(1993) 08 NCDRC CK 0041

In the National Consumer Disputes Redressal Commission

MEMORY SOFTWARE LTD. APPELLANT

Vs

STATE BANK OF BIKANER and JAIPUR RESPONDENT

Date of Decision : 26-08-1993

Acts Referred:

Citation : 1993 3 CPJ 343 : 1993 3 CPR 666 : 1994 1 CLT 84 : 1994 1 CPC 158

Hon'ble Judges : V.Balakrishna Eradi , Y.Krishan , B.S.Yadav J.

Advocate : S.K.Sharma , H.C.Dhall

Final Decision : Dismissed

Judgement

1. -THIS is a complaint filed by a Company through one of its Director, Manmohan Singh Gill, under Section 12 read with Section 21 of the Consumer Protection Act, 1986(for short the Act) in respect of a claim for Rs. 3,32,70,000/- against the Respondent, State Bank of Bikaner & Jaipur (for short the Bank) on the ground of alleged deficiency in the rendering of banking service by the Bank to the Company. According to the allegations in the complaint the Board of Directors of the Complainant Company decided to set up an industry to manufacture Floopy Disk Jackets in the State of Uttar Pradesh. The U.P. State Financial Institutions viz. Pradeshiya Industrial & Investment Corporation of U.P. Ltd. (for short PICUP) and Uttatr Pradesh Financial Corporation (for short UPFC), sanctioned to the Company a total term loan of Rs. 129.50 lakhs besides central subsidy of Rs. 39.50 lakhs. For implementation of the project, a plot was allotted from the U.P. State Industrial Development Corporation Ltd. and Civil construction work of the factory buildings was started. Firm orders were placed for the import of machineries including spares under Open General Licenses (OGL) viz. Jacket Laminating Machine amounting to US $ 545,400 from Bernal Rotary Systems, U.S.A. and Primary Folder of the value of US $ 175,650 from R.A. Jenton & Co. Ltd. After taking all effective steps towards implementation of the project and incurring an expenditure of Rs. 36.50 lakhs by way of promoters'' equity share capital, the Complainant entered into a common loan agreement on August 22, 1989 with PICUP in respect of a term loan of Rs. 39.50 lakhs

sanctioned by U.P.F.C. and also completed the legal formalities for securing the above term loans. At the time of entering the common loan agreement with PICUP, the following persons were Directors and there is no change in the Board of Directors since then: 1. Shri S.P. Sachdeva 2. Shri Y.P. Gupta 3. S. Manmohan Singh Gill.

