(2015) 09 NCDRC CK 0004

In the National Consumer Disputes Redressal Commission

Kishore Kumar Kochar APPELLANT

Vs

STATE BANK OF BIKANER AND JAIPUR RESPONDENT

Date of Decision : 15-09-2015

Acts Referred:

Citation : (2015) 09 NCDRC CK 0004

Hon'ble Judges : J.M.MALIK J.

Judgement

1. THE preliminary question raised by the counsel for the OP is that the complainant, which is a private company, transacts the business of international trade. The transaction in question is purely ''commercial''. The Consumer Commission cannot arrogate to itself the powers which it does not enjoy. It was explained that this Commission has no jurisdiction and, therefore, the case should be dismissed on this short count itself.

2. SH . Kishore Kumar Kochar, the complainant is the Sole Proprietor of M/s. Mithashu Exports India, Delhi. He is engaged in the business of International Trade in food grains, etc. After intensive labour and efforts, including foreign travel and related expenses, he was able to finalise export orders to the tune of USD 900 million (approx.), for export of food -grains from India to South Africa. Copy of the contract, dated 08.07.2002 issued by M/s. Tanaka Resources Ltd., South Africa, covering the entire agreed export consignment, marked as Annexure - A, is attached. This achievement of the complainant was lauded by the Government of India vide Communication dated 10.12.2002, copy of which has been placed on record as Annexure - B. The complainant also received irrevocable Letter of Credit backed specific part consignment. Order was received for USD 2.6 million (approx. Rs. 15.00 crores) from M/s. Tanaka Resources Ltd., covering 15000 MT of Soya -bean out of the total quantity of 2 lakh tonnes of soya -bean covered by the original contract. The Letter of Credit was given by ABSA Bank Ltd., one of the largest banking institutions of South Africa and was confirmed by ICICI Bank Ltd., Connaught Place Branch, New Delhi. True copy of the Letter of Credit dated 16.04.2003, is annexed with the complaint as

Annexure - C.

3. ON the same day, the complainant approached the State Bank of Bikaner & Jaipur, OP, for obtaining loan facility against the above said Letter of Credit backed export order. However, it must be borne in mind that the complainant did not move any application for grant of loan. The LC issued by the foreign Bank, i.e., ABSA Bank Ltd., South Africa was advised by the ICICI Bank and the said LC contained endorsement in the name of State Bank of Bikaner & Jaipur - OP. This is customary in the banking trade for the important branch including the branch authorized for Forex dealings, to be headed by a very senior level officer, in this case, the Assistant General Manager, so as to expedite the action to be taken and also to provide the branch head with full powers, unlimited by financial ceiling, etc., applicable to the normal Branch Manager level officer.

4. IT is alleged that the OP Bank took long time of about three days to inform the complainant orally that the complainant should obtain ECGC cover for the said export transaction. The ECGC cover was obtained and copy of it was sent to the Bank, vide communication dated 26.04.2003, Annexure - D. The papers were unnecessarily sent to Jaipur. The complainant was made to run from pillar to post and wait indefinitely for the grant of credit in the form of LC discounting limit to the tune of about 75% of the value of the irrevocable LC. The Bank was aware that the duration/life of LC was just 45 days and apart from the sanctioning of LC discounting facility, there are a number of other compliances to be carried out by the complainant for effecting the export within the scheduled period. The Bank was aware that an Irrevocable LC is just as good as cash in its coffers and goods are handed over to shipper in Indian Port and clean Bill of Lading issued, the payment would be immediately forthcoming from the ICICI Bank through its New Delhi branch itself. It is alleged that the OP Bank acted with gross deficiency and despite repeated visits and requests, the OP Bank did not discount the document, even though it was duly instructed to them that the credit after discounting would be in the form of advance payment to M/s. FCI, APIDA, SOPA, which are all well established and reputed Government Bodies. The validity period of said 45 days expired without the OP Bank sending even a single response or seeking any clarification, in writing, from the complainant. It abruptly issued a communication dated 29.05.2003 conveying that the period of LC was over. Legal notice dated 12.07.2005 was sent and thereafter, this complaint was filed before this Commission, on 25.10.2005, with the following prayers: - - "In the above premises, it is most respectfully prayed that this Hon''ble Commission graciously pleased to adjudge the respondent bank as having been deficient in the discharge of banking services to the complainant in relation to LC back foreign purchase order for USD 900 million and on a consideration of the averments made by the complainant, to allow the damages claim for Rs. 3.00 crores with interest @ 18% from May 2003, till the date the said payment is received by the complainant along with costs of the present proceeding quantified at Rs. 50,000/ -".

