IN THE HIGH COURT OF DELHI AT NEW DELHI

Date of decision: 16.11.2017

W.P. (C) 4418/2017

BANK OF BARODA ..... Petitioner

Through: None

versus

M/S BHARGAVA COMMERCIAL (P) LIMITED & ORS. ..... Respondents

Through: Ms. Pankhuri Malik, Advocate.
Mr. Rajiv Kapur and Mr. Priyash Sharma, Advocates for State Bank of India/respondent No. 3.

CORAM:
HON'BLE MR. JUSTICE SIDDHARTH MRIDUL
HON'BLE MS. JUSTICE DEEPA SHARMA

SIDDHARTH MRIDUL, J (ORAL)

1. None appears on behalf of the petitioner. Learned counsel for the petitioner has been praying for time to obtain instructions from the latter qua the prosecution of the present petition for the last few dates of hearing.

2. The present petition essentially assails the order dated 6th January, 2017 in Appeal No. 411/2015 titled as '*M/s Bhargava Commercial (P) Limited vs. Bank of Baroda & Ors.*'; arising out of OA No. 35/2009 (Delhi DRT-III), whereby, the learned Debts Recovery Appellate Tribunal, Delhi (hereinafter referred to as 'DRAT') allowed the appeal filed on behalf of M/s Bhargava Commercial (P) Limited, respondent No. 1 herein and set-aside the

recovery certificate issued against the said party. Consequently, it was directed that the respondent No. 1 would also be entitled to receive back the money, which it had deposited before the learned DRAT as a condition precedent for the entertainment of its appeal.

3. A perusal of the impugned order dated 6th January, 2017, reveals that M/s Presstech Litho (P) Limited purchased, the respondent No. 2 herein purchased goods from respondent No. 1 herein and ensured payment of the price of the said goods, by way of a Letter of Credit issued by the State Bank of India, Noida Branch. It transpires that the State Bank of India, however, failed to honour the said Letter of Credit to the account of respondent No. 2 on account of negligence on the part of the officials of the Bank of Baroda, the petitioner herein, in not presenting the same to the issuing Bank, namely, State Bank of India within the period of its validity. The learned DRAT, therefore, found as follows:-

> "I am, however, not at all convinced with these submissions of the learned counsel for the Bank of Baroda. This is a simple case of sale purchase of goods between the appellant as the supplier of goods and respondent No. 2 as the buyer and the payment of the price of goods was ensured to the appellant by respondent No. 2 by way of an LC which it had got issued from its banker, State Bank of India, Noida. State Bank of India however failed to honour its LC and that was admittedly on account of the negligence on the part of the officials of Bank of Baroda in not presenting the LC to State Bank of India within its validity period

and for that act of negligence on the part of officials of Bank of Baroda the appellant could not be made to suffer under the legal position regarding the LC transactions which is internationally recognized and unless some fraud is attributed to the seller and buyer of goods the bank which has to make payment to the supplier of goods under an LC cannot refuse to make payment which of course it was made by Bank of Baroda in the present case but after making payment it is demanding back that payment from the seller/beneficiary not on account of any fraud having played by the seller but because the LC issuing bank had refused to honour the LC for which decision of State Bank of India the appellant cannot be blamed and made to suffer and if the claim of Bank of Baroda's claim against the appellant is to be allowed the appellant will suffer on two counts, firstly, by delivering goods to respondent No. 2 and secondly by being called upon to make the payment of the price of the sold goods to Bank of Baroda also. That is not permissible under the well settled legal guidelines governing the LC transactions involving two banks.

It may be observed here that when hearing was going on before this appeal Bank of Baroda had made an offer to the appellant to close this legal battle in case the appellant was willing to pay the amount of about Rs. Six lacs which the appellant had deposited with this tribunal towards compliance of the condition of pre-deposit for the entertainment of this appeal but that offer was not accepted by the appellant since that would also have amounted to unjustified financial burden upon the appellant for no fault of its Counsel for the appellant had rightly submitted that this kind of offer should have been made to State Bank of India as a banker to banker co-operation or should have recovered the money from its own officials who were responsible for non-presentation of the LC to State Bank of India in time.