It is further the case of the Complainant that the Jacket Laminating Machine was shipped to Bombay on 27th March, 1989 from Newyork Port of loading. As per the normal business practice the Company has to advise the name of their bankers for the receipt of import shipping documents. For this purpose, the Company opened a current account with the respondent Bank during April, 1989 with clear instructions, by furnishing Board of Directors'' resolution, that each and every document including cheques, bills of exchange and any instruction given or to be given should be signed by at least two Directors of the Company. Further a sum of Rs. 10.63 lakhs (includeing a term deposit of Rs. 8,50,000/- was deposited in the account of the Company on 31st May, 1989. The Bank received shipping documents on cash collection license basis covering import of Jacket Laminating Machine and also earmarked a sum of Rs. 8.50 lakhs towards margin contribution by the Company. The Bank also informed the PICUP about the same on 1st June, 1989. PICUP released two drafts, one amounting to Rs. 70.89 lakhs and another amounting to Rs. 8,33,840/- on November 8, 1989 in favour of the Bank towards retirement of documents in respect of the imported plant and machinery against the letter of credit and on account of the Company for meeting capital expenditure respectively. The Bank had not established any letter of credit for import of plant and machinery on account of the Complainant Company. Still the Bank adjusted the amount of draft of Rs. 70.89 lakhs against the shipping documents received on cash collection license basis. THIS clearly violated the instructions given by PICUP in its letter. Instead of crediting into the account of the Company for meeting its capital expenditure/the amount of second draft of Rs. 8,33,840/- was illegally adjusted and transferred by the Bank against retirement of documents in respect of imported plant and machinery. THIS resulted in the stoppage of all civil and allied works at the factory site due to shortage of necessary funds. The Bank transferred a sum of Rs. 97.86 lakhs equal to US $ 517,600 to the Fidelity Bank N.A. London on November 9, 1989 without any proper authorization or price intimation to the Company and thus violated the terms of Board of Directors'' resolution of the Company to have at least two Directors'' signatures jointly for acceptance of the instructions. The above remitted amount was inclusive of Rs. 79,22,840/- towards the entire term loan released by U.P. Financial Institutions and Rs. 8.63 lakhs lying in the Company''s current account as credit balance with the Bank on November 9, 1989. The amount remitted to the Fidelity Bank was short by US $ 27,8000 as the total value of imported plant and machinery was US $ 545,400. The Company had never asked the Bank to transfer partial amount of the cost of imported plant and machinery. Even the instructions as per shipping document of the Fidelity Bank, N.A. London did not allow acceptance of transfer of partial payment. Although the partial remitted amount towards the shipping documents was short by only 5% of the total value of the imported plant and machinery, the Bank never handed over the shipping documents to the Complainant. In the absence of shipping document of the Jacket Laminating Machine, the Complainant was not in a position to file any ownership claim document with the Bombay Port Trust Authorities and it finally resulted in the auction of the said machine by the said authorities. The Bank has also violated Reserve Bank of India guidelines of Time Limit for Settlement of Import Payments under Cash Licenses and OGL. As per RBI Exchange Control Act-Imports Manual, Chapter 13A, Clause 17, the authorised dealers are only allowed to make remittance even if the period of six months from the date of shipment has expired provided payment is made within six months from the last date of shipment authorised under the OGL License and no payment of interest is involved for the additional period. All other cases of extended payment terms require prior approval of Reserve Bank of India. In the present case the last date of shipment authorised under the OGL License during the year 1988-89 was March 31, 1989 and hence the remittance could have been made latest within six months viz. upto September 30,1989. The most damaging and shocking truth in violating these guidelines was admitted by the Bank itself in its letter dated September 19,1989 addressed to the Company (copy of this letter has not been filed by either party). In spite of admitting these guidelines, the Bank had remitted the part payment on November 9, 1989. Further as per the special instructions given by the Fidelity Bank, London interest was to be collected from March 27, 1989 until the date of payment viz. clearly beyond the period of six months. No RBI''s approval was obtained before remitting this partial cash license amount. As per RBI Exchange Control Act-Import Manual, Chapter 14A, Clause 7, the authorised dealers are not allowed to make remittances in foreign currency until Form A-I (for import payments only) is duly filled up and signed by the importer. The Bank had never asked the Company to fill-up such form. As per the banking rules, in each and every shipping document or bills received on collection must be accepted by the party in whose favour the documents are received. The Bank has to intimate the parties about the receipt of such documents by way of a registered letter. The Bank never intimated the Complainant nor they were asked to accept the shipping documents. The authorised dealers have to furnish duly attested copies of the invoice and shipping documents to the importer but the Bank has violated these guidelines. The Complainant has leant that the shipping documents of Jacket Laminating Machine were handed over by the Bank of an unauthorised person. RBI Exchange Control Act clearly states to whom the import documents should be delivered by the authorised dealer. The Bank has thus breached the trust, confidence and faith by violating terms of opening the current account by the company. Hence the claim for the above amount made up of various items stated at page 2 of the complaint.

2. COMPLAINT was contested by the Respondent Bank which took up various preliminary objections contending inter alia that various intricate and highly

