(2006) 03 NCDRC CK 0001

In the National Consumer Disputes Redressal Commission

Jason Links India Pvt Ltd APPELLANT

Vs

STATE BANK OF INDIA RESPONDENT

Date of Decision : 27-03-2006

Acts Referred:

Citation : 2006 4 CPJ 328 : 2007 1 CLT 265

Hon'ble Judges : S.N.KAPOOR , B.K.TAIMNI J.

Judgement

1. THIS appeal is directed against the order of the State Consumer Disputes Redressal Commission, Delhi in Complaint No. 107 of 1994 dated 8.12.2005.

2. BRIEF facts of the case are as under: Ths appellant/complanant is NRI who has established his name in executing works on prestigious works in Middle East since 1985, started his projects in India and bagged a number of good contracts from the leading organizations such as IOC, TCIL, HAL, MTNL, Spie Capag, etc. For executing the contracts, the appellant/complainant availed of credit and the State Bank of Iindia facilities in terms of mutual agreements with OP No. 2 w.e.f. 1986. At that time, there was a small credit facility of Rs. Akh in the year 1986 which was enhanced by the OP in 1993 to the sum of Rs. 38.Akh in view of satisfaction of respondent State Bank of India. The appellant/complainant requested for issuance of earnest money Bank guarantee in favour of MTNL on 5.12.1992 which was not issued by the bank. On 7.1.1993 the OP confirmed continuation of the Credit facilities for a further period of six months as under: 1. Cash Credit Limit - Rs. 38.Akh 2. Bank Guarantee Limit - Rs. 120 lAkh On 17.2.1993 the appellant/complainant requested for extension of bank guarantee No. IG/92/489 for Rs. 22,53,255 in favour of Silver Oak Cooperative Group Housing Society Ltd. for a further period of six mooths w.e.f. 23.3.1993 to 22.9.1993. At the time of seeking extension of the Bank guarantee facilities availed were only as under: (i) MTNL Rs. 31,91,615.00 (ii) I.O.C. Rs. 1,95,000.00 (iii) Silver Oak Society Rs. 22,53,255.00 Rs. 56,39,870.00 3. The existing Bank guarantee issued in favour of M/s. Silver Oak Cooperative Group Housing Society Ltd. in the sum of Rs. 22,53,255 was to expire on 23.3.1993.

But, the OP did not renew the Bank guarantee and inflicted a serious blow to the financial health of the appellant Company as also its liquidity position as the Silver Oak Society withheld the payments due and the amount which would have become due to the appellant Company to the tune of Rs. 1,5Akh. This wrongful action in not renewing the Bank guarantee gave a big jolt, seriously and severally affecting and damaging the good name, reputation, credit and liquidity of the appellant Company. Hence, the State Bank of India, BarAkhamba Road Branch was directly responsible for stopping the immediate flow of money payments from Silver Oak Society because of non -renewal of Bank guarantee. As on 5.12.1992, the appellant Company had Rs.3 -3.5 lAkh in its CC A/c. and by then had availed Bank guarantees to the extent of Rs. 56.Akh only, the State Bank of India ignoring their obligations did not act on the request of appellant Company made on 5.12.1999 for issue of a Bank guarantee for Rs.1.Akh in favour of MTNL by way of earnest money. Similarly, OP 2 failed to issue yet another earnest money Bank guarantee in favour of IOC even for a small sum of Rs. 21,000 in June, 1993 preventing the appellant Company from taking up new jobs at the very inception.

3. WE have heard the learned Counsel for the appellant. The grievance of the appellant is that the respondent Bank has unreasonably deducted the credit limit and secondly did not renew the existing Bank guarantee and, consequently, the Bank guarantee issued to M/s. Silver Oak Group Housing Society Ltd. M/s. Silver Oak Group Housing Society Ltd. withheld the payment due to the extent of Rs. 15.00 lakh.

4. IN this regard the documents on record and the findings given by the State Commission do not justify the submissions of the learned Counsel for the appellant. A request was made on 17.2.1993 for renewal of existing Bank guarantee of Rs. 22;53,255 in favour of M/s. Silver Oak Group Housing Society Ltd. as it was to expire on 23.3.2003. It was not renewed. As has been mentioned earlier M/s. Silver Oak Group Housing Society Ltd. stopped the payments withholding Rs. 15.00 lakh. The complainant had not availed Bank guarantee to the extent of Rs. 15.00 lakh. On 5th December, 1992, the Complainant Company had Rs. 3.00 lakh to Rs. 3.5 lakh in its CC A/c. and by then had availed Bank guarantees to the extent of Rs. 56.00 lakh only Similarly, they have also failed to issue bank guarantee of Rs.1.00 lakh in favour of M.T.N.L. and Rs. 21,000 in favour of I.O.C. It was contended from the side of OP - State Bank of India that the objections raised by the opposite party were required to be complied with before complainant could get the facilities released and it was sole discretion of the opposite party Bank at the same it was a commercial decision which is to be taken keeping in mind various factors and circumstances prevalent at the time of release of the credit facilities to enhance the existing sanctioned limit of credit or even to grant credit. It would not constitute breach of banks obligation towards its customers, if decision is taken on an objective basis.

