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THE HIGH COURT OF DELHI AT NEW DELHI

Judgment reserved on : 15.12.2011

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Judgment delivered on : 23.12.2011

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WP(C) 1657/2011

M/S. SHYAM GARMENTS & ORS.

.... PETITIONERS

Vs

STATE BANK OF INDIA

... RESPONDENT

AND

+

WP(C) 431/2011

STATE BANK OF INDIA

...PETITIONER

Vs

M/S. SHYAM GARMENTS & ORS.

...RESPONDENTS

Advocates who appeared in this case:

For the Petitioner: Mr. Sangram Patnaik, Mr. Anupam Siddhartha and Ms. Renu Narula, Advocates in WP(C) 1657/2011 and Mr R.P. Vats and Ms Reema, Advocates in WP(C) 431/2011.

For the Respondent: Mr. R.P.Vats & Ms. Reema, Advocates in WP(C) 1657/2011 and Mr. Sangram Patnaik, Mr. Anupam Siddhartha and Ms. Renu Narula, Advocates in WP(C) 431/2011.

CORAM :-

HON'BLE MR JUSTICE SANJAY KISHAN KAUL

HON'BLE MR JUSTICE RAJIV SHAKDHER

RAJIV SHAKDHER, J

1. The captioned writs have been preferred against the judgment dated 21.09.2010, passed by the Debt Recovery Appellate Tribunal, Delhi (hereinafter referred to as DRAT). By virtue of this judgment, the DRAT allowed the appeal of the principal debtor (i.e., Shyam Garments, which is a partnership firm) and its partners, who had guaranteed the debt. The effect of the impugned judgment is that the principal debtor alongwith the guarantors, is liable to pay to the creditor i.e., State Bank of India having its branch at Okhla Industrial Estate, New Delhi, 50% of the principal amount decreed alongwith proportionate interest and the costs. The remaining amount is required to be borne by the creditor bank in lieu of compensation owed to the principal debtor and guarantors for injury caused to them.

1.1 Resultantly, both parties are aggrieved by the impugned judgment of the DRAT. Consequently, the captioned writ petitions were instituted, which are really in the nature of cross actions.

1.2 For the sake of convenience, we would be referring to the parties before us as follows :- The principal debtor be referred to as M/s. Shyam Garments, while its partners would be collectively referred to as guarantors. The Creditor Bank would be referred to as SBI, Okhla Branch. The reason we have made a reference to the specific branch of SBI would become clearer as we go along with the narrative.

2. With this preface, let us advert to the facts which would be relevant for adjudicating upon the issue raised in the captioned writ petitions :

2.1 Shyam Garments, which is in the business of manufacture and export of children's garments, approached SBI, Okhla Branch, sometime in the year 1998, for sanction and grant of Export Packing Credit Facility

(hereinafter referred to as EPC facility). Consequently, on 16.10.1998 Shyam Garments was sanctioned an EPC facility limited to Rs.50 Lakhs. To secure against future withdrawals that may be made against the sanctioned EPC facility, necessary security documents were executed by Shyam Garments, on 22.10.1998, in favour of SBI, Okhla Branch. In addition, security was also provided in the form of guarantees furnished by the partners of Shyam Garments. As a matter of fact, out of the four (4) guarantors, two (2) guarantors, also created, equitable mortgage in favour of the bank qua their respective immovable properties.

2.2 It appears, in the beginning of 2000, Shyam Garments received an order for supply of children's garments from one, M/s. Talib H.A, situate in Jeddah, Saudi Arabia (hereinafter referred to as Talib). In order to effectuate the transaction, Talib advised its local bank, one, National Commercial Bank, Jeddah (in short 'NCB') to open a Letter of Credit in favour of Shyam Garments in the sum of USD 86320/- The said Letter of Credit was apparently advised to SBI, Okhla Branch through the Union Bank of India, Overseas Branch (in short 'UBI') New Delhi. The communication in this regard was issued by UBI, on 10.12.1999. It has been the stand of SBI, Okhla Branch that as per the Letter of Credit, the negotiation of documents was restricted to UBI.

2.3 It is not in dispute that in pursuance of said Letter of Credit having been opened by Talib, Shyam Garments shipped the said garments to Talib. It is in connection with the said trans-shipment, that Shyam Garments raised two separate invoices, for a value of USD 37073/- and USD 38750/-. It is not in dispute that payment against invoice valued at USD 37073/- has been

received by Shyam Garments. The present proceedings are confined to the invoice valued at USD 38750/-.

2.4 Shyam Garments, under a cover of a letter dated 16.02.2000, submitted a set of documents detailed out therein to SBI, Okhla branch with the hope of securing payment from Talib, against garments exported by it. The letter, as is framed, is rather peculiar, in the sense, while in the opening paragraph, Shyam Garments alludes to the fact that it is enclosing a set of documents referred to therein for “*negotiation*”; in the concluding paragraph it is stated that the said documents were being sent for ‘collection’. It is, however, not in dispute that the said letter is accompanied by a bill of exchange for a value of USD 38750/-, the title of which reads as follows :-

**“DOCUMENTS DRAWN FOR COLLECTION UNDER OUR
INVOICE NO.SG/015/99 DATED 28.01.2000 AGAINST LC
NO.613M9932562 DATED 09.12.1999.”**

2.5 The SBI, Okhla Branch dispatched the aforementioned documents to NCB vide communication dated 17.02.2000, which again adverted to the fact that the documents were being sent on a collection basis which were to be delivered to the buyer / drawee i.e., Talib against payment. In this communication clearly, SBI, Okhla Branch had also indicated their collection number as : 00/2/00GC48802. At the foot of the document, there is also reference to the fact that the proceeds received by NCB had to be remitted to its Calcutta office account, bearing no.544-7-21930, maintained with Chase Manhattan Bank, Newyork, USA (in short ‘Chase Manhattan Bank’). The communication went on to say that NCB was required to revert

back to the SBI, Okhla Branch by swift message/telex/cable, wherein the *reference number* given in the document was required to be quoted. More specifically, it was, in no uncertain terms, indicated that the said collection was ‘**subject to Uniform Rules for Collection, 1995 revision I.C.C. Publication No. 522**’ (in short, URC 522).