In the facts and circumstances of the case it also becomes clear that the amount of Rs.19,08,086/- was not paid to the appellant on the basis of a Bill discounting facility as was sought to be urged by the counsel for Bank of Baroda. Normally whenever money is paid by any Bank to its customer after purchasing some cheque for the period during which it remains under clearance process or Bill is discounted that is done on payment of some charges/commission and the Bank does not extend that facility for free. In the present case full Bill amount was paid to the appellant and negatives the case of the Bank of Baroda that money was paid to the appellant under Bill discounting facility. In fact the Bank of Baroda had placed on request a form signed by the appellant on 08.09.2007 in respect of the Bank discounting facility to be sanctioned. Since the payment had already been made to the appellant on 06.09.2007 this bank form also negatives the case that payment was made to the appellant under Bill discounting facility.

As far as the reliance placed on the promissory note allegedly executed by the appellant in favour of Bank of Baroda is concerned, I am of the view that this Bank cannot succeed even on the strength of that document since it has always been the case of Bank of Baroda that it was to get its money from State Bank of India at first instance and then from respondent No. 2 (buyer of goods). It was never its case that immediately on the refusal of State Bank of India to make the payment that appellant herein had become liable to pay to it on the basis of the promissory note for Rs.19,08,086/-. If at all, if the claim of the Bank of Baroda was based on the Bill discounting facility and promissory note, it would not have demanded its money from State Bank of India and then from respondent No. 2 and these two defendants would not have been impleaded also in the OA. That cause of action subsequently on being converted into a cause of action based on the Bill discounting facility and promissory note was thus not the genuine cause of action for filing of petition under Section 19 of the RDDBFI Act by Bank of Baroda but an illusory cause of action devised only to base an unjustified claim against the seller of goods and as an attempt to get some relief by misleading the tribunal and in which attempt it has succeeded before the tribunal below. The learned Presiding

Officer Mr. Ashish Kalia ought to have gone behind the sentences written in the Bank's petition to find out if the cause of action pleaded was a real one or not instead of passing a routine order simply saying that on the basis of documents exhibited by the Bank its case stood proved as if defence of a defendant has no importance at all and in this case the Presiding Officer has not even referred to the plea raised by the appellant that being the seller of the goods on the strength of an LC issued by State Bank of India in its favour requiring Bank of India to make the payment of Rs.19,08,086/- it could not be fastened with any financial liability because of State Bank of India having refused to honour its own LC which even as per the own case of Bank of India having refused to honour its own LC which even as per the own case of Bank of Baroda was due to inadvertent failure of its own employees to present the same to the issuing Bank within the validity period of the LC. Thus the impugned order cannot be said to have been passed by the Presiding Officer by applying his judicial mind and if I may so this is not the first order coming to the notice before this tribunal passed by the same Presiding Officer which can be unhesitatingly said to have been passed in a most casual and mechanical manner. But this tribunal cannot approve of the decision of the DRT rendered without paying any attention to the stand of the appellant in its written statement that payment having been made to it under an LC no money could be claimed back from it, if the issuing Bank had justifiably or unjustifiably refused to honour its LC.

For the aforesaid reasons, this appeal is allowed. The impugned order of the DRT whereby a recovery certificate was issue against the appellant is set aside. Since the respondent No. 2 which chose not to contest even the O.A or to file any appeal against the final order of the DRT, the impugned judgment qua him will, however, remain unaltered. Consequently, the appellant shall also be now entitled to get back the money which it had deposited with this Tribunal as condition precedent for the entertainment of its appeal. As and when any application is

> moved by the appellant for the release of that money which, if lying deposited in a Fixed Deposit, the same shall be got released and pay to the appellant with interest accrued on the initial amount of deposit."

4. A perusal of the above extracted paragraphs would show that in the considered view of the learned DRAT, the petitioner was negligent in recouping the amount represented by the said Letter of Credit on account of its failure to present the same to the issuing bank within the period of its validity and that the respondent No. 2 could not be made to suffer the consequences of their act of omission.

5 Be that as it may, since none appears on behalf of the petitioner, the petition is dismissed in default and disposed off accordingly.

SIDDHARTH MRIDUL, J

DEEPA SHARMA, J

NOVEMBER 16, 2017
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