(2015) 02 NCDRC CK 0112

In the National Consumer Disputes Redressal Commission

Tarsem Goel APPELLANT

Vs

PUNJAB AND SINDH BANK RESPONDENT

Date of Decision : 26-02-2015

Acts Referred:

Citation : (2015) 02 NCDRC CK 0112

Hon'ble Judges : AJIT BHARIHOKE , Rekha Gupta J.

Final Decision : Complaint dismissed

Judgement

1. BRIEFLY put the facts relevant for the disposal of the present complaint are that the complainant is a proprietorship concern and was engaged in the business activities of manufacturing of export of home furnishing, made UPS towels and fabricates as per the requirement of foreign buyer.

2. THE complainant as per demand and requirement of the agent of one foreign buyer obtained LC dated 01.02.2001 for US $1,05,600. After obtaining the aforesaid LC the complainant for the purpose of collecting true and correct information regarding the integrity and status of the said foreign buyer wrote a letter dated 20.02.2001 to the opposite party who was the banker of the complainant. The complainant vide aforesaid letter requested the opposite party Bank to collect a full -fledged report about the status of the foreign buyer so that the complainant may proceed further to manufacture the goods at the earliest.

3. DURING , the verification process by the opposite party Bank, regarding the integrity and financial status of the foreign buyer, the complainant obtained another LC dated 14.03.2001 through the agent of the foreign buyer for US $ 1,07,600. The opposite party Bank collected the report about the foreign buyer and vide letter dated 21.03.2001 sent a verification report from one M/s Dun and Bradstreet India Pvt. Ltd., Vide its report the opposite party opined that this business therefore has a higher than average financial strength, compared to its industry sector, and a lower than average risk indicator, when comparing businesses of the same financial strength category.

4. THE complainant took all steps for manufacturing the goods on the basis of status report provided by the opposite party whereby it was communicated to the complainant that the status of the foreign buyer is sound and integrity is believable. The opposite party believed the report regarding status and integrity of the foreign buyer and accordingly advanced loan to the complainant for a sum of Rs.9,50,000/ - against LC dated 01.02.2001.

5. THE only substantive/ reliable piece of evidence regarding the status of foreign buyer that the complainant had was that which was provided to him by the opposite party and believing the same to be true the complainant obtained another LC dated 30.03.2001 for US $ 46,100.

6. THE complainant believing the report of the opposite party as true and reliable, paid commission of Rs.31 lakh to the agent of the foreign buyer as per the MOU. The complainant spent a huge amount of Rs.69,68,612/ - in manufacturing the goods.

7. THE agent of the foreign buyer despite having full fledge knowledge about the manufacturing of defectless goods by the complainant did not make efforts to export the goods of the complainant. Thereafter, the complainant started doubting the integrity and genuineness of the foreign buyer and that is why the complainant then made enquiries from the opposite party regarding the integrity and status of foreign buyer about which the opposite party assured that status report given by them regarding financial status and integrity of foreign buyer was believable.

8. THE complainant after exhausting all the possible avenues to know about the truth of the matter felt compelled to approach the Crime Branch of Delhi Police and accordingly made complaint before Crime Branch, Anti Forgery Section, Economic Offence Wing, Crime Branch, Delhi Policy, C 22 23, Qutub Institutional Area, New Delhi 110 016 against the foreign buyer. On the basis of complaint filed by the complainant before the Crime Branch, Delhi Police, FIR being FIR no. 195 of 2002 under section 406/420/468/471/506 IPC was registered by Delhi Police against the foreign buyer and also against the persons having relations with the foreign buyer.

9. DURING the course of investigation proceedings the concerned police officials made inquiries regarding foreign buyer from one M/s First Discount Ltd., Morrell House, 98 Curtain Road, London EC 2A3AA and in reply to the inquiry made by M/ s First Discount Ltd., vide their reply dated 24.09.2002 given to the concerned officials of Crime Branch, Delhi Police with regard to M/s City (Europe) PLC and their agent, one Mr Vijay Khanna stated that in fact there was no buyer at all.