2.6 It is not in dispute that NCB under the Letter Of Credit opened by it had nominated the Bank of America, Newyork, USA (in short BOA) as its correspondent bank.

2.7 It appears that on 28.02.2000, a communication was sent by NCB, to the SBI, New Delhi overseas branch, on telex no.**0813165459**. By this communication, NCB apparently attempted to inform that the documents dispatched to it, were discrepant. The nature of the discrepancy evidently referred to in the document was as follows :-

- “(i). Amount insured in rupees;
- (ii). Insurance policy not showing 1.0.1;
- (iii). Vessel age on separate certificate and not on E/L; and
- (iv). LC restricted”

2.8 The aforementioned communication dated 28.02.2000, ended with the post script, that NCB was holding the documents at SBI’s disposal and that they will be delivered unless NCB heard to the contrary.

2.9 Rather curiously, by a communication dated 07.03.2000, Shyam Garments informed the SBI, Okhla Branch that they had yet to receive payments against their two invoices deposited with it for ‘*collection*’ despite the fact that they had been advised by the buyer i.e., Talib, that payment had

been released. Since the amount had not been credited, they required SBI, Okhla Branch to do the needful in the matter.

3. On the same date i.e., 07.03.2000, SBI, Okhla Branch sent a telex message to NCB giving reference of both the invoices i.e., the one valued at USD 37073/- and the other valued at USD 38750/- (i.e., the invoice in issue) mentioning therein that they had been advised by the drawer (i.e., Shyam Garments) that payments against both the invoices had been made by the drawee (i.e., Talib), and hence they should investigate the matter, and thereafter credit the payment to their nostro account maintained with the Chase Manhattan Bank.

3.1. The aforesaid communication was followed by yet another communication by SBI, Okhla Branch dated 24.03.2000, though this time it was sent directly to the BOA. This communication obviously was sent by SBI, Okhla Branch in the best interest of its client i.e., Shyam Garments, though in a sense they had circumvented, in their over enthusiasm, the established protocol in such like matters, which was to get in touch with the issuing bank (i.e., NCB). The reason perhaps is that SBI, Okhla Branch was unable to contact NCB directly and hence, wanted the message to be relayed through BOA – this fact is adverted to in the communication of 24.03.2000 itself. The said communication dated 24.03.2000, however, was restricted to the invoice in issue, which was issued for a value of USD 38,750/-. The BOA was specifically advised to remit the proceeds (as in their earlier communication) to their Calcutta office account no.544-7-2190, maintained with the Chase Manhattan Bank. The communication went on to say that information to that effect should be communicated by swift/telex/cable message, on quoting, their reference number. The communication ended

with SBI, Okhla Branch reminding that their earlier communication of 07.03.2000 had not been responded to.

3.2. The BOA on its part vide a written communication dated 28.03.2000, informed the head office of SBI, at Calcutta (now Kolkata), that funds against the invoice in issue, after making some nominal deductions, had been remitted to the referenced account maintained with the Chase Manhattan Bank. This communication was received in the head office of SBI, at Calcutta, on 29.03.2000. In so far as SBI, Okhla Branch is concerned, the communication got delivered on 03.04.2000.

3.3. After a lapse of nearly three (3) months, the BOA sent a communication dated 26.06.2000 to SBI, at its head office in Calcutta, informing them that they had received information from NCB that the funds remitted was a double payment and hence, was required to be refunded. By this communication, the BOA also indicated that they had at their end, got in touch with the Chase Manhattan Bank, which had asked them to get in touch with them, as they had not received any response in the matter.

3.4. Since SBI, Okhla Branch, at that point in time, found, that the basis for seeking refund of the money remitted, was untenable, it sought to clarify the situation vide their communication dated 07.07.2000, by adverting to the fact that they had sent for collection to NCB two invoices and hence, according to them, there was no case made out of double payment.

3.5. The issue, however, erupted once again when, NCB vide communication dated 04.11.2000 informed SBI, Okhla Branch that they had received discrepant documents against the invoice valued at USD 38750/-; a fact, which according to them, they had communicated vide their telex

message dated 28.02.2000, on the following telex number i.e., 81-3165459. The communication of 04.11.2000, went on to portray that the SBI, Okhla Branch had claimed payment from the BOA despite, the aforementioned communication of 28.02.2000. NCB, concluded the said communication, by stating that they were still holding the documents which had been rejected by the applicant i.e., buyer/Talib. Consequently, on this ground, they sought refund of their money, which, in turn, had debited to their account by the BOA.

3.6. It is at this juncture that SBI, Okhla Branch realized that the communication of NCB dated 28.02.2000, had been sent to an incorrect telex number. Accordingly, a communication dated 09.11.2000 was sent by it to NCB wherein it alluded to the following :-

“We have to advise you as under :-

(1). Documents for USD 38,750/- were sent to you by DHL courier on 18th Feb 2000 and no message for discrepancies has been received at our end. You have mentioned of TLX No.0813165459 which is not our telex no. so no discrepancy has been received by us.

(2). After a lapse of almost one month on 24th March, 2000 as we have not received any response from your side, reimbursement claim was lodged with Bank of America as mentioned in L/C.

(3). We have failed to understand that why rejected documents were held up at your end for so long time. As per our information buyer has received the goods.

As the bill of lading was in your favour how buyer have received goods. Refund of amount is not possible at our end as documents were negotiated under L/C.

Matter may be treated as closed at our end.”

3.7. As was expected, NCB did not let the matter rest there. It responded by another communication dated 10.12.2000 wherein, they lodged their protest vis-à-vis the contents of the SBI, Okhla Branch's aforementioned communication. The thrust of this communication was that, as per their special condition, 47A(x) if, documents were forwarded for approval or payment without indicating the discrepancies, they were to be treated as collection documents and hence, relieving them of any liability. In this regard, reference was also made to Article 14 of URC 522. The communication went on to say that SBI, Okhla Branch's covering letter (which obviously referred to its letter dated 17.02.2000) quite clearly indicated that it was governed by URC 522, and therefore, it was acting as a collecting bank since, they were required to hand over the documents only against payment. Though, NCB did not refute the fact, that the message dated 28.02.2000 had been sent to the telex no.813165459, it reiterated that it constituted sufficient notice to SBI, Okhla Branch as, the message had, the reference number of the said branch appended to it. The communication concluded with, NCB once again, objecting to the fact that SBI, Okhla Branch had sought release of funds in their favour in respect of its collection without NCB's authorization. Consequently, NCB sought refund of the amount in issue.