disputed questions of fact as well as of law were involved, the disposal of which will necessarily require a lengthy trial in the recording of voluminous evidence of numerous witnesses and the scrutiny of a very large volume of documentary evidence and therefore the appropriate and convenient forum in which all these issues can satisfactorily be adjudicated is only the Civil Court. On merits it was pleaded that there were only two Directors of the Complainant Company namely Shri S.P. Sachdeva and Shri Manmohan Singh Gill and at no point of time name of Shri Y.P. Gupta was furnished to the Bank as one of the Directors. The claimant might have arranged for letter of credit from Hongkong for importing Jacket Laminating Machine and that is why Bill of Exchange was issued from Hongkong for US $ 5,45,400 and the payment was to be made to Fidelity Bank N.A. London. The opening of the account of the Complainant Company by the Respondent Bank on 17th April, 1989 was admitted. However, it was pleaded that at the time of opening the account the Complainant had assured and promised that they would be sending a resolution passed by the Company and believing that assurance and representation the Company was allowed to open the account but there is no resolution on the record of the Bank. After account had been opened, the Bank received documents of Fidelity Bank N.A. London for US $5,45,000 on 27th May, 1989. Upon receipt of the documents, the Bank intimated the Complainant about the receipt of the bill. On 31st May, 1989, the Complainant deposited a sum of Rs.1,63,800/- in their current account and also obtained a term deposit receipt for Rs. 8,50,000/-. The Complainant did not deposit the amount in spite of repeated requests and on the other hand requested the Bank that till the credit facilities are sanctioned, the Bank may release the documents to their Clearing Agents. In order to help and assist the Complainant, the documents were delivered to OTA Falloons, Forwardess Pvt. Ltd., Bombay, Customs Agents so that the goods be got released from the Customs'' House which would save the Complainant from further demurrage and other charges payable by them. The said Custom Agents advised the Bank vide letter dated 10th August, 1989 that the process of project registration shall be completed upon receipt of certain documents from the Complainant. The Complainant failed to submit the same. Again the said Customs'' Agents advised the Bank vide letter dated 17th September, 1989 that clearnace of Project was still at the Contract Cell for want of continuity Bond and goods could not be released. Again vide letter dated 27th September, 1989 the said Customs Agents advised the Bank that complete documents had not been received and therefore, the bonding of the goods with Central Warehousing Corporation could not be taken up. A copy of the said letter was also endorsed to the Complainant. Ultimately, the said Customs'' Agents vide letter dated 21st October, 1989 returned documents to the Bank. Perusal of these documents would reveal that because of want of registration of contract by the Complainant, the consignment could not be released and kept in bonded Warehouse. The Complainant was kept informed of all the said position, more so as the said OTA was acting for and on behalf of the Complainant as their agent. The Bank had a lien on the documents as the same were received on collection basis. The Bank was duty bound to remit the amount to Fidelity Bank N.A. London. The Complainant failed to complete all the formalities as required and has concealed the material facts in the COMPLAINT. When the documents were received back from the Custom Agents, the Bank again requested the Complainant that though without receiving the payment, documents had been delivered to their Clearing Agent but those had been received back, solely because of the Complainant''s fault and that they should make the arrangement to pay the amount at the earliest. Letter dated 8th November, 1989 (Annexure D) of PICUP was delivered by the Petitioner-Complainant on 9th November, 1989 by hand alongwith two drafts, one for Rs. 70.89 lakhs and other for Rs. 8,33,840/- to the Respondent Bank. The said drafts were received towards retirement of documents. Shri Manmohan Singh Gill, Director of the Company while delivering the said letter and drafts requested the Bank vide letter, Annexure H, to remit the maximum amount to the shippers and also requested to hand over the documents to Shri S.H. Yajnik. Shri Gill further represented that since Fidelity Bank has permitted to release the documents against partial payment, the documents be delivered. In fact prior to such request of Mr. Gill a telex had been received from Fidelity Bank dated 12th October, 1989 wherein they had advised the Respondent-Bank that the documents be released to the drawee on immediate payment of US $ 4,70,000. and on condition that the drawee signs an undertaking to pay the balance of US $ 45,400.00 plus interest on US $ 5,45,000 at US Dollars Prime Rate from 27th March, 1989 to 6th September, 1989 within 30 days from 12th October, 1989. It was also advised by the Fidelity Bank that the undertaking will be accepted by it without any undertaking'' or commitment from the Respondent-Bank. Shri Manmohan Singh Gill again came on 10th November, 1989 with a letter dated 9th November, 1989 (Annexure F) and requested the Bank that the documents be delivered to them against part-payment of US $ 500,000. The Complainant Company also gave the undertaking asked for by the Fidelity Bank. Though the drafts had not been encashed, still to accommodate the Complainant Company, the Respondent-Bank agreed to the said request. Shri Yajnik had accompanied him to the Bank at that time. The Bank first delivered the documents to Mr. Gill at that time who passed on the same to Mr. Yanjik. On the letter dated 14th April, 1989 (Annexure N at page 123) Mr. Yajnik made endorsement in his own hand-writing about having received the documents on 10th November, 1989 and signed below the endorsement. Therefore, it was wrong to say that the documents had been delivered to some unauthorised person. The Respondent-Bank reruited a sum of US $ 500,000 to Bank of California, New York with the concurrence of Shippers. On 10th November, 1989 US $ 17,600 were also remitted to the said Bank. These remittances were made as per made as per instructions of the Complainant through Shri Manmohan Singh Gill. On 15th November, 1989 the Respondent-Bank advised the Fidelity Bank that the documents had been delivered to the drawee against part-payment and further advised that necessary undertaking had been taken which shall be sent to them. On 6th February, 1990 (vide Annexure I) the Respondent Bank called upon the Petitioner-Complainant that since the documents were retired on 9th November, 1989, the exchange control copy of the bill of entry within 90 days from that date as per para 14-A.35 of the Exchange Control Manual which the Complainant had failed to submit and they were advised to submit the same within 10 days from the receipt of that letter. Another letter dated 14th March, 1990 was sent to the Complainant stating that payments were made on 9th and 10th November, 1989 and further requested the Complainant to pay the balance amount of US $ 27,500 as per their undertaking.