10. THE complainant believing the report of the foreign buyer given by the opposite party started manufacturing the goods and spent huge amount of money which otherwise would not have been done if the opposite party had not submitted the report of sound financial status and believable integrity of foreign buyer. The complainant claimed that he has jeopardized the status of his

business on account of losses suffered by him. The complainant suffered losses of his business repute and goodwill besides extreme mental agony and harassment due to neglectful and wrongly act of the opposite party. Therefore, the complainant has claimed the following quantum of amount as compensation against the losses suffered: Amount of Rs.31 lakh having been paid by the complainant to the agent of foreign buyer as commission against the intended export of goods manufactured by the complainant which the complainant would have not done if the opposite party had not given the report in favour of the foreign buyer. Sum of Rs.69,68,612/ - which the complainant vested in manufacturing the goods in question and thus the complainant claims the said quantum against losses suffered in making investment in manufacturing the goods. Loss of reputation in business goodwill occasioned due to the carelessness and fault of the opposite party and for the same complainant claims Rs.10 lakh. Compensation against mental agony and harassment caused by the opposite party for sum of Rs.5 lakh.

11. THE total quantum of amount claimed by the complainant runs up to the tune of Rs.1,16,00,000/ - together with interest leviable @ 12% per annum chargeable from the date of incident till actual realisation thereof.

12. IN their written argument, the opposite party Bank stated that the complaint filed by the complainant being partner of M/s Sawan Overseas, was not based on the law as enumerated in the Consumer Protection Act. The facts stated in the complaint do not give any cause of action against the respondent Bank. The complainant was neither a consumer, as per the definition under section 2 (1) (d) nor the respondent bank a service provider as per the facts stated in the complaint. The transaction in question for which the complainant was alleging deficiency in service was connected with commercial activity which has been excluded from the purview of the Act, by amending the definition of Consumer, with effect from 15.03.2002 and as such the complaint was not covered under the definition of Consumer thereby the present complaint is liable to be dismissed on this ground alone.

13. THE complainant has not made others as respondent who in fact may be responsible for his loss, if any, has occurred to the complainant.

14. THE present complaint was hopelessly time barred as the loan given to the complainant dated back to 22.02.2001 and the complaint was filed on 26.04.2004.

15. THE complainant had approached and requested the Bank in February 2001 for financial assistance as loan facility for export of some goods to a foreign buyer named M/s The City (Europe), PLC, City House, 55 -57, Rivington Street, London EC 2A 30A with one LC dated 01.02.2001 issued by Bank of China to the tune of US $ 1,05,600 with letter dated 10.02.2001. The respondent Bank granted the loan facility of Packing Credit Limit for a sum of Rs.9,50,000/ - against the said LC of Bank of China as per International Banking Norms and

after completing all the legal requirements as required in the course of disbursement of loan facility vide sanction letter dated 22.02.2001. One M/s Roshan Lal Gupta HUF stood as guarantor. The complainant had also ECGC, a post shipment (comprehensive risk) policy in usual course, like similar for the facility to any other firm. Vide letter dated 20.02.2001 the complainant had requested the respondent Bank to get verified the financial status of the buyer, at the expense of the complainant because the respondent Bank had neither felt it necessary nor was it under any legal obligation to get the financial status of the foreign buyer verified as the Bank had granted the Packing Credit Limit Facility to the complainant only on the basis of LC issued by the Bank of China. However, the Bank after considering the request and desire of the complainant got the status report of the foreign buyer M/s The City (Europe) PLC, City House, 55 -57, Rivington Street, London EC 2A 30A through a reputed international company named M/s Dun and Bradstreet (India) Private Limited who was involved in the business of giving reports about the foreign buyers. After receiving the same the Bank sent the report to the complainant along with a forwarding letter dated 23.03.2001. Before receiving the said report, the complainant had already availed the PCL limit of Rs.9,50,000/ - The complainant had also availed another loan facility of cash credit limit of Rs.4 lakh as GPA holder of his wife in which his wife was a proprietor of M/s Goel Handloom.