3.8 The aforementioned communication prompted SBI, Okhla Branch to write to NCB vide letter dated 02.01.2001, whereby they sought a copy of

the telex dated 28.02.2000, in which, a reference was made to the discrepant documents. Information was also sought as to when the documents had been presented to the drawee i.e., Talib and, its response to the same.

3.9 SBI, Okhla Branch followed the aforementioned communication with a communication dated 06.01.2001 to the shipping agent i.e., Trans-World Shipping Services (I) Ltd., seeking information as to when the goods in issue were released at the foreign port / destination. On the same day, by a separate communication of even date i.e., 06.01.2001, SBI, Okhla Branch also wrote to Shyam Garments, seeking to know from them whether it had received any information with regard to the fate of the goods from the shippers. The said letter adverted to the fact that discussions with regard to the same had been held at the branch on 30.12.2000. Importantly, the letter opened with the phrase : “*with reference to the above bill sent for collection on 17.02.2000*” to NCB, Jeddah.

4. In the meanwhile, NCB at their end escalated the matter by having their international division contact the Mumbai office of SBI, to prevail upon SBI’s Okhla Branch to refund the money.

4.1 SBI, Okhla Branch, however, by letter dated 16.01.2001, once again, called upon NCB to respond to their earlier communication dated 02.01.2001, whereby they had sought a copy of the telex message dated 28.02.2000, which alluded to the discrepant documents.

4.2 Finally, NCB responded vide their letter dated 04.02.2001, which was received at SBI, Okhla Branch on 15.02.2001. Under the cover of this letter, NCB dispatched all previous communication on the subject including their telex message dated 28.02.2000.

4.3 There was further communication in the matter for refund of money at NCB's end in the form of messages dated 21.02.2001 (swift message), 22.02.2001 and 21.05.2001. By virtue of the last communication dated 21.05.2001, the NCB returned the documents which had been rejected by the drawee i.e., Talib.

4.4 In the background of the aforesaid circumstances, the SBI, Okhla Branch bearing in mind the international banking practices, which ordinarily entailed remittance of funds or adjustment of accounts on a mere request of a bank of repute – found it difficult to withhold the moneys which BOA had remitted to them, by debiting the account of NCB, at its instance. It became quite clear that the drawee i.e., Talib had not retired the bill of exchange and made payment to NCB. Given these circumstances, on 07.12.2001, SBI, Okhla Branch remitted the amount to BOA to the extent of USD 38579/- after deducting its costs. Accordingly, it correspondingly debited the account of Shyam Garments to the extent of the equivalent value of USD 38579/- (i.e., Rs.18,48,892/-). The necessary consequences of this was that SBI, Okhla Branch was required to issue an advice to its Calcutta office to remit an amount equivalent to USD 38,579/- to Chase Manhattan Bank, USA. This leg of the transaction was completed on 29.12.2001.

5. It is the stand of SBI, Okhla Branch that Shyam Garments and its partners were thereafter called upon to pay the amount in issue and since, they did not respond favourably in the matter, a legal notice was issued to them, on 25.11.2002. By virtue of this legal notice, they were called upon to pay the entire outstanding amount alongwith interest.

5.1 It appears that the matter was referred at some stage to the Delhi Legal Services Authority (in short 'DLSA'). There is in the record a proceeding sheet of 07.12.2002 available, in which, certain aspects of the matter have been adverted to. Arguments on matters alluded to therein, have been addressed, which we have dealt with in the latter part of our judgment.

5.2 Suffice it to say that on 06.08.2003, SBI, Okhla Branch filed an application under section 19 of the Recovery of Debts Due to Banks and Financial Institutions Act, 1993 (in short 'RDB Act') for recovery of a sum of Rs.23,52,289.29. In response to the same, a common reply was filed by Shyam Garments and its partners.

5.3 The Debt Recovery Tribunal (in short 'DRT') by an order dated 28.09.2007, after perusing the record and the evidence adduced by parties, issued a certificate of recovery in favour of SBI, Okhla Branch in the sum of Rs.18,48,892/- alongwith pendente lite and future interest at the rate of 9% p.a. with monthly rests with effect from 07.12.2001 till the date of realization. In addition, cost of litigation was also directed to be paid to the applicant. It was directed that on failure to pay the amount by the judgment debtors, SBI, Okhla Branch i.e., the applicant could recover the decretal amount in the first instance from the sale of hypothecated and mortgaged property, and thereafter, from personal assets of the individual judgment debtors.

6. Being aggrieved, the judgment debtors i.e., Shyam Garments and its partners preferred an appeal before the DRAT. As indicated hereinabove, the DRAT by the impugned judgment allowed the appeal in part by

reducing the decretal amount and, the proportionate interest and cost by one half i.e., 50% on account of the fact that SBI, Okhla Branch had contributed to the negligence which resulted in the transaction at hand not bearing fruit.

SUBMISSION OF COUNSELS

7. The arguments on behalf of SBI, Okhla Branch were addressed by Mr. R.P. Vats assisted by Ms. Reema, Advocate while, on behalf of the Shyam Garments arguments were advanced by Mr. Sangram Patnaik, Advocate assisted by Mr. Anupam Siddhartha and Ms. Renu Narula, Advocates.

7.1 Mr. Vats drew our attention to the evidence placed on record, in particular, with respect to the correspondence exchanged both with NCB and Bank of America. Our attention was also drawn by Mr. Vats to what SBI, Okhla Branch's mandate was qua the transaction at hand. It was the contention of Mr. Vats that the SBI, Okhla Branch was the collecting bank and not the negotiating bank, as contended by the other side. In this regard, he placed particular reliance on the letter dated 16.02.2000 issued by Shyam Garments to SBI, Okhla Branch, as also, the letter dated 17.02.2000, in turn, issued by SBI, Okhla Branch to NCB. Mr. Vats stressed that on a reading of the letter dated 17.02.2000 the following would emerge:-

- (a). that SBI, Okhla Branch was acting as a collecting bank;
- (b). the collection was subject to URC 522;
- (c). there was a clear reference to the telex number of the branch which, in the instant case, was: (031) 75189 SBIO and, not 0813165459 to which, the crucial telex message dated 28.02.2000 was sent by NCB

evidently pointing out that there was a discrepancy in the documents sent by it on behalf of Shyam Garments.