It was further averred that the shipping documents were received by the Bank on 29th May, 1989 and upon receipt of those documents the Bank had advised the Complainant Company vide letter dated 1st June, 1989 about the receipt of the document from Fidelity Bank N.A. The acceptance of documents is obtained only in those cases where delivery of documents is to be against acceptance only and not against payment. There has been no violation of any practice regarding collection of bill. The petitioner Company advised the Bank that imported Jacket Laminating Machine was meant for a project that was to be set up at Dehradun for which PICUP and UPFC had sanctioned loans. At the request of the Complainant in the letter dated 1st June, 1989 the Bank informed PICUP about the receipt of the collection of bill enclosing therewith a copy of the invoice and shipping documents to the Bank. Vide letter dated 22nd September, 1989 the Complainant apprised the Respondent-Bank that the letter dated 1st June, 1989 addressed to PICUP had not been received by PICUP and a copy of the same was, therefore, sent to PICUP on 22nd September, 1989 alongwith a copy of earlier letter dated 1st June, 1989. Upon receipt of this letter, PICUP vide letter dated 27th September, 1989 confirmed the receipt of letter dated 1st June, 1989 and further requested to allow temporary accommodation to the Complainant of payment of imported plant and machinery to which the Bank did not agree as there was no such proposal before the Bank for consideration and/or to sanction of any credit facility. Vide letter dated 6th November, 1989 the Respondent-Bank had also advised PICUP that the Bank had not released or sanctioned any credit facility to the Complainant. Both the drafts referred to above representing part disbursement of the loans by PICUP and UPFC. It appears that the complainant had perhaps made some misrepresentation to PICUP that letter of credit had been opened by the Respondent Bank while the credit had been obtained from Bharat Overseas Bank which fact had been concealed by them from the Respondent-Bank. The PICUP was under some wrong impression about the letter of credit while advising the Respondent Bank for retirement of the Bill. The amounts were received from PICUP, specifically for retirement of the documents and the amounts were accordingly disbursed as per instructions of Mr. Manmohan Singh Gill. Shri Gill had been regularly visiting the Bank branch in this behalf. The remittances have been made at the instance of the Complainant. PICUP never apprised the Bank that the amount of the second draft was to be utilised towards capital expenditure by the Complainant nor the Complainant apprised that the amount of second draft was to be so utilised. Shri Gill himself had requested the Respondent-Bank to remit the proceeds of the bill to the maximum amount possible out of the maximum amount available from the drafts as well as the amount which was kept as margin money by way of term deposit receipt (TDR). When Mr. Gill himself was giving various instructions to the Bank he is now estopped from filing this complaint on behalf of the Company. The statement of account now filed will show that as on 9th November, 1989 the opening balance in the account of the Complainant was Rs. 413/-. The two drafts referred to above aggregating to Rs. 79,22,840/- and proceeds of T.D.R. kept as margin money along with interest thereon amounting to total of Rs. 8,80,180.80 was credited to the account of the Complainant thus making the balance as Rs. 87,99,850/-. The amount was remitted to the Fidelity Bank as per the instructions of Shri Gill. 4. It was also pleaded that when the telex dated 12th October, 1989 was received from Fidelity Bank the Respondent Bank took all precautions of getting it verified through State Bank of India and the same was confirmed by the said Bank on 25th October, 1989.

