(1990) 11 NCDRC CK 0028

In the National Consumer Disputes Redressal Commission

Punjab National Bank APPELLANT

Vs

PUSHKAR WOOLENS PVT. LTD. RESPONDENT

Date of Decision : 09-11-1990

Acts Referred:

Citation : 1991 0 CPC 285 : 1991 1 CPJ 627 : 1993 1 CLT 76

Hon'ble Judges : V.Balakrishna Eradi , A.S.Vijayakar , Y.Krishan , Brijendra Singh J.

Final Decision : Appeal succeeded

Judgement

1. THE appellant, Punjab National Bank, granted a term loan of Rs. 2,00,000/- and a cash credit limit of Rs. 3,00,000/- to the respondent on the 4th February, 1986 for financing the textile unit to be established by the respondent complainant.

2. THE Appellant, in pursuance of the loan to be given to the Respondent, issued on 27.2.1986 a Bank Draft for Rs. 2,16,200/- (including the margin money of Rs. 16,200/- deposited by the Respondent) on 3.3.1986 in favour of the manufacturer of dyeing and knitting machinery for supply of the machinery to the Respondent However, the said Bank Draft was dishonoured and could not be encashed by the bankers of the supplier of the machinery on the ground that the signatures of the drawing officer of the Bank differed.

The State Commission has held that Respondent-Complainant was guilty of negligence and there has been deficiency in service on the part of the Bank for issuing a Bank Draft which was dishonoured as mentioned above. This led to paucity of funds for the unit which was starved of the funds required and repeated representations by the Respondent-Complainant to the Bank for providing funds in lieu of the dishonoured Bank Draft remained unheaded. The State Commission observed "because of paucity of funds caused by the dishonouring of the draft issued by the respondent Bank, '' the very foundation of the unit was shattered''."

3. THOUGH the Respondent-Complainant had claimed a compensation of Rs. 4.60 lakhs for the said negligence and consequent damages caused to him, in the hearing before the State Commission the Respondent agreed to the compensation amount equal to the interest on cash credit limit utilised by the Respondent in its account with the Bank. The State Commission had accordingly decreed a compensation of Rs. 2 lakhs to be paid to the Respondent-Complainant in this case. By this appeal the Appellant herein has impugned the order of the State Commission mainly on the following two grounds: (i) that the Respondent did not suffer from shortage of finance, especially capital for investment, and (ii) that the Respondent suffered no loss due to the Bank Draft having been dishonoured.

For the disposal of this appeal two questions need to be considered. (a) Is it a fact that the unit of the Respondent was starved of funds which led to a breakdown of the complainant''s business as concluded by the State Commission? (b) In case the answer to the above question is in the affirmative, what is the precise quantum of loss caused to the Respondent by the negligence of the Appellant?

4. AS regards the first question whether the Respondent was starved of the funds in financing the new unit to be established, the Appellant has cited the following facts to establish that there was no shortage of funds with the Respondent The Respondent had in his letters of 12th March, 1986 and of 13th March, 1986 informed the Bank that MTL (Medium Term Loan) was no longer required, that their application for the same should be treated as cancelled and that their margin money should be credited to the Current Account with the Bank. The suggestion of the Appellant is that these letters from the Respondent clearly establish that the Respondent was not in need of a term loan for financing to his unit. These communications of 12th and 13th March, 1986 were considered by the State Commission and the Commission came to the finding that these communications were got signed by the Respondent on the assurance from the Bank that the fresh loans would be made available to the Complainant if he wrote such a letter and that the Complainant naturally agreed to do so in the hope of getting a fresh loan which, however, he never got.

5. ACCORDING to the Appellant there is further evidence to establish that there was no paucity of funds with the Respondent even if his letters of 12th and 13th March, 1986 were to be ignored as has been done by the State Commission. This is sought to be established by the following facts.

6. THE Appellant obtained a fresh M.T.L. of Rs. 42,000/- on 16th May, 1986 against which he drew only Rs. 7,270/- indicating that the fresh term loan sanctioned was substantially in excess of the Respondent''s requirements. Again the Respondent had been sanctioned a cash credit limit of Rs. 3,00,000/- on the 4th February, 1986 and he availed of a maximum of Rs. 2 lakhs only as cash credit against this limit upto 7th January, 1987. In other words, the cash credit limit was quite liberal and his actual requirement of funds was substantially less.

It is true that the Bank finance provided under cash credit limit cannot be utilised as term loan. It may also be that cash credit facility can be availed of after getting the term loan. But the Respondent availed of the cash credit facility and according to the State Com mission, the Complainant, after the Bank Draft issued against the term loan was dishonoured, made up the short fall in the term loan funds by drawing some funds of the cash credit limit. It is not known whether the Respondent had diverted the cash credit funds to the term loan with the prior knowledge and approval of the Bank. However, it is indicative of the fact that there was no shortage of funds on account of the Bank Draft of 3rd March, 1986 having been dishonored, the Respondent could have availed of the surplus of the cash credit limit funds with the prior consent of the Bank for the purpose of term loan requirements. The explanation given by the Respondent in its reply to the appeal for partial utilisation of the M.T.L. of Rs. 42,000/ and of the cash credit limit are not convincing. In any case, it is quite evident that there was no evidence of shortage of funds for establishing the new unit by the respondent.

7. THE Appellant has further pointed out that the fixed assets of the Respondent had grown substantially at the end of June, 1987 as compared to the value of the fixed assets as per the Balance Sheet submitted with the Project Report for grant of term loan. THE fixed assets at the time of applications for term loan were declared to be of the value of Rs. 86,000/-. THEse stood at Rs. 3,67,000/- on 30th June, 1987. Such a substantial growth in the value of the fixed assets of the Respondent-Complainant in a period of 18 months could not have occurred if there was shortage of capital funds with the Respondent Company. THE explanation given by the Respondent in its reply is not illuminating. So, according to the Appellant, taking all these facts together availing of a new M.T.L. marginally, drawing funds against the cash credit limit only partially, and more importantly diverting the surplus available against the cash credit limit for meeting the term loan requirements and the substantial growth in the capital of the respondent complainant company, there is no room for doubt that there was no paucity of funds with the Respondent or it was in no way starved of capital funds causing loss to the Respondent. THEse submissions of the Appellant have remained uncontroverted by the Respondent. (b) THE second question is: presuming that the Bank had defaulted in providing adequate term loan to the Respondent, was any loss or damage caused by the respondent in consequence? The amount of compensation claimed by the Respondent was Rs. 4,60,000/- but without furnishing the details of loss or damage suffered by him.

8. THE loss could possibly arise because of short fall or from delay in production due to delay in the installation of machinery purchased by the Respondent-Complainant with the promised term loan which was eventually not given. Loss could also arise because of higher financing charges which the Respondent Complainant might have incurred for raising funds from other sources for meeting term loan requirements. It is not the case of the Respondent-Complainant that there was delay in the installation of machinery and consequent delay in production and financial loss to him.

9. SINCE the Respondent met his requirements of term loan by drawing the funds available against the cash credit facility, the loss or damage could be only in terms of the extra interest, if any, he had to pay on the loan drawn as cash credit as against the interest payable on M.T.L. and for the period for which the cash credit funds were so diverted.

10. AS per the loan agreements the rate of interest payable on the M.T.L. loan and on the cash credit loan sanctioned on 4th February, 1986 was 15.75% only. In the Civil Suit filed by the Punjab National Bank (Appellant) in 1989, against the Respondent, the rate of interest on the term loan is shown as 13%. This is indicative of the fact that the diversion of cash credit loan funds to term loan requirements could not have caused a loss of Rs. 4.60 lakhs as claimed or even Rs. 2 lakhs as awarded by the State Commission. This only establishes that in the absence of quantification of loss with reference to the amount of cash credit directed as term loan and the period for which it was so directed, the amount awarded as compensation is not sustainable The Appellant has also pointed out that the claim is not bona fide in as much as the Bank Draft was dishonored in March, 1986 but the Respondent-Complainant remained silent about the question of damages till June, 1989.

It is evident from the above that the Respondent-Complainant had not quantified the precise loss suffered by him due to the alleged negligence of the appellant and that the Compensation to the Respondent-Complainant of Rs. 2 lakhs has been determined arbitrarily. There is also inordinate delay in raising the claim for damages due to the Bank Draft having been dishonored which makes his claim suspect.

11. IN the result the order of the State Commission is set aside and the appeal succeeds. There is no order as to costs. Appeal succeeded.