7.2 Mr. Vats thus submitted that SBI, Okhla Branch was neither responsible nor negligent as alleged by Shyam Garments and its partners in discharging the duties it owed to them. The fact that Shyam Garments and its partners were in communication with the drawee/the buyer i.e., Talib, purportedly through its agents, is evident from the averments made in ground 'O' of the writ petition filed by Shyam Garments, and the letter dated 07.03.2000, issued by it.

7.3 It was contended by Mr.Vats that as a matter of fact, the letter dated 07.03.2000 led SBI, Okhla Branch to believe that the amounts in respect of both invoices have been released which, in turn, prompted them to call upon first, the NCB, and thereafter, the BOA to release the payment of the invoice in issue.

7.4 Mr. Vats submitted that the bank's keenness to act in the interest of its customer i.e., Shyam Garments is quite evident from the steps it took in regard to getting the amount remitted to its nostro account maintained with the Chase Manhattan Bank. In this regard, he emphasized on the contents of the telex message dated 07.03.2000, issued to NCB. This message, as is evident, was issued on the very date, Shyam Garments informed SBI, Okhla Branch that it had received communication from the buyer i.e., Talib that, they had released payments against both invoices.

7.5 The sum and substance of the contentions of Mr. Vats was that, the DRAT had erroneously come to the conclusion that SBI, Okhla Branch had

contributed to the negligence displayed in execution of the transaction in issue.

8. On the other hand, Mr. Patnaik submitted that the negligence of SBI, Okhla Branch was writ large as it had failed to bring to the notice of Shyam Garments the contents of communication dated 28.02.2000, whereby NCB had informed that the buyer i.e., Talib, had rejected the documents as the same were discrepant. The learned counsel submitted that this had resulted in an odd situation, which was that, the documents lay with NCB for an inordinately long period of time and got returned only on 21.05.2001, to SBI, Okhla Branch. It was contended that because of this piquant situation obtaining, the port authorities had ultimately auctioned the goods in issue, since, in the meanwhile, a substantial amount of demurrage had accumulated.

8.1 Mr. Patnaik further contended that the stand of the SBI, Okhla Branch that the telex message dated 28.02.2000 had been sent by NCB to its overseas Branch cannot result in Shyam Garments being mulcted with the loss as, in the instant case, the negligence was either of NCB or that of SBI's Overseas Branch. In this connection, it was submitted that the DRAT had lost sight of the fact that the telex dated 28.02.2000, clearly adverted to the correct reference number of the transaction in issue, and therefore, with some application the Overseas Branch of SBI could have linked the telex message to that of its Okhla Branch. Mr. Patnaik further submitted that SBI, Okhla Branch was acting as a negotiating bank vis-à-vis Shyam Garments, and was therefore, governed by the provisions of Uniform Customs and Practice for Documentary Credits (in short UCPDC) and thus, under the provisions of Article 13, it was the duty and the obligation of SBI,

Okhla Branch to communicate the discrepancy in the documents, within a period of 7 days. Instead, Mr. Patnaik submitted, the information with regard to the discrepancy in the documents was conveyed to the Shyam Garments only on 06.01.2001.

8.2 In sum and substance, it was Mr. Patnaik's contention that Shyam Garments was not at fault and therefore, SBI, Okhla Branch was not authorized in law to debit its accounts, in respect of moneys which it had credited to its account, in April, 2001. Mr Patnaik went on to submit that as a matter of fact, because SBI, Okhla Branch had issued a Bank Certificate Of Export And Realization to Shyam Garments on 05.04.2000 – Shyam Garments, in turn, was propelled to pay commission to its foreign agent. It was contended that Shyam Garments had no knowledge that the amount in issue had not been realized from the buyer i.e., Talib.

8.3 It was also the contention of Mr. Patnaik that, in the aforementioned circumstances, the SBI, Okhla Branch could not have unilaterally debited its account and reversed the credit, which it granted to Shyam Garments, against the invoice in issue. In support of this submission, the learned counsel relied upon a Division Bench judgment of this court in State Bank of India Vs. National Open School Society AIR 2004 DELHI 306.

8.4 Mr. Patnaik in the alternative contended that if it were to be held that SBI, Okhla Branch acted as a collecting bank then it would be governed by the provisions of Article 4-202 of the Uniform Commercial Code – Bank Deposits and Collection. For the sake of convenience, the said article as placed before us is extracted hereinafter :-

“ARTICLE 4-202 – RESPONSIBILITY FOR COLLECTION
OR RETURN; WHEN ACTION TIMELY :

- (a). A collection bank must exercise ordinary care in :
 - (1) presenting an item or sending it for presentment;
 - (2) Sending notice of dishonor or nonpayment or returning an item other than a documentary draft to the bank's transferor after learning that the item has not been paid or accepted, as the case may be;
 - (3) settling for an item when the bank receives final settlement; and
 - (4) notifying its transferor of any loss or delay in transit within a reasonable time after discovery thereof.
- (b) A collecting bank exercises ordinary care under subsection(a) by taking proper action before its midnight deadline following receipt of an item, notice or settlement. Taking proper action within a reasonably longer time may constitute the exercise of ordinary care, but the bank has the burden of establishing timeliness.
- (c) subject to subsection (a)(1), a bank is not liable for the insolvency, neglect, misconduct, mistake, or default of another bank or person or for loss or destruction of an item in the possession of others or in transit.”

Reasons :

9. Having perused the record and, on hearing the submissions made by the learned counsel for both parties, in our view, what needs to be ascertained is the character of the obligation undertaken by the SBI, Okhla Branch and the failure, if any, of SBI, Okhla Branch to carry out the mandate given by its customer i.e., Shyam Garments.

9.1. It was argued before us with great vehemence by Mr. Patnaik that SBI, Okhla Branch was the negotiating bank and hence, was governed by the provisions of UCPDC 500, in particular, the provisions of Article 13.