5. HAVING heard the parties Counsel and having gone through the record, it appears that the plea of the appellant does not have any substance as would become evident hereinafter.

6. IT may also be seen from the letter of State Bank of India dated 30.3.1993 that the credit facilities had been renewed subject to certain conditions as would be evident from the following: ''Dear Sir, Renewal of Credit Facilities With reference to credit facilities being enjoyed by you please note that your Cash Credit (Hyp. Of Stocks and Book -debts) facilities has been reduced to Rs. 38 lacs and Bank guarantee facilities has been reduced to Rs.120 lakh, which please, note. Please arrange to file the charge in respect of the above at the ROC office, immediately. Yours faithfully, Sd/. Asstt. General Manager (Credit)'' It may also be mentioned that whenever any term and condition of loan, etc. is modified fresh documentation is necessary and the Bank has appropriately demanded to file the fresh charge in respect of the above immediately.

7. TILL 20th November, 1993, it is evident that the appellant had not complied with that condition as is evident from the letter dated 20.11.1993 ''Before I close, I may also mention that you had asked for the registered mortgage of the office premises of the Company at Yusuf Sarai, New Delhi. Although keeping in view our relationship and the limited extent of facilities enjoyed by us it was not necessary to undergo this exercise, still the Company agreed to whatever was suggested and the Bank undertook on itself to complete the formalities which would have cost the Company between Rs. 2 and 3 lakh. In this context, the Bank had engaged at our cost their lawyers and they had devised and advised the legal drill and also given estimate of the quantum of expenditure in completing the legal formalities. In this context, your reference is invited to the correspondence. Finally, the Company authorised you at your instance to complete all the formalities which satisfy you and debit our account with the entire expenditure as agreed to in three instalments. The Bank hereto neglected to act and in such a situation the Bank cannot now choose to blame the Company for the Banks lack of taking further steps for effecting the requisite mortgage.

8. THERE were several irregularities committed by the complainant as has been mentioned in the order of the State Commission, which disentitled the appellant to avail the sanctioned credit facilities which are as under: (a) The complainant was required to execute the registered mortgage in favour of OP Bank but he did not execute the same. (b) Since the construction work at the Silver Oak Group Housing Society at Patparganj had come to a standstill and the Bank guarantee that was to be renewed was performance guarantee. (c) It was due to paucity of funds with the Group Housing Society that the funds were released to the complainant and since there was no link between the issuance of Bank guarantee and the release of funds/payments by M/s. Silver Oak Group Housing Society Ltd. which were to the extent of Rs. 15.00 lakh. The Bank was not at fault for not releasing the money against the Bank guarantee and this fact has been admitted

by the complainant in his letter dated 2.4.1993. (d) Since April, 1993, the complainant started routing its sales proceeds through the Green Park Branch of the State Bank of India and therefore violated the terms of sanction as the complainant was under an obligation to route all its commercial transac -tions through its cash credit account maintained by the OPs. Whenever any Bank or financial institution does not feel it safe on account of the questionable conduct of a borrower, it could, rather should, reduce the credit limit. Credit limit depends on the flow of money in the Bank account. It depends also on the conduct of the borrower not to take money surreptitiously and take the money only through the bank to assure the Bank that the amount shall always come to them and they would be able to adjust the loan. But, if the source of further flow of money is dried up then it may not be appropriate to continue with existing limit. If the money is diverted through other channels as has been noticed in this case then the Bank would have justifiable reason to think that the borrower is not keeping his promise and trustworthiness of the borrower is reduced. If in these circumstances specific charge is asked to be created by executing a mortgage and it is delayed for nearly six months then the Bank cannot be said to be deficient in rendering service, in case of reduction of the credit limit and non - issuance of the Bank guarantees sought for. Nor it could be said that the respondent was deficient in rendering appropriate banking services.

9. FOR the aforesaid reasons, we do not find any force in this appeal and the First Appeal is dismissed accordingly. Appeal dismissed. -