(1993) 07 NCDRC CK 0031

In the National Consumer Disputes Redressal Commission

SEPPLE RALLY OY — APPELLANT

Vs

Union Bank of India — RESPONDENT

Date of Decision : 22-07-1993

Acts Referred:

Citation : 1993 3 CPJ 1569 : 1994 1 CLT 111 : 1994 1 CPC 75

Hon'ble Judges : R.N.Mittal , S.Brar , A.N.Saxena J.

Final Decision : Complaint allowed with costs

Judgement

1. BRIEFLY the facts are that the Dany Dairy & Food Engineers Ltd., respondent No. 3 entered into an agreement with the complainant wherein the respondent No. 3 agreed to supply two evaporator systems valued at Rs. 25,98,473/- to them within a period of four months from the date of the order. Respondent No. 3 asked for 100% advance which was paid by them in pound sterling on the condition that they would furnish bank guarantee for refund of the amount incase the contract remained un-executed. Respondent No. 3 obtained bank guarantee dated 19.12.88 from Union Bank of India, Saharanpur, Respondent No. 2 and furnished that to the complainant. Respondent No. 3 supplied a part of the plant on account of which bank guarantee stood reduced to Rs. 10,53,735/-. The complainant asked respondent No. 2 on 20.12.89 to pay to them pound 39,000/- equivalent to Rs. 10,53,735/-as respondent No. 3 had failed to perform his part of the contract in full but they did not pay the same. It is alleged that the respondent Bank informed the complainant that the Reserve Bank of India, Kanpur, vide letter dated 11.10.90 had considered the matter favourably and regularised the illegal action of the Saharanpur Branch in issuing the guarantee dated 19.12.88. The Bank then gave a draft dated 4.3.91 for pound 29,062 to the complainant. Thus they suffered a loss equivalent to about 9,938 (39,000 (-) 29,062 = 9,938). Consequently they have prayed that respondent Nos. 1 & 2 be directed to pay the amount of pound 9,938 along with interest @ 18% p.a. from the date of invocation of bank guarantee till the date of actual payment.

2. THE complaint has been contested by the respondent Bank. THEy have raised

a preliminary objection that no part of cause of action arose at Delhi and therefore the Commission at Delhi had no jurisdiction to entertain the complaint. On merits, they admitted that they had executed a guarantee in favour of the complainant and that the guarantee amount stood reduced to Rs. 10,53,735/-. However, they denied that the complainant was entitled to that amount in pound sterling. THEy have pleaded that they were liable to pay the amount in Indian currency. However, in order to remit the amount to the complainant, the permission of Reserve Bank of India had to be obtained and formalities were to be complied with. THE amount was converted to sterling pound at the prevailing rate when the amount was given to the complainant. It is further pleaded that the complainant accepted the amount in full and final settlement of their claim and consequently they are estopped from filing the complaint. The first question that arises for determination is, whether the Commission has got the territorial jurisdiction to entertain the complaint. The bank guarantee was furnished by respondent No. 3 who is a necessary part to the present proceedings, to the complainant at Delhi. The contract between respondent No. 3 and the complainant in pursuance of which bank guarantee was given, took place at Delhi where respondent No. 3 has its office. Thus a part of cause of action arose at Delhi. It is true that the bank guarantee was furnished by the Saharanpur Branch of the Bank, but that will not make any difference, as a part of the cause of action arose at Delhi. Consequently, we are of the opinion that the Commission has got the jurisdiction to entertain the complaint.

The next question that arises for determination is, whether the complainant was to be paid in Indian Currency or in pound sterling. The learned Counsel for the complainant has urged that the amount was to be paid in pound sterling to the complainant which is evident from the bank guarantee. On the other hand the learned Counsel for the Bank relying on the bank guarantee argued that the amount was to be paid in Indian Currency.

3. WE have duly considered the arguments. The bank guarantee has not specifically mentioned that the amount was to be paid in Indian Currency. What it says is, that the Bank undertakes to pay to the complainant an amount not exceeding Rs. 25,98,475/- only equivalent to pound sterling 94,490. Thus the bank guarantee is silent about the currency in which payment is to be made by the Bank. In order to determine whether the amount was to be paid in Indian Currency or in pound sterling the sequence of events has to be seen. The important circumstance is that the amount was paid by the Bank to the complainant in pound sterling. The payment of the amount in pound sterling is a pointer of the fact, that the guarantee amount was payable in pound sterling.