9.2. Before we proceed further it may be useful to bear in mind, that in a transaction of such nature, the Bank deals with documents and not the goods in issue. In this situation it may be relevant to first examine the stand of the parties before the court of first instance i.e., DRT. In paragraph 5G(ii) and (iii) of the original application filed by SBI, Okhla Branch with the DRT, it has been averred in no uncertain terms that on placing an order for supply of garments, the buyer i.e., Talib, requested the NCB to open a Letter of Credit in favour of Shyam Garments; the said Letter of Credit was advised to the SBI, Okhla Branch, for onward transmission to Shyam Garments, through UBI; the negotiation of documents under the Letter of Credit was restricted to UBI; Shyam Garments instead of sending documents through UBI for negotiation preferred to deliver the documents pertaining to the bill in issue to SBI, Okhla Branch on 16.02.2000, with a request to collect the amount represented by the bill from NCB; and lastly, that SBI, Okhla Branch had sent the documents received from Shyam Garments under the cover of its letter dated 16.02.2000 to NCB vide its collection memo dated 17.02.2000.

9.3 In the reply filed, Shyam Garments categorically admitted the averments made in paragraph 5G(ii) of the original application filed by SBI, Okhla Branch . In so far as the averments made in paragraph 5G(iii) were concerned, Shyam Garments and its partners while, denying the averments made therein generally, in specific terms, made the following relevant averments :-

“It is submitted that both the Export bills including the Bill in question were given to the applicant Bank, drawn under the Letter Of Credit advised by the applicant Bank to the Defendant no.1. The applicant Bank sent the same for collection. It is submitted that since no discrepancy was pointed out by the applicant Bank the defendant no.1 vide its letter dated 07th March, 2010 requested the applicant Bank to look into the matter for release of payment. Then after receiving the payment of the Export Bill (Value dated 29th March, 2000) the applicant Bank advised the Defendant no.1 of the realization of the subject Export Bill on 5th April, 2000 and issued Bank Certificate of Export and Realisation in favour of the defendant no.1 and it was only thereafter that the commission to foreign agent was paid by defendant no.1 through the applicant Bank after so permitted by the applicant Bank.

....

It is submitted that the payment of the Export Bill was released only after the same was realized.” (emphasis is ours)

9.4. The DRT on its part, in paragraph 25 of its order dated 28.09.2007, after perusal of the record and the evidence has come to the following conclusion :-

“From sequence of events given above, I am inclined to hold that bill for USD 38750 was not negotiated under Letter of Credit rather was sent on collection to the opening bank i.e., buyer bank as per request of defendant no.1. It is also pertinent to note that buyer bank did not receive payment from buyer and

document remained unpaid and goods covering under the said bill were auctioned by port authorities for recovery of their dues. Defendant had never asked for negotiation of the document under LC, therefore, they are entitled for payment arises in the event of ultimate payment made by the buyer. In the present matter, no payment has been made by the buyer and also they have not taken delivery of the goods, therefore, no further right could have come to the drawer of the bill.” (emphasis is ours)

9.5. We have, at our end also, examined the documents in issue. A perusal of the documents would show that a Letter of Credit was opened by NCB on 09.12.1999, on the instructions of the buyer i.e., Talib. The advice in respect of which was sent through UBI on 10.12.1999. The Letter of Credit is ‘irrevocable’ in nature. Furthermore, the Letter of Credit contained, amongst others, the following terms which in our view are crucial to the case :-

“RCVD	*IN CONFORMITY WITH THE TERMS OF THIS CREDIT
RCVD	*WE AUTHORISE YOU TO DRAW ON OUR JEDDAH H.O.
RCVD	*ACCOUNT WITH BANK OF AMERICAN N.Y. U S A
RCVD	*FOUR BUSINESS DAYS FROM THE DATE OF NEGOTIATION
RCVD	*AND SUBJECT YOU TLX/SWIFT ADVICE ON THE DAY

RCVD *OF NEGOTIATION TO OUR INT'L DIVISION
CENTRAL

RCVD *ACCOUNTS DEPT. JEDDAH ATTN:L/C
REIMB. SECTION

RCVD *INDICATING AMOUNT NEGOTIATED,
VALUE DATE AND

RCVD *OUR L/C NO. IF ACCOMPANIED BY YOUR
DECLARATION

RCVD *THAT ALL CREDIT TERMS HAVE BEEN
COMPLIED WITH

RCVD ***OTHERWISE IS SUBJECT TO URR ICC
PUBLICATION 525. (SIC 522)**

RCVD ***:57D : STATE BANK OF INDIA,**

RCVD ***OKHLA INDS ESTATE,**

RCVD ***NEW DELHI – INDIA.**

RCVD ***ACCOUNT NO.01050075069”**

9.6. Importantly, the fact that the said Letter of Credit was advised through UBI is not in dispute. It cannot be disputed that the documents were handed over by Shyam Garments to SBI, Okhla Branch vide their letter dated 16.02.2000, which was further dispatched by SBI, Okhla Branch to NCB vide letter dated 17.02.2000.

9.7 A perusal of the letter dated 16.02.2000 would show that though it is entitled: “*documents drawn for negotiation*” and similarly, in paragraph 1 it adverts to the fact that documents have been sent for negotiation, it concludes with a request that these documents may be sent for collection to their buyer’s bank and the full amount be credited to their current account.

The letter of 16.02.2000 was accompanied by a bill of exchange, which reads as follows :-

“DOCUMENTS DRAWN FOR **COLLECTION** UNDER OUR INVOICE NO.SG/015/99 DATED 28.01.2000 AGAINST LC NO.613M9932562 DATED 09.12.1999.

BILL OF EXCHANGE FOR US \$ 38750.00

L/C AT SIGHT : PAY THIS FIRST OF EXCHANGE (SECOND OF THE SAME TENOR AND DATE BEING UNPAID) TO THE ORDER OF STATE BANK OF INDIA, OKHLA INDUSTRIAL ESTATE, NEW DELHI-110 029, THE SUM OF US \$. THIRTY EIGHT THOUSAND SEVEN HUNDRED FIFTY ONLY.

FOR THE VALUE RECEIVED AND CHARGED THE SAME AMOUNT OF GOODS SEA FREIGHTED AGAINST INVOICE NO.SG/015/99 DATED 28.01.2000 SEA B/L NO.DELA007610 DATED 04.02.2000. AFTER DEDUCTING 3% AGENT COMMISSION ON TOTAL CIF USD. 1162.50 PAYABLE TO M/S. ABDULLAH TRADING EST. P.O. BOX NO.19022. JEDDAH-21435 (S.A.) TEL-6480722.