16. THE Bank after the expiry of the stipulated period of exporting the goods as per aforesaid LC started to pursue to recover the loan amount as per the PCL limit from the complainant. However, the complainant kept requesting the respondent to give some time to clear the account on one pretext or the other stating that he would get the goods exported after some time, that the agent of the said foreign buyer was trying to dispose of the goods either with the same buyer or with another buyer, or that he himself was trying to dispose of the goods and this process continued upto January 2003. Thereafter the complainant even stopped making any correspondence with the Bank. Due to non -payment of the loan, the officials of the Bank time and again requested the complainant personally, telephonically, through guarantor and through letters reminded and requested the complainant for the liquidation of loan facility. On getting no response from the complainant, the Bank issued notice dated 30.03.2004 to M/s Swan Overseas and M/s K Goel Handlooms under the SARFAESI Act, 2002 which was duly served upon them and this fact has been concealed by the complainant while filing the present complaint. The complainant in order to escape from the liabilities accrued against him as well as against his wife on account of the above said two loan facilities filed the present complaint on a completely false and concocted story just to hamper the recovery process of the respondent Bank and further to put pressure not to recover the aforesaid due amount. In fact the complainant has never written any letter on the report of M/s Dun and Bradstreet to say it was wrong and that relying on upon the report he manufactured the said goods. He also never mentioned in any of his letters to the Bank that the agent of the buyer had played any fraud upon him. He also never wrote any

letter that he had lodged a case against the agent. He has also not mentioned in any letter that the investigating agency has sought any other report from any other company named First Discount Limited, London, and the said company had stated that the report of M/s Dun and Bradstreet was false. As per the admission of the complainant himself all these incidents had happened prior to January 2003 which shows that the present complaint was an afterthought just to harass the Bank and to stop the recovery process against the complainant.

17. THE Bank further stated that from a perusal of the FIR lodged by the complainant, it is clear that the complainant had made three agreements with the agent (Vijay Khanna) and had obtained three LCs. The complainant however, obtained credit facility from the Bank only on LC dated 01.02.2001 to the tune of US $ 1,05,600 or in other words it can be said that goods which were to be supplied by the complainant should not have been more than the total cost of LC whereas as per the case of the complainant, he has given Rs.31 lakh as commission to the agent and has spent as much as Rs.68,69,612/ - for manufacturing of the goods before export, which was not possible in any manner against the LC of having value about US $ 1,05,600. This shows that the complainant had concealed the facts while filing the present complaint.

18. THE dispute was not related with any deficiency in service of the Bank rather it was a dispute between the complainant and the agent of the foreign buyer who had committed fraud in collusion with the family members of the complainant and against which the complainant himself has got registered FIR bearing no. 159 of 2002 under section 406, 420, 468, 471, 506 IPC before Crime Branch, Delhi. The complainant should have approached the Civil Court against the agent of the buyer for the default to perform on the three agreement entered between them.

19. SINCE the goods were not sent to the buyer, the complainant did not receive any payment from the buyer. From the perusal of the record of the case it was clear that the complainant was dealing with the agent of the buyer and has kept the Bank in dark. Therefore, the Bank was not liable for any loss incurred to the complainant and the complainant has no right, cause of action or locus standi to file the complaint.

20. THE report of M/s Dun and Bradstreet (India) Private clearly stated that the company did not guarantee the correctness or the effective delivery of the information and would not be held responsible for any errors therein or omissions therefrom.

21. WE have heard the learned counsel for the parties and have carefully gone through the records on the file. Learned counsel for the complainant drew our attention to the three messages relating to the opening of three LCs. The first LC no. TS/LC/01000044 dated 01.02.2001 for US $ 1,05,600 with date of expiry as 30.04.2001. The second LC no. TS/LC/01000127 dated 14.03.2001 for US $ 1,07,600 with an expiry date of 13.06.2001 and the third LC no. TS/

LC/01000164 dated 30.03.2001 for US $ 46,100 with an expiry date of 28.06.2001. Learned counsel for the complainant has also drawn our attention to the letter dated 20.02.2001 addressed to the Manager, Punjab and Sind Bank by the complainant which is reproduced below: "Report on my buyer as per LC no. TS/LC/01000044 dated 01.02.2001. Dear Sir, I have received the above said LC through Indian Overseas Bank, Panipat. Please collect full report about the buyer of the goods as per LC. So that I may proceed further to manufacturer goods at an earliest".