3. IT was further pleaded that when the Complainant failed to deposit the demurrage and other charges in spite of repeated requests and reminders made by the Bombay Port Trust and also failed to comply with other formalities/ instructions, the Bombay Trust had no option but to auction the goods and the blame cannot be thrown upon the Bank. At no point of time during this period the Complainant had approached the Respondent Bank with a complaint that the documents had not been delivered to them or there was any fault or shortcoming on the part of the Bank or the Bank had violated their instructions. Vide letter dated 14th March, 1990 the Complainant enquired from the Respondent Bank as to the balance amount payable by them after the remittances of the amount. The letter is duly signed by the other Director Shri S.P. Sachdeva. This letter shows that there was no violation on the part of the Respondent Bank. There has been no violation of RBI Exchange Control Manual. When the amount itself was not in the hands of the Bank the question of remittances within six months did not arise at all. In any case it is between the Respondent Bank and the Reserve Bank of India. Moreover, the Respondent Bank has reported to the Reserve Bank of India in its fortnightly return for the fortnight ending 15th November, 1989 about the remittances. Forms A-1 were duly submitted to RBI. According to the Respondent Bank since the account opening form was signed by Shri S.P. Sachdeva and Shri Manmohan Singh Gill all cheques etc. were signed by both the Directors of the Complainant. So far as the other instructions were concerned the same could be conveyed to the Bank by any of the two Directors. Letter dated 13th February, 1990 copy of which has been filed by the claimant and said to have been issued by PICUP appears to be fabricated one as it is not signed by anybody nor its copy was ever received by the Respondent Bank. Moreover, that letter has no meaning when the amounts had been remitted much prior to the said alleged letter. In fact the Complainant was never interested in setting up the Unit and they have defrauded the financial institutions and PICUP had filed a criminal complaint against the Complainant and their Directors vide FIR No. 223 dated 3rd March, 1990 and it is to avoid the prosecution, that the Complainant has filed this

complaint.

4. THE Complainant filed a rejoinder to the counter filed by the Respondent. In that rejoinder it mainly reiterated the allegations contained in the complaint and denied the allegations of the Respondent Bank. Surprisingly the various allegations contained in the counter of the Respondent Bank were not explained except that the authenticity of the letters dated 9th November, 1989 said to have been written by Complainant to the Bank is disputed. In support of the facts contained in the counter the Bank has filed affidavits of Shri Rajiv Bhatnagar dated 29th July, 1992 and 22nd September, 1992 who was Branch Manager of the branch concerned of the Respondent Bank from 19th December, 1988 to 18th August, 1990 in which all the material facts contained in the counter have been stated on oath. In the latter affidavit, Shri Rajiv Bhatnagar has further stated that earlier the complainant had not disclosed that they had an account with Bharat Overseas Bank and had obtained letter of credit from the said Bank and that Bank has since filed suit against the Complainant for recovery of its dues. The Complainant has not filed any detailed affidavit. Its Director, Shri Gill of course has filed a brief affidavit stating that the contents of the complaint are true to the best of his knowledge and belief.

5. ARGUMENTS were heard in detail on 1st March, 1992. Order was reserved with liberty to the parties to file written submissions if any. The complainant has filed written arguments which are nothing but summary of complaint. The Respondent has not filed written submission.