ATTN: FOREIGN EXCHANGE DEPTT.

TO : THRU NATIONAL COMMERCIAL BANK, JEDDAH (S.A.)

A/C : TALIB H.A. HABTOOR EST.

P.O. BOX NO.11780

JEDDAH – 21463 (S.A.)”

TEL : 6470241”

9.8. The bill of exchange contained an endorsement directing the drawee to pay /deliver to the order of NCB. It is quite evident even though Shyam Garments may have wanted SBI, Okhla Branch to negotiate the bill of exchange in issue, SBI, Okhla Branch agreed to act only as collecting bank with the mandate that NCB should deliver the documents to the buyer only against payment. This becomes quite clear on a perusal of SBI, Okhla Branch's letter dated 17.02.2000 addressed to NCB. The said letter categorically adverts to the collection number of SBI, Okhla Branch, which as per the document is 00/2/00GC-48802. The letter quite clearly mandates NCB to, as noted above, deliver the documents to the buyer against payment, which was required to be credited to its Calcutta Office account maintained with Chase Manhattan Bank. The fact that the collection was governed by URC 522 was an aspect which is clearly adverted to in the said communication. If there was any doubt as regards the character of the obligation undertaken by SBI, Okhla Branch, it attains clarity on perusal of Shyam Garments letter dated 07.03.2000, wherein it is quite categorically averred by it that documents had been delivered to SBI, Okhla Branch for '*collection*'. Therefore, what in effect has emerged is that, while SBI, Okhla Branch had agreed to act as a collecting bank qua Shyam Garments it had also on the say so of its client, that is, Shyam Garments engaged the issuing bank's (i.e., NCB's), services to deliver document to the buyer (i.e., Talib) against payment, to effectuate the collection process.

9.9. It is well understood, in the context of a bill of exchange, that the expression '*to negotiate*' when applied to bills means 'to buy' and the banker who buys these bills, are said to negotiate them. Therefore, an

exporter can send bills for collection through its banker, who charges a commission for collection or, the said bills can be sold to the banker. The banker who buys the bill quotes a price, which takes into account the interest which ought to accrue to him for the time that he will have to wait before he can collect the money from the foreign drawee. (see Sheldon's Practice and Law of Banking, 10th Edition Page 468-469). Therefore, the bills can either be negotiated or discounted. In both eventualities, what the customers achieves is that he gets the value of the bill immediately. In the instant case, it is quite clear from the facts on record that Shyam Garments received the payment only on 05.04.2000 after, the BOA; albeit erroneously, had credited the amount to the account of the Calcutta office of SBI, maintained with the Chase Manhattan Bank, as per the request of SBI, Okhla Branch. Quite clearly therefore, SBI, Okhla Branch had neither negotiated the bill for a value nor had it discounted the bill. SBI, Okhla Branch had thus taken upon itself the obligation of a collecting bank. The obligations of the SBI, Okhla Branch would thus be governed by URC 522. The submission of Mr Patniak that the transaction in issue was governed by UCPDC is clearly flawed for more than one reason. First, the document dated 17.02.2000 by which instructions for collection were issued unambiguously referred to URC 522 and not UCPDC. Second, UCPDC is applicable where credit is extended, ordinarily on negotiation of a bill, no such act was undertaken in the instant case.

10. This brings us to the provisions of URC 522 so as to enable us to come to the conclusion whether any fault can be attributed to SBI, Okhla branch. Before we advert to URC 522, let us briefly delve into the role of each entity vis-à-vis the transaction in issue. In the instant case, Shyam

Garments, on receipt of an order for supply of readymade garments from Talib drew up the requisite documents, which included the bill of exchange, two invoices, original certificate of origin, packing list, the bill of lading, appended declaration to the bill of lading as attested by Notary, original certificate and a declaration to that effect by the Notary, STF form in original and the exchange control copy. The buyer (i.e., Talib) on his part opened a Letter of Credit on 09.12.1999, in respect of which, advice was received by SBI, Okhla Branch on 10.12.1999. The Letter of Credit was issued by NCB, and therefore, typically NCB was the issuing bank and, UBI was the correspondent bank. The drawer of the bill of exchange i.e., Shyam Garments furnished the aforementioned documents to SBI, Okhla Branch on 16.02.2000, with a hope that it would be able to negotiate bill bearing a value of USD 38750/-. The SBI, Okhla Branch at its end, however, seems to have accepted the role of a collecting bank and, sent the documents to NCB for collection. The mandate to collect payment on its behalf was given to NCB vide letter dated 17.02.2000. The collection was quite plainly made subject to URC 522. Therefore, undoubtedly the transaction in issue was a '*documentary collection*' within the framework of URC 522. Once URC 522 is incorporated in the documents, it is binding on all parties unless otherwise expressly agreed to or where it is contrary to the provisions of the National, State or Local Law and/or regulation, which cannot be departed from. (see Article 1 of URC 522). In this connection, it may also be relevant to examine the provisions of Article 2, 3, 14 and 26 of URC 522 to appreciate their scope, extent and import. For the sake of convenience, the same are extracted hereinafter :-

“Article 2 – DEFINITION OF COLLECTION

For the purposes of these Articles :

a). “**Collection**” means the handling by banks of documents as defined in sub-Article 2(b), in accordance with instructions received, in order to :

- 1). Obtain payment and / or acceptance, or
- 2). Deliver documents against payment and / or against acceptance, or
- 3). Deliver documents on other terms and conditions.

b). “**Documents**” means financial documents and / or commercial documents :

1). “**Financial documents**” means bills of exchange, promissory notes, cheques, or other similar instructions used for obtaining the payment of money;

2). “**Commercial documents**” means invoices, transport documents, documents of title or other similar documents, or any other documents whatsoever, not being financial documents.

c). “**Clean collection**” means collection of financial documents not accompanied by commercial documents.

d). “**Documentary collection**” means collection of :

1). *Financial documents accompanied by commercial documents;*

2). Commercial documents not accompanied by financial documents.