5. THE OP contested this case.

6. WE have heard the counsel for the parties. The learned counsel for the complainant has cited two authorities. One is reported in Standard Chartered Bank Ltd., v. Dr. B.N. Raman, : AIR 2006 SC 2810. Counsel for the complainant was fair enough to admit that the cause of action in this complaint has arisen prior to the amendment of the C.P. Act, 1986, dated 15.03.2003. On 15.03.2003, the definition of "consumer" was tremendously changed. The said definition runs as follows: - - "(d) ''consumer'', means any person, who -

(i) buys any goods for a consideration which has been paid or promised or partly paid and partly promised, or under any system of deferred payment and includes any user of such goods other than the person who boys such goods for consideration paid or promised or partly paid or partly promised or under any system of deferred payment when such use is made with the approval of such person but does not include a person who obtains such goods for resale or for any commercial purpose; or

(ii) hires or avails of any services for a consideration which has been paid or promised or partly paid and partly promised, or under any system of deferred payment and includes any beneficiary of such services other than the person who hires or avails of the service for consideration paid or promised, or partly paid and partly promised, or under any system of deferred payment, when such services are availed of with the approval of the first mentioned person, but does not include a person who avails of such services for any commercial purpose.

Explanation. - -For the purposes of this clause, "commercial purpose" does not include use by a person of goods bought and used by him and services availed by him exclusively for the purposes of earning his livelihood by means of self - employment".

[EMPASIS SUPPLIED].

This must be borne in mind that this case was filed after the amendment of the C.P. Act, 1986. The counsel for the complainant has also invited our attention towards a judgment of this Commission, in case No. FA 432 of 2008, titled Canara Bank v. M/s. Jain Motor Trading Co., decided on 29.07.2013.

7. THE counsel for the complainant vehemently argued that he has not come to this Commission but has approached this Commission, being compelled by statute. He submitted that no loan was ever obtained.

8. FOR the following reasons, we are unable to locate substance in these arguments. The term ''discounting facility'' clearly means that the loan was to be obtained by the complainant. This is an admitted fact that no application for loan was ever moved. However, it stands established beyond reasonable doubt that we are dealing with a commercial transaction. The complainant himself admits in his complaint that he is engaged in the business of international trade of food - grains, etc. As per new definition of the word ''consumer'', the complainant is not

a ''consumer'', as such. In Subhash Motilal Shah (HUF) & Ors. v. Malegaon Merchants Co -op. Bank Ltd., the petitioner, ''HUF'', had opened a current account to be used for commercial purpose. It was held that it was not a ''consumer'', by this Commission vide its order dated 12.02.2013 and the SLP filed against the said order, was dismissed by the Hon''ble Apex Court in Civil Appeal No. 39200/2013, dated 13.01.2014.

9. IN Monstera Estate Pvt. Ltd. v. Ardee Infrastructure Pvt. Ltd. -, IV (2010) CPJ 299 (NC), this Commission held, as under: - - "Housing - Purchase of space for commercial purpose - There was delay in possession. Complainant was a private limited company. Complainant was nominated for allotment of showroom. Possession not given. Sale deed was not executed. Deficiency in service was alleged. It was held that even if private limited company was treated as ''person'', purchase of space could not be for earning its livelihood. Purchase of ''space'' was for commercial purpose".

10. IN Consumer Complaint No. 306 of 2014, titled Pharos Solutions Pvt. Ltd. v. Tata Motors Ltd. & Ors., dated 01.09.2014, we observed as under: "19. The car in hand was not purchased exclusively for the purposes of earning livelihood by means of self -employment for the legal Director of the Company. It is not for the livelihood of the Director or personal use of the Director. He has to use the car only for commercial purposes. There is no resolution for purchase of car. In case the companies are allowed to save the court fees, the very purpose of ordinary consumer or as defined by the Act shall stand defeated. Consequently, we find that the present case is not maintainable and the same is, therefore, dismissed in limine".

The above said view was upheld by the Hon''ble Supreme Court in Civil Appeal No. 9724 of 2014, vide its order dated 03.11.2014, and dismissed the Special Leave Petition.

11. CONSEQUENTLY , the complaint is hereby dismissed for want of jurisdiction. However, there lies no rub for the complainant to seek remedy before any other appropriate forum or civil court, as per law. Further, he may seek help from the law laid down in the celebrated authority reported in Laxmi Engineering Works v. P.S.G. Industrial Institute, : (1995) 3 SCC 583, on the question of limitation.

