
(2016) 09 CAL CK 0016
In the Calcutta High Court

Case No : GA No. 1653 of 2013, GA No. 1648 of 2013 and CS No. 80 of 2013

Navyug Enterprises (P) Ltd.

APPELLANT

Vs

Bangladesh Krishi Bank

RESPONDENT

Date of Decision : 01-09-2016

Acts Referred:

Uniform Customs and Practice for Documentary Credits, 1993 — Article 14, Section 16

Citation : (2016) 4 CalHCN 681

Hon'ble Judges : Sanjib Banerjee, J.

Bench : Single Bench

Advocate : Mr. R. Ghosh, Mr. Ayan Dutta, Mr. M. A. Jabar, Mr. N. Khanjoy, Mr. Suman Dutt, Sr. Advocate and Mr. Sukrit Mukherjee, Advocates, for the Appearing Parties

Final Decision : Dismissed

Judgement

Sanjib Banerjee, J.—The claim is quite simple. Though the plaintiff's anxiety to cover all the bases that need not have been covered has resulted in much more having been said in the plaint and others parties being imp-leaded, the claim is essentially under an irrevocable international letter of credit issued by the first defendant bank.

2. The plaintiff claims to have agreed to supply goods to the second defendant Bangladeshi importer. The second defendant caused the first defendant bank to issue an irrevocable letter of credit in respect of the transaction. Under such irrevocable letter of credit, which was expressly governed by the latest version of Uniform Customs and Practise for Documentary Credits, the first defendant bank undertook to pay the specified amount upon certain documents as detailed in the letter of credit being furnished by the plaintiff exporter.

3. There is no doubt that UCP 600 applies to the transaction and the plaintiff and the first defendant accept such position. The plaintiff forwarded the documents on or about December 9, 2010, though in a letter addressed by the first

defendant to its constituent, the second defendant, the first defendant claims to have received such documents only on December 13, 2010. The first defendant bank did not immediately protest the documents or point out any discrepancy or non-compliance with the terms of the documentary credit on the part of the plaintiff or the third defendant negotiating bank. It was only on January 10, 2011 that the first defendant wrote to the plaintiff's bankers the following remarkable lines:

"Please refer to you export Bill under reference No.0480510BP0001241 Date 09.12.2010 drawn on our L/C No 049910010537 Date 10.11.2010 for USD.51,400.00.

It is very regretted that your exporter M/S. Navyug Enterprises Pvt. Ltd. 3f, Trinity House, 226/1, AJC Bose Road, Kolkata-700020 have not shipped any goods against this documents and our customs authority of Port landing station i.e. Sonamasjid land customs Sibganj, Chapai Nababganj confirmed the same vide their letter no.5-Cus- 20(26) Bangladesh Bank/SO:M:/09/42 Date-06.01.2011 photocopy of which enclosed.

Though, Bank deals with documents not with goods. But how a bank can pay money against fake documents like this.

However, we returned herewith your documents without any risk and responsibilities on our part. Please acknowledge receipt."

4. It is evident from the third paragraph of such letter that the first defendant was aware of its obligation and its unimpeachable liability to make payment under the letter of credit. The first defendant was also aware that it had no right to question the documents furnished for negotiation unless it had pointed out any discrepancy within the time permitted under UCP 600.

5. Article 14(b) of UCP 600 provides, inter alia, that "the issuing bank shall each have a maximum of five banking days following the day of presentation to determine if a presentation is complying." Such provision follows Article 14(a) that mandates that the issuing bank must examine a presentation to determine, on the basis of the documents alone, whether or not the documents appear on their face to constitute a complying presentation.

6. Article 16 of UCP 600 permits discrepant documents to be brought to the notice of the beneficiary or the negotiating or the confirming bank. It also provides for the waiver of any discrepancy by or on behalf of the issuing bank. Article 16(a) of UCP 600 gives the issuing bank the right to refuse to honour or negotiate any presentation if the presentation does not comply with the requirements of the relevant documentary credit. Clauses (d) and (f) of Article 16 of UCP 600 provide as follows:

"d. The notice required in sub-article 16(c) must be given by telecommunication or, if that is not possible, by others expeditious means no later than the close of the fifth banking day following the day of presentation.

"f. If an issuing bank or a confirming bank fails to act in accordance with the provisions of this article, it shall be precluded from claiming that the documents do not constitute a complying presentation."

7. Article 16(c) of UCP 600 deals with the contents of a notice that is issued by a confirming or issuing bank when it refuses to honour or negotiate the documents presented under the documentary credit.