Article 3 – Parties to a Collection

a). For the purposes of these Articles the “parties thereto” are :

- 1). The “**principal**” who is the party entrusting the handling of a collection to a bank;
- 2). The “**remitting bank**” which is the bank to which the principal has entrusted with handling of a collection;

- 3). The “**collecting bank**” which is any bank, other than the remitting bank, involved in processing the collection;
- 4). The “**presenting bank**” which is the collecting bank making presentation to the drawee.
- b). The “**drawee**” is the one to whom presentation is to be made in accordance with the collection instruction.”

Article 14 – Disclaimer on delays, loss in transit and translation

- a). **Banks assume no liability or responsibility for the consequences arising out of delay and / or loss in transit of any message(s), letter(s) or document(s), or for delay, mutilation or other error(s) arising in transmission of any telecommunication or for error(s) in translation and / or interpretation of technical terms.**
- b). **Banks will not be liable or responsible for any delays resulting from the need to obtain clarification of any instructions received.**

Article 26 - Advices

Collecting banks are to advise fate in accordance with the following rules :

a) **Form of Advice**

All advices or information from the collecting bank to the bank from which the collection instruction was received, must bear appropriate details including, in all cases, the latter bank’s reference as stated in the collection instruction.

b). **Method of Advice**

It shall be the responsibility of the remitting bank to instruct the collecting bank regarding the method by which the advices detailed in sub-Articles (c)i, (c)ii and (c)iii are to be given. In the absence of such instructions, the collecting bank will send the relative advices by the method of its choice at the expense of the bank from which the collection instruction was received.

b) 1) Advice of payment

The collecting bank must send without delay advice of payment to the bank from which the collection instruction was received, detailing the amount or amounts collected, charges and / or disbursements and / or expenses deducted, where appropriate, and method of disposal of the funds.

2) Advice of acceptance

The collecting bank must send without delay advice of acceptance to the bank from which the collection instruction was received.

3) Advice of non-payment and / or non-acceptance

The presenting bank should endeavour to ascertain the reasons for non-payment and / or non-acceptance and advise accordingly, without delay, the bank from which it received the collection instruction.

The presenting bank must send without delay advice of non-payment and / or advice of non-acceptance to the bank from which it received the collection instruction.

On receipt of such advice the remitting bank must give appropriate instructions as to the further handling of the documents. If such instructions are not received by the presenting bank within 60 days after its advice of non-payment and / or non-acceptance, the documents may be returned to the bank from which the collection instruction was received without any further responsibility on the part of the presenting bank.”

10.1. A perusal of the aforementioned articles would show that in accordance with the definitions as obtaining in Article 3(a) of URC 522, Shyam Garments was the principal; the SBI, Okhla Branch discharged the role of the remitting bank, and that, NCB was the presenting bank being a bank, other than the remitting bank, which was involved in processing the collection and being responsible for making a presentation to the drawee i.e., Talib.

10.2. In terms of Article 26(a), any advice or information flowing from the collecting bank, (which under URC 522 was a role assigned to NCB) was required to bear appropriate details including the remitting bank’s reference number as stated in the collection instruction; [see Article 26(a)]. Similarly, under clause (b) of Article 26 the remitting bank is entitled to instruct the collecting bank regarding the method by which advices were required to be given. Furthermore, Article 14 clearly provides that banks could not be made liable or responsible for consequences which arise out of delay and / or loss in transit of any message(s), letter, documents for delay, mutilation or other errors arising in transmission of any communication or for errors in translation and / or interpretation of technical terms. Sub clause

(b) of Article 14, further provides that banks will not be liable for any delay resulting from the need to obtain clarification of any instruction received.

10.3. In the facts of the case, it is quite evident that the instructions for collection sent to NCB by SBI, Okhla Branch clearly stipulated that both the payment as well as non payment had to be advised by a telex. The instructions for collection issued vide communication dated 17.02.2000, gave the telex number of the remitting bank i.e., SBI, Okhla Branch as: (031) 75189 SBIO. It is not disputed that the advice of NCB, conveying discrepancy in documents was sent to telex number : 0813165459. Therefore, notwithstanding the fact that the said message bore SBI, Okhla Branch's collection reference no.00/2/00GC48802, it was not a transmission in accordance with the collection instructions issued by SBI, Okhla Branch to NCB. It is also not in doubt that as per Article 2(d)(1), the transaction between SBI, Okhla Branch and NCB involved ***documentary collection***. Therefore, the import of the instructions for collection dated 17.02.2000, issued by SBI, Okhla Branch when, seen in light of the letter dated 16.02.2000, issued by Shyam Garments and, URC 522 would be that, while SBI, Okhla branch acted as a collecting bank qua Shyam Garments, it entrusted the collection process to NCB. Thus, under the provision of URC 522, it donned the hat of a remitting bank, while NCB adorned the role of both, the collecting bank and the issuing bank. In either situation, that is, both – in its role as a collecting bank and / or as a remitting bank, no fault can be attributed to SBI, Okhla Branch.

10.4 A conjoint reading of the articles alongwith the collection instructions of 17.02.2000, leave no doubt in our mind that SBI, Okhla Branch cannot be held as having breached its duty, if any owed to Shyam Garments and its

partners. The fact that SBI, Okhla Branch went out of its way to help Shyam Garments is evident from the correspondence which ensued between SBI, Okhla Branch, BOA and NCB after it had received intimation from Shyam Garments vide its letter dated 07.03.2000 that the buyers had released payments in respect of both invoices, which included, the invoice in issue. As a matter of fact, it appears that Shyam Garments and its partners, have been less than forthright, in as much as, they have not disclosed the basis on which they informed SBI, Okhla Branch that the buyer (i.e., Talib), had released the payment in respect of the invoice in issue. Quite clearly, SBI, Okhla Branch was led astray by communication dated 07.03.2000 sent by Shyam Garments to it. This led to the confusion whereby, SBI, Okhla Branch in its enthusiasm to protect the interest of its customer (i.e., Shyam Garments) sought transmission of the funds to its Calcutta office account maintained with Chase Manhattan Bank.

