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15.07.2022
Ct. No. 32
rrc

FMA 1362 of 2017
with
IA No. CAN 1 of 2017 (Old No. CAN 6420 of 2017)

(State Bank of India Vs. West Bengal State Electricity Distribution Company Ltd. & Ors.)

Mr. Biswajit Sau
.... For the appellant

Dr. Madhusudan Saha Roy
.... For the respondent no. 1

The present *intra court* Mandamus appeal is directed against an order dated 16th June, 2017 by which the learned Judge has directed the appellant to honour the Letter of Credit which had been duly invoked by the respondent no. 1, within four weeks from the date of communication of such order.

The facts of the case are that the respondent no. 2 entered into an agreement with the respondent no. 1 for supply of electrical energy. The appellant at the instruction of the respondent no. 2 opened an irrevocable revolving Letter of Credit in favour of the respondent no. 1 to provide 100% credit of the invoice value, in respect of the energy bills that were to be raised by the respondent no. 1 on the respondent no. 2. Records would reveal that the Letter of Credit, which was opened on 15th March, 2011, was renewed from time to time and was valid till 19th May, 2013.

It would further appear from the records that the respondent no. 1 had through its banker, Punjab National Bank, forwarded to the appellant, the energy bills for the month of February, 2013, March, 2013 and April, 2013 along with other documents and had called upon the appellant to make payment of such bills in terms of the Letter of Credit. Such invocation of Letter of Credit was made within its validity, which is within 19th May, 2013.

The respondent no. 1 had disclosed the aforesaid invocation of the Letter of Credit and the relevant documents in their supplementary affidavit which had been affirmed by them on 23rd December, 2015. Such documents form part of the application for stay filed before this Hon'ble Court.

It