6. BEFORE we proceed further we may mention here that in cases filed under the Consumer Protection Act, 1986 a party has not to prove its case beyond all reasonable doubts. The Fora constituted under the Act are only to be satisfied about the facts of the case. The satisfaction can be arrived at by looking at the probabilities of the case. For this purpose, the evidence i.e. the documents filed by the parties and oral evidence, if produced, can be considered. In the present case, the respondent has also filed affidavits of the Branch Manager who was posted at the concerned branch of the Bank during the relevant period. These affidavits contain all the material facts which have been averred by the Respondent Bank in its counter. As a rejoinder to these affidavits, the complainant has not chosen to file any affidavit about the facts of the case except the brief affidavit already referred to above. The main grievance of the Complainant is that partial remittances were made to the Fidelity Bank without any proper instructions from the Complainant and that those remittances are against the instructions issued by the Reserve Bank of India. It is also the grievance of the Complainant that shipping documents were delivered by the Bank to some unauthorised person and that one of the drafts received from PICUP was meant for capital expenditure of the project of the Complainant Company but the Bank utilised that amount for retiring the shipping documents. Therefore, the question to be seen is whether the Complainant has been able to prove these allegations.

When the documents were received by the Bank, Shri Gill, Director of the Company wrote a letter (Annexure ''X'') to the Bank Manger to release the documents to their Clearing Agents M/s. O.T.A. Faloons to bond the consignment at Central Warehousing Corporation''s warehouse to avoid further demurrage. The consignment could not be bonded for want of clearance of project at the Contract Cell. Annexure C-I to C-4 filed by the Bank are the various letters written by the Clearing Agents to the Bank. Except of C-l, the copies of all the letters were sent by the Clearing Agents to the Complainant Company. Vide Annexure C-4 the Clearing Agents returned the shipping documents to the Bank. In this letter it is also mentioned that though the bond has been filed but it was kept pending for want of contract and that the detention charges as well as the demurrage charges were mounting. In spite of those letters the complainant does not appear to have taken any action. At least no letter has been filed by the Complainant to show that they took some action on the basis of various advices received from their Clearing Agents.

7. ON 1st June, 1989 the Bank had written a letter to PICUP. Its copy was sent to the Complainant Company. It is at annexure B. It reads as follows:- "We have received a bill for collection for US $ 5,45,400 drawn on the captioned company covering import of a Jacket Laminating Machine. A copy of the invoice and bill of Lading is enclosed. At the request of the Company, we have earmarked a sum of Rs. 8.50 lacs in the company''s account towards part payment of the bill."

This letter has been referred to because the Complainant''s case is that its term deposit receipt had been encashed by the Bank without any instructions. The amount of Rs 8,50,000 mentioned in this letter has reference to the term deposit made by the Complainant Company on 31st May, 1989. If the term deposit receipt had been encashed by the Bank illegally the complainant would have at once objected to it. The Respondent''s case is that the Complainant had not filed with them copy of any resolution passed by the Board of Directors of the Company. This allegation finds support from the affidavit of Shri Rajeev Bhatnagar. There is no rebuttal.

8. THE documents were sent back to the Bank by the Clearing Agents on 21st October, 1989 Annexure C-4. Soon thereafter the Complainant appears to have approached PICUP for the advancement of loan. On November 8,1989 the PICUP wrote a letter (Annexure D) to the Bank and two drafts referred to above were sent alongwith this letter. According to the Bank, by Shri Gill on 9th November, 1989. THE last two paras of this letter read as follows:- "THE amount of the draft represents a part disbursement of Rs. 54.50 lakhs against term loan of Rs. 90.00 lakhs sanctioned by PICUP and part disbursement of Rs. 25.00 lakhs against term loan of Rs. 39.50 lakhs sanctioned by UPFC. Please acknowledge the receipt of the letter and drafts and also confirm about the retirement of the LC."