10.5. In these circumstances, we are unable to agree with the finding and the conclusion arrived at by the DRAT that SBI, Okhla Branch contributed in the negligence displayed qua the transaction in issue. The principle of contributory negligence is quite clearly based on the premise that the plaintiff is found guilty of careless conduct in failing to prevent or, avoid the consequences of the other person, that is, the defendant's breach of duty, to take care. (See Charlesworth & Percy on Negligence, 8th Edition, Paragraph 1.10 Page 8 and 9). This would, therefore, imply that the negligence is of the defendant to which the plaintiff has contributed and, in that sense, his action would not succeed to the extent of his contribution.

11. In our view, the DRAT has failed to analyse the facts and the evidence placed on record in the light of the provisions of URC 522, under WP(C) 1657/2011 & WP(C) 431/2011

which admittedly the collection instructions operated. It is quite clear that the SBI, Okhla Branch had credited the account on 05.04.2000, in favour of Shyam Garments, only on receiving an advice to the effect that the corresponding remittance had been made to its Calcutta office account maintained with the Chase Manhattan Bank, at an earlier date i.e. 24.03.2002. Therefore, Shyam Garments cannot lay much store by the fact that the amount had been credited to its account, and thus, no reversal of the said amount could have been made unilaterally. The amount was obviously credited to the account of Shyam Garments by virtue of a mistake of fact that the buyer (i.e., Talib) had released the payment in respect of the invoice in issue. No sooner did the situation attain clarity, Shyam Garments was put in the know of things, if not earlier, surely by 30.12.2000. This fact emerges on a perusal of letter dated 06.01.2001 issued by SBI, Okhla Branch to Shyam Garments, seeking confirmation with regard to the fate of the goods from the shipping company. In this connection, SBI, Okhla Branch on its own, also took steps, in seeking information from the shipping agent i.e., Transworld Shipping Services (I) Pvt. Ltd. vide its letter of 06.01.2001, whereby it sought to enquire about the status of goods. It is when every attempt at saving the situation failed, that the amount in issue, was debited to the account of Shyam Garments. It cannot be said in these circumstances, that the debit entry made in the account of Shyam Garments, maintained in the books of SBI, Okhla Branch was, an unilateral act, of which the client, i.e., Shyam Garments had no knowledge.

11.1 The judgment in the case of *State Bank of India Vs. National Open School Society AIR 2004 Delhi 306* cited by Mr. Patnaik in support of this contention, is clearly distinguishable. This was the case where the

customer/respondent had authorized the appellant bank to collect fees deposited by its students. In this connection, an account was opened with the appellant bank. It appears that the officials of the appellant bank had committed an error, in as much as, they had credited an excess amount of Rs.22.23 Lakhs to the customer/respondent's account. This error, on the part of the officials of the appellant bank, was discovered after nearly a year. Immediately, on the error being brought to the knowledge of the customer / respondent, the excess amount was returned. The appellant bank, however, took the stand that the respondent was liable to pay interest; since it treated the excess amount drawn as an overdraft facility extended to the customer / respondent. Admittedly, the customer/respondent had not executed any document seeking an overdraft facility from the appellant bank. The appellant bank proceeded to unilaterally debit the account of the customer / respondent to recover the interest. The customer / respondent was thus required to file a suit to recover the interest. It is in this context that the court held that the appellant bank had no authority 'to automatically debit another account of the account holder i.e., the respondent.' According to us, this judgment can have no application to the obtaining in of this case.

11.2 Mr. Patnaik also cited the judgment of the Supreme Court in ***Federal Bank Ltd. Vs. V.M. Jog Engineering Ltd. and Others (2001) 1 SCC 663***, to support his contention as to the role of a negotiating bank qua a Letter of Credit. A perusal of the judgment would show that the appellant before the Supreme Court was, the negotiating bank, which had come up in appeal against an injunction obtained by the buyer against the issuing bank i.e., the bank which had opened the Letter of Credit in favour of the seller. The appellant, being the negotiating bank had released the sum in issue in favour

of the seller, after deducting its commission. It was while the negotiating bank was awaiting reimbursement of money by the issuing bank (i.e., the bank which had opened the Letter Of Credit on the say so of the buyer), that an injunction was obtained by the buyer from the trial court, which was confirmed by the High Court, against the issuing bank reimbursing the negotiating bank. It is these circumstances, that the Supreme Court was called upon to adjudicate as to whether such an injunction order qua a Letter of Credit could be sustained at the behest of the buyer, where no fraud had been alleged vis-à-vis the appellant / the negotiating bank. The court vacated the injunction and, while doing so, discussed the provisions of the UCPDC. According to us, the judgment does not help the cause of Shyam Garments and its partners. On the contrary it does establish the position, to which, we have made a reference above, that a negotiating bank is one which buys a bill and therefore, releases the payment in favour of the seller. The judgment is, according to us, clearly distinguishable.

12. Before we part with the judgment, we may also refer to two short submissions of Mr. Patnaik : First that the Article 4 of the Uniform Commercial Code would be applicable to the transaction in issue and second, the SBI, Okhla Branch had admitted in the proceedings before DLSA that Shyam Garments was not at fault in respect of the transaction at hand. In so far as the first submission is concerned, according to us, said Uniform Commercial Code has no applicability whatsoever to the transaction in issue. The transaction in issue is squarely covered by URC 522. Any reliance on the provisions of Uniform Commercial Code, is clearly misconceived. As regards the second submission, its untenability is quite clearly apparent if, one were to bear in mind, the stage at which the

proceedings before the DLSA got terminated. At the stage at which proceedings before DLSA got terminated, they were clearly non-binding. Therefore, anything said in the course of the proceedings could not have bound SBI, Okhla Branch. The proceeding before DLSA are pivoted on a compromise or, a settlement being reached between parties. It is only when, such a stage is reached, that they attain a binding character. Even otherwise, we do not read the proceedings, in the manner, in which they are read by Mr. Patnaik.

13. In view of what has been observed by us hereinabove, we are of the opinion that the judgment of the DRAT will have to be reversed and that of the DRT sustained. It is ordered accordingly. Consequently, the writ petition filed by SBI, Okhla Branch bearing no.WP(C) 431/2011, is allowed, while that filed by Shyam Garments and its partners, bearing no. WP(C) 1657/2011, is dismissed. However, in the stated facts and circumstances, parties shall bear their own costs.

RAJIV SHAKDHER, J

SANJAY KISHAN KAUL, J

DECEMBER 23, 2011

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