(1993) 11 NCDRC CK 0013

In the National Consumer Disputes Redressal Commission

SATYAM FIBRES INDIA (P) LTD. — APPELLANT

Vs

INDIAN BANK — RESPONDENT

Date of Decision : 16-11-1993

Acts Referred:

Citation : 1993 0 NCDRC 67 : 1993 3 CPJ 400 : 1993 3 CPR 480

Hon'ble Judges : V.BALAKRISHNA ERADI , Y.KRISHAN , B.S.YADAV J.

Advocate : F.F.Madan , WADIA GANDHI , S.U.KAMDAR , R.MILVALLA

Judgement

1. THE complainant shipped certain quantity of cotton grey sheeting ("the goods") under a contract on 17th May, 1989 to a French firm M/s. STE Kolori. Originally the goods exported were of the value of French Francs 4,35,000 and subsequently by an agreement among the buyers and the seller this was reduced to French Francs 4,10,000 only. The said goods were to be delivered to the buyer in France against acceptance of bills of exchange drawn by the complainant on M/s. STE Kolori and co-accused to by a foreign Bank.

2. THE complainant supplier drew bills of exchange which on their face, stated that draft was to be accepted by the drawer and co-accepted by the drawee Bank for payment on 31.12.1991. The Bills of Exchange were submitted to the opposite party Indian Bank with a covering letter on 26th August, 1991 which specifically instructed the opposite party Bank that the said Bills of Exchange have to be accepted by the buyer and co-accepted by the Bank named thereon for payment on 31.12.1991. The opposite party Bank forwarded the said Bills of Exchange to the Foreign Bank in France on the 27th of August, 1992 with their own covering note which, however, did not direct the said Foreign Bank to co-accept the said Bills of Exchange.

3. ON the 10th December, 1991 the complainant was informed by the liquidator that the said buying firm M/s. STE Kolori had gone into liquidation. In January, 1992, on enquiries made from the opponent, the complainant came to know that the said Bills of Exchange had not been honoured on the due dates due to liquidation of the buyer firm and that under the French Law the French Banks do

no co-accept Bills of Exchange. As such, no such co-acceptance was obtained from the Foreign Bank by the buyer M/s. STE Kolori. The opposite party Bank also denied their liability to make payment of French Francs 4,10,000 to the complainant.

4. THE complainant has, therefore, filed this complaint alleging negligence on the part of the opposite party Indian Bank in not getting the Bills of Exchange co-accepted by the Foreign Bank causing a heavy loss to the complainant. The complainant has also drawn attention to the Uniform Rules for Collections of the International Chamber of Commerce [page 68] enjoining "All documents sent for collection must be accompanied by a collection order giving complete and precise instructions, Banks are only permitted to act upon the instructions given in such collection order, and in accordance with these Rules. In Article 15 of the said Rules "It is the responsibility of the presentee Bank to see that the form of the cceptance of the Bills of Exchange appears to be complete and correct". The opposite party Bank has stated that "it is not aware of and it is not concerned with any alleged agreement pertaining to the acceptance and/or co-acceptance of documents by and between the complainant and the said M/s. STE Kolori,,. According to the opposite party, the document, viz., the Bills of Exchange were forwarded as received by them from the complainant requiring acceptance and co-acceptance. It denied that it is necessary that the covering note to the document should specifically mention that the said documents had to be co-accepted by the Foreign Bank and that it was the duty of the Foreign Bank to see that the acceptance of the Bills of Exchange must be complete and correct in accordance with the tenor of the document, viz. Bills of Exchange. From a perusal of the facts, there is no merit in the defence of the opposite party. The Bills of Exchange as well as the covering letter from the complainant to the Bank clearly specified that the Bills of Exchange were to be accepted by the buying French firm and co-accused by the Foreign Bank. It was the duty of the opposite party Bank to ensure co-acceptance by the Foreign Bank and if this could not be done for any reason it ought not to have parted with the documents but should have informed the complainant and or returned the Bills of Exchange.

5. THE Rules for Collection laid down by the International Chamber of Commerce leave no room for doubt that as per Article 3 of the said Rules, for giving effect to the instructions of the principal, Le., the customer entrusting the operation of collection to his Bank, the remitting Bank (viz. the Bank to which the principal has entrusted the operation of collection) is the collecting Bank. As observed earlier, under Article 15 it is the presenting Bank which is responsible for seeing that the form of acceptance of a Bill of Exchange appears to be complete and correct. Under. Item C "General Provisions and Divisions,, of the above Rules "All documents sent for collection must be accompanied by a collection order which has to be made by the Bank in accordance with the instructions of the client or the principal,,. The opposite party Bank failed to do so. We reject its plea that it was not responsible to obtain the co-acceptance of the Bank and there was no deficiency of service on its part.

6. IN the result, the complaint is accepted and the opposite party Bank is ordered to pay to the complainant as under: (i) A sum of French Francs 4,10,000 being the principal amount of the Bills of Exchange, which was to be realised by the opposite party Bank on behalf of its client; (ii) Interest @ 18% in rupees on the rupee equivalent of the principal amount as in (i) above payable from 31st December, 1989 at the rate of exchange obtaining on that date. (iii) The opposite party Bank will also pay a sum of Rs. 10,000/- as costs to the complainant.