In this letter it is nowhere mentioned that any part of the money sent by means of the drafts was on account of meeting the capital expenditure of the project. It may be mentioned here that the Complainant has filed copy of a letter dated

February 13, 1990 (Annexure XI) said to have been written by PICUP to show that the draft for Rs. 8,33,840/- was for meting capital expenditure of the project of the Company. This letter is not signed by anybody. THE contents of the letter only narrate the facts. THE letter does not show for what purpose it was written to the Complainant. This letter, therefore, appears to be a fabricated one as alleged by the Bank. Mr. Gill is also said to have produced a letter dated 9th November, 1989 (Annexure ''H'') before the Bank. The Complainant has denied the genuineness of this letter but Shri Rajeev Bhatnagar has supported this part of the Bank''s story by his affidavit. Here we may reproduce the contents of that letter:- "We are enclosing two drafts bearing Nos. 6606793 and 6606794 dated the 8th November, 1989 for Rs. 70,89,000/- and Rs. 8,33,840/- respectively alongwith a letter addressed by PICUP to you. You are requested to credit the proceeds of the drafts to our current account alongwith the margin money of Rs. 8,50,000/- alongwith up-to-date interest and remit the proceeds of the bill to maximum amount possible after deducting Bank charges, to the shippers. We further request you that the above drafts may be purchased by your and amount credited to our current account today itself, As you are aware that we have taken forward cover of the above amount. You are requested to send maximum proceeds to shippers and cancel the balance contract. You are requested to handover the documents to Shri S.H. Yajnik."

As noticed earlier while narrating the facts the Bank remitted a sum of US $ 5,00,000 to the Bank of California on 9th November, 1989 and $ 17600 on 10th December, 1989 as maximum possible amount was to be remitted at the request of the Complainant. The telex, referred to while narrating the averments of the Respondent Bank and said to have been received from Fidelity Bank is Annexure E to the counter. Vide this telex the documents were advised to be released to the drawee on payment of US $ 4,70,000 and on condition that drawee signs an undertaking to pay the balance amount of US $ 75,400 plus interest on US $ 5,45,500 at US $ prime rate from 27th March, 1989 to 26th September, 1989 within 30 days of 12th October, 1989.

9. THE whole case of the Complainant Company is falsified by the letter dated 15th March, 1990 (Annexure JI) written on behalf of the Complainant Company and signed by Shri S.P. Sachdeva who described himself as Managing Director of the Company. He is admittedly one of the Directors of the Complainant Company. This letter reads as follows:- "You are requested to give us a details of our bills of Imported Machinery. THE payments received by you from our Financier P.I.C.U.P. and the balance payable to you." If the payments had not been remitted by the Bank under proper instructions of the Company, the Company would not have asked the Bank to tell it about the balance payable by it. From this letter it can also be held that Shri S.P. Sachdeva had ratified and owned all the instructions given by Shri Gill to the Bank on behalf of the Company. In reply to that letter of the Company the Bank wrote a letter of even dated (Annexure J2) and alongwith it also annexed the account of the Company. THEre is nothing on the file to show that before filing the present complaint the Company ever objected to the said

account. Further it is to be noted that the building construction of the Company is said to have come to a standstill in November, 1989 when the amounts were remitted by the Bank to the foreign Bank. Before writing the above letter dated 15th March, 1990, the Company did not write to the Bank that one of the drafts sent by PICUP was meant for working expenses of the Company or the term deposit had been illegally cashed. Before filing this complaint the Company also did not appear to have written any letter to the Bank complaining that the documents relating to the imported machinery had been delivered by the Bank to some unauthorised person. As is clear from the counter of the Bank, the present complaint was filed only after the PICUP had filed a criminal complaint against the Company..

10. AS noticed earlier the whole case of the Bank is supported by the affidavits of Shri Rajeev Bhatnagar. The Complainant Company did not seek any permission of this Commission to crossexamine Rajeeev Bhatnagar. It also did not seek any permission to lead any oral evidence in support of the Complainant''s case. In the light of the above discussion we have come to the conclusion that the present complaint is false and frivolous and is liable to be dismissed and we order accordingly. The Complain-ant shall pay to the Respondent Bank the costs of these proceedings which we quantify at Rs. 10,000. The costs shall be paid by the Complainant Company to the Bank within two months of the receipt of the copy of this order. Order accordingly.