8. There is no doubt in the instant case that the documents were presented for negotiation by the plaintiff or by the third defendant bank on behalf of the plaintiff on December 9, 2010 and that such documents were received by the first defendant issuing bank on the same day or, latest by December 13, 2010. In the event the issuing bank had any reservations, it had every right to refuse to honour or negotiate the documents on account of any discrepancy or others valid reason; provided that the notice of refusal ought to have been issued within five banking days after the date of receipt of the documents for negotiation. There was no notice by the first defendant to the third defendant at any time prior to January 10, 2011. Further, it is not the first defendant's case that the last of the five banking days, between the date of receipt of the documents by the first defendant and the issuance of the letter dated January 10, 2011, fell on or after the date of issuance of the first defendant's reply.

9. It is apparent that the first defendant did not protest the documents or point out any discrepancy therein or issue any notice refusing to honour the documents or the presentation within the time stipulated under UCP 600. Since the effect of the failure of the issuing bank to give notice of dishonour within the stipulated time entails the undeniable liability of the issuing bank under the documentary credit, it is evident that the first defendant is liable to pay the amount covered by the documentary credit or as demanded by the covering letter under which the documents were presented.

10. There is no defence to the claim, but the first defendant has made some murmurs. The first defendant seeks to contend that if one of the documents that was required to be submitted for negotiation was a writing evidencing the shipment being made over to the Bangladeshi importer or a document demonstrating that the goods had crossed over to Bangladesh to be handed over to the importer, once the first defendant alleged that the plaintiff had relied on fake documents in such regard, no decree can be passed in favour of the plaintiff without the plaintiff being required to prove the crossing over of the goods to Bangladesh or the delivery thereof to the Bangladeshi importer.

11. The further meaningless ground that is urged on behalf of the first defendant is that since the second defendant Bangladeshi importer has been imp-ledged herein, it will be open to the second defendant to file a counter-claim in these proceedings, whereupon the plaintiff will have to prove the supply of the goods to the second defendant upon such goods crossing over from the territory of India to the territory of Bangladesh. What the first defendant seeks to assert is

that a plaintiff will be dis-entitled from being granted a summary decree without the plaintiff affirmatively establishing the claim; and the underlying claim of the plaintiff herein is that the goods had been transported to Bangladesh and had been made over to the second defendant.

12. There is no shred of merit in any of the grounds canvassed by the first defendant. Upon a bank being bound by the Uniform Customs and Practise for Documentary Credits, the bank has to only deal with the documents and the documents alone; and it is not the bank's concern even as to whether the goods covered by the documents exist or not. Further, once the documents had been presented to the first defendant and the first defendant failed to issue notice of refusing to honour or negotiate the credit within the time stipulated under Article 14(b) and Article 16(d) of UCP 600, the bank's obligation to pay the amount covered by the documentary credit is absolute and unquestionable and nothing else need to be seen while assessing the bank's liability under the relevant documentary credit.

13. As to what steps the others parties to the suit may take against the plaintiff or anybody else is of no concern of the first defendant and, certainly, not a defence that can be urged by the first defendant. Indeed, the stand of the first defendant has been utterly dishonest and most reprehensible, considering that the matter covers an irrevocable international credit, which is the life-blood of international commerce.

14. For the reasons indicated above, there will be a decree in favour of the plaintiff and against the first defendant bank in the Indian equivalent of US \$51,400/- as on date. The decree will carry interest at the rate of 12 per cent per annum in the currency of the transaction till today. The high rate of interest awarded is on account of the completely dishonest stand taken by the bank and the claim having been resisted for nearly six years. The US dollar equivalent of the interest will be converted to Indian rupees as on date and the same will carry interest at the rate of 9 per cent per annum from today till payment. The Indian equivalent of the principal amount will also carry interest at the rate of 9 per cent per annum till realisation.

15. The first defendant bank will also pay costs assessed at Rs.5 lakh to the plaintiff, which will carry interest at the rate of 9 per cent per annum if not paid within a month from date. The costs will include the amount expended by the plaintiff on account of court-fees.

16. In view of the above, which covers the entire claim of the plaintiff, CS No.80 of 2013 stands disposed of along with GA No.1653 of 2013.

17. GA No.1648 of 2013, which is the first defendant's application for extension of time to file its written statement is dismissed as meaningless since a decree has already been passed.

18. The subsisting order of attachment will continue till the entire decretal debt is

discharged by the first defendant.

19. Let the decree be drawn up expeditiously.