounting to Rs. 2,01,000/- due to the Bank. The grievance of the Complainant is that on account of non-receipt of cameras in time the unit remained nonfunctional from August 1987 to July 1989. The Complainant/Company has thus complained about the deficieny in the rendering of banking service by the Bank. It has assessed the damage at Rs. 35,22,088/. The complaint was contested by the Respondent. The main defence of the Bank is as follows :

3. AS regards Annexure XVII and XVIII mentioning the letters dated 17.3.1988 and 22.3.1988, both written by DFC to the Bank, it is submitted that disputes were also pending between the Bank and DFC regarding the paripassu charge on the mortgage properties in view of the fact that DFC had without intimating the Bank handed over the possession of the unit to the complainant who promptly removed some of the securities thereby jeopardizing the interest of the Bank. On 17.3.1988, as per the said letter, this matter stood resolved and it was only on 22.3.1988 that DFC for the first time requested the Bank for release of the required amount to GCEL, Baroda. However, in view of the various letters of the Bank being ignored by DFC as well as the complainant, the situation had worsened and the Bank had threatened DFC to invoke its pari passu charge on the properties. However, all the parties got together and set up a joint meeting which took place on 13.4.1988 in which the whole issue was resolved and it was decided that the borrower should switch over to some other Bank after clearing the dues of the Bank by 31st May, 1988. It was also decided that during this period DFC will not press for release of any further amount and the Bank would

not insist on invoking the pari pasu charge. In view of these developments things came to a standstill till the complainant fulfilled his obligations." According to the Bank, its accounts were cleared by the Complainant/Company in September, 1988 and it released the amount from the ''Special Account''. Some preliminary objections, inter alia, that the present complaint has been filed by B.K. Sethi while Respondent-Bank was dealing with Indu Video Films (P) Ltd. and the complaint was time barred inasmuch as the dealings between the parties came to an end in September, 1988 while the present complaint was filed in April, 1992 were also taken. First we may take up the preliminary objections. Though the complaint has been filed by Shri B.K. Sethi he has described himself as Managing Director, Indu Video Films (P) Ltd. Therefore, we are of the opinion that the preliminary objection taken by the Bank that the complaint has not been filed by a proper person has no force. Shri B.K. Sethi has not filed the complaint in his personal capacity but has filed as Managing Director of the said Company.

4. AS far as the question of limitation is concerned we are of the opinion that this complaint is clearly barred by time. Admittedly, the transaction between the parties came to an end in September 1988 while the present complaint was filed in April, 1992 i.e. beyond a period of three years. It has been repeatedly held by this Commission that though the Limitation Act has not been specifically made applicable to the proceedings under the Consumer Protection Act, 1986 the fora constituted under the Act should not entertain and adjudicate upon stale claims. It may be mentioned here that during the arguments the Complainant has relied upon some notices and letters written to the Bank subsequent to September, 1988 but those notices or letters do not give rise to a fresh cause of action to the Complainant. Hence we hold that the complaint is liable to be dismissed as it has been filed beyond the period of limitation In view of the fact that the complaint is liable to be dismissed on the ground of limitation we do not think it necessary to discuss the case on the merits. Complaint dismissed.

