(2012) 05 DEL CK 0627

In the Delhi High Court

Case No : Regular First Appeal (OS) 64 of 2007

Union Bank of India — APPELLANT

Vs

M/s. Milkfood Ltd. — RESPONDENT

Date of Decision : 14-05-2012

Acts Referred:
Limitation Act, 1963 — Section 15(1)

Citation : (2012) 05 DEL CK 0627

Hon'ble Judges : Pradeep Nandrajog, J;Indermeet Kaur, J

Bench : Division Bench

Advocate : Rakesh Tiku, instructed by Mr. S.W. Haider and Mr. Vivek Ojha, for the Appellant; Simar K. Narula and Ms. Sanyukta Singh, for the Respondent

Final Decision : Dismissed

Judgement

Pradeep Nandrajog, J.—The instant appeal concerns, two of the several purchase orders placed by the respondent ''Milkfood Ltd.'' upon M/s.Dany Dairy Food Engineer Ltd. (DDFE) i.e. the purchase orders dated May 25, 1988 and September 10, 1988, for due performance of which, at the asking of DDFE, the appellant, Union Bank of India, had issued three bank guarantees No.614 dated June 09, 1988 in sum of Rs. Rs. 50,00,000/-(Rupees Fifty lakhs), reduced later on to Rs. 25,00,000/-(Rupees Twenty five lakhs) and extended up to June 08, 1990; bank guarantee No.615 dated June 09, 1988 in sum of Rs. 16,50,000/-(Rupees Sixteen Lakhs Fifty thousand) valid up to June 08, 1990 and; bank guarantee No.626 dated September 12, 1988 in sum of Rs. 12,00,000/-(Rupees twelve lakhs) valid up to June 11, 1990. Undisputably, the three bank guarantees are unconditional and payable on demand, without demur.

2. Alleging default committed by DDFE in supply of equipment, respondent invoked the three bank guarantees by three separate demand letters dated June 21, 1990.

3. It appears that the appellant was having a problem with DDFE, which appears

to have defaulted with respect to the credit facilities it was enjoying with the appellant. Instead of honouring its obligation under the three bank guarantees, appellant wrote to DDFE requesting that amount covered by the bank guarantees be paid to the appellant so that it could honour the bank guarantees.

4. Upon learning about the bank guarantees being invoked when appellant wrote to DDFE, suit for permanent injunction was filed by DDFE in the Court of the Civil Judge, Saharanpur to restrain appellant from making payment under the bank guarantee. An ex-parte ad-interim injunction was granted by the learned Civil Judge restraining the appellant from making any payment under the three bank guarantees, which injunction was finally vacated on February 13, 1992 and it needs to be simply highlighted that while granting the ex-parte ad-interim injunction, the learned Civil Judge at Saharanpur observed with respect to grant of injunction and balance of convenience as under:

"Against this restraining the defendant No.2 from making payment to Defendant No.1 till disposal of the case, without making payment to Defendant No.1 will not result in irreparable loss to him as the option of invocation of Bank Guarantee and right to receive payment from Defendant No.1 will remain open in case the Plaintiff fails and the guarantee will also be intact with bank."

5. The three bank guarantees being unconditional and payable on demand and without demur, the appellant cannot seek to urge that it is not liable to pay any money under the three guarantees due to a dispute between the respondent and DDFE.

6. Two technical pleas have been advanced. The first is that Courts at Delhi would not have jurisdiction to entertain the suit.

7. Suffice would it be to state that as per the testimony of Shri S.P.Khurana PW-2, the contract between the respondent and DDFE was executed at Delhi. The three bank guarantees in favour of the respondent were issued by the appellant to the respondent at Delhi and were addressed to the respondent at its address at Delhi, notwithstanding the bank guarantees being issued by the Saharanpur branch of the appellant. The letters extending the bank guarantees were addressed to the respondent at Delhi. DW-2, Senior Manager of the appellant bank, during cross-examination admitted that the bank guarantees did not specify any place of payment and that the amount could be paid at any place at the request of the respondent.

8. It is settled law that in the absence of any covenant in the agreement settling a place of payment, the debtor must seek the creditor and pay at the place where the creditor is stationed. And, suffice would it be to state that the registered office of the respondent is at Delhi.

9. The second technical argument advanced is the bar of limitation, and for which we note that the instant suit was instituted on May 22, 1993.

10. As noted herein above, two out of the three bank guarantees were valid up

to June 08, 1990 and the third was valid up to June 11, 1990. The three bank guarantees were invoked on March 21, 1990. It is urged by Shri Rakesh Tiku, learned senior counsel for the appellant that the bank guarantees being payable on demand, limitation would commence from March 21, 1990, when the guarantees were invoked, and thus urges that the suit which was filed on May 22, 1993 would be barred by limitation.

11. The argument ignores the fact that after the bank guarantees were invoked on March 21, 1990, an injunction operated against the appellant to pay under the bank guarantees from January 17, 1991 till the injunction was vacated on February 13, 1992. This period has to be excluded in view of Section 15(1) of the Limitation Act.

12. We would simply highlight that the learned Single Judge has highlighted the relevant terms of the three bank guarantees in para 71 and 72 of the impugned decision, to bring out that the liability of the appellant is to pay on demand and without demur. The learned Single Judge has noted the identical language of bank guarantee No.614 and 626. The learned Single Judge has noted similar language in bank guarantee No.615 and we do not re-note the said terms. Indeed, the guarantees have been correctly read by the learned Single Judge.

13. The learned Single Judge has noted, in paragraph 75 to 76 of the impugned decision that the demand raised while invoking the bank guarantees is in conformity with the requirement of the bank guarantee.

14. A brief attempt appears to have been made before the learned Single Judge to advance arguments on the subject of fraud, but realizing the narrow space afforded by law to seek restraint from payment under a bank guarantee on grounds of fraud, no such submission has been advanced before us. The appeal fails and is hereby dismissed with costs against the appellant and in favour of the respondent.