4. THE other circumstance is that the amount was paid after about one year and three months from the date when it became payable. It is not disputed that it became payable on 20.12.89 whereas it was paid on 4.3.91. THE reason for delay given by the Bank is that it had to obtain clearance from the (R.B.I.) Reserve Bank of India for making the payment. Incase the amount was payable

in Indian Currency it was not necessary for the Bank to have the permission of the R.B.I. THE second reason given for the delay is that the Saharanpur Branch of the Bank could not deal in foreign exchange matters. If the amount was not to be given in pound sterling this ground of delay given by the respondent, is meaningless. After taking into consideration all the aforesaid circumstances we are of the view that the amount was to be paid by 938-00 the Bank in pound sterling. The next question that arises for determination is, whether the complainant is estopped from claiming the balance amount. It is contended by the learned Counsel for the Bank that the amount was accepted by the complainant in full and final settlement and therefore, they are estopped from claiming the amount in dispute. It is true that the receipt given by the complainant says that the draft of the amount had been received in full and final settlement. However, on 5.3.91 i.e. the next date of the receipt of the amount, they informed the Bank that the amount was received in full and final payment except for the loss suffered due to exchange rate on account of delay in making the payment by them. Thus immediately after the receipt of the amount a protest was made by the complainant. In this regard they also referred to their earlier communications of 27.2.91 and 28.2.91. In case the amount had not been accepted by them as paid by the Bank, the matter would have been further delayed and in such circumstances it cannot be said that complainant is estopped from claiming the remaning amount. That last question that arises for determination is, to what amount is the complainant entitled to get from the Bank. The complainant has claimed the following amounts:- (i)Fiscal loss incurred on account of variation in exchange rate since the date when the Bank Guarantee was invoked, but which amount was not deliberately paid.... 9,938-00 (ii)Interest @18% p.a., on the total amount of 9939 and amount paid on 5.3.91, i.e., 29,062/- from the date of invocation of the guarantee till date of actual payment 8,725-00 (iii)Interest accrued of 9938 @ 18% p.a., from 5.3.91 till date (in pound sterling) 750-00 Total:- 19,413-00 The question to be decided is, to what amount the complainant is entitled to claim on account of late payment. It is not disputed that the claimant was paid at the exchange rate as it existed on 4.3.91. The exchange rate on that date was Rs. 36.26 for a pound whereas on 20.1.90 it was Rs. 28.20. We have taken the exchange rate dated 20.1.90 into consideration as one month period had to be given to the respondent for making the payment of the guarantee amount. The complainant, at the said rate of Rs. 28.20 would have become entitled to pound 37,366. However, they have been paid pound 29,062 only. Thus they are entitled to the balance amount of pound 8,304 from the respondent.

5. THEY are further entitled to interest on that amount from 20.1.90 to 27.5.92, the date of filing the complaint. In the facts and circumstances of the case allow interest @ 15% p.a. The amount of interest comes to 2,930 pounds. Thus the complainant in all is entitled to pound 11,234.

6. BEFORE parting with the order we would like to deal with another preliminary objection raised on behalf of the Bank. It is, that the complainant is not a

''consumer'' as defined in Section 2(1)(d)(ii). It is pointed out that the complainant is not a beneficiary from respondent No.3. We do not find any substance in this contention. The bank guarantee was furnished by respondent No. 3 to the complainant. Thus the latter availed of this guarantee with the consent of the former. The consideration for the service was paid by respondent No. 3. Therefore, the complainant is a beneficiary and falls with in the definition of the word consumer as defined Section 2(1)(d)(ii) of the Consumer Protection Act. For the aforesaid reasons we accept the complaint with costs and direct respondent No. 1 & 2 to pay an amount of pound 11,234 with interest @15%p.a. from the date of complaint i.e. 21.5.92 till the date of payment within a period of 3 months, failing which acton shall be taken against them under Section 27 of the Consumer Protection Act. Costs Rs. 2,500/-. Complaint allowed with costs.