22. THIS request was based on the message received regarding the opening of LC by M/s The City (Europe) PLC City House, 55 -57 Rivington Street, London EC 2A 30A. The Bank as would appear from their report approached M/s Dun and Bradstreet (India) Private Limited to obtain a report on credit worthiness of the said company. They gave a positive report as per the information collected by them. As per the learned counsel for the complainant it was only after receiving the report that they began to purchase the material for the manufacturer of the goods allegedly ordered by the said company. After receiving the information regarding the first LC issued on 01.02.2001 they approached the Punjab and Sind Bank for a loan of Rs.9.5 lakh to augment their resources and to execute the export order. The same was sanctioned on 22.02.2001. It may be mentioned here that this loan was sanctioned before the verification report of M/s Dun and Bradstreet (India) Private Limited was received. Hence, the complainant was not right in saying that the loan was sanctioned after the Bank received the verification.

23. AS per the learned counsel for the complainant, the only deficiency of service alleged against the respondent was that trusting their verification report they had incurred huge expenditure and incurred great loss and hence, the bank should indemnify for the same. Learned counsel for the opposite party on the other hand stated that they had advanced a loan of Rs.9.5 lakh to the complainant for which he had hypothecated his property. As he had not repaid the loan the Bank had initiated action against the complainant under the Sarfaesi Act, 2002. It was only thereafter that the complainant filed this case before the National Commission.

24. WE find that the complainant has not placed on record the contracts supposedly entered into with the foreign parties through an agent in India for export of goods. However, from the arguments heard today as also a perusal of the FIR on record it would appear that the contracts were entered into with an agent and not with any of the companies abroad.

25. WE have carefully gone through the copy of the FIR filed on 30.03.2002 by the complainant against the Vijay Khanna, Radha Khanna and Vikas Khanna, all residents of E 224 Sainik Farm, New Delhi 62. A careful reading of the FIR makes it very clear that it was Vijay Khanna who had represented himself to be the proprietor of M/s Viva Vision and also a representative/ Consultant of an Overseas Buyer who had met the complainant and solicited business from him.

The complainant entered into an agreement with Vijay Khanna to export the said items for which Vijay Khanna managed to get LCs opened as also sent one pay order of 80,000/ - sterling on 25.07.2001, issued by Barclays Bank Limited (UK) which was later also found to be forged. The investigation into the matter by the police also clearly established that the said Vijay Khanna had never contacted M/s First Discount Ltd., London for export of goods from India. In fact, Vijay Khanna had made an LC application requesting directly with City Europe on behalf of his buyer M/s Hillcrest International USA.

26. AFTER the goods were ready for inspection, the complainant had addressed a letter dated 17.09.2001 to ''the City (Europe) PLC, Liaison Office, New Delhi stating as under: "Subject : Verification of the documents attached issued by you. Sir, The letter head of your office is used for inspection attached with this letter. Please come to know us whether it is is order or meet at an earliest".

27. THE inspection was thereafter carried out by Vikas Khanna and his representative. As per the FIR no shipment however, was arranged. Meanwhile, as per the letters placed on record addressed to the Bank, the said LCs expired. LCs were not amended/extended for further period and shipment was still pending in his godown. The agent was not cooperating, hence, he had sought some time for repayment of the loan from the Bank.

28. FROM the sequence of events it is very clear that the complainant was not cheated or duped by the opposite party i.e., Punjab and Sind Bank but by Mr Vijaya Khanna and his family members against whom he has made police complaint. Complainant has not given any evidence to show that there was any export order from M/s City (Europe) PLC or from any other company abroad. The report of M/s Dun and Bradstreet (India) Private Limited and M/s City (Europe) PLC is not at all relevant to the case on hand and in no way contributed to his loss as the complainant has failed to adduce any evidence or proof to the fact that export order had been placed by the City (Europe) PLC, UK for the said goods with the said company and it had opened three LCs and that the goods had been shipped and they had failed to pay. Neither has the complainant given any evidence to show that the verification report of M/s Dun and Bradstreet Pvt. Ltd., was misleading or false. The complainant has failed to implead the agents with whom he had entered into the contracts to export as also the alleged principals on whose behalf the contracts were supposedly signed. He has failed to establish any deficiency of service against the opposite party, the Bank, which lead to his failure to export and the alleged loss he incurred on that account. We find the role of the Bank was limited to extending him a loan against an LC issued by Bank of China and, thereafter, on his request, getting credit opinion on City (Europe) PLC.

29. WE find no merit in the present complaint as the complainant could not establish that he suffered loss only on account of the verification report given by the opposite party Bank and that the opposite party should make good for the loss. Hence, the complaint is dismissed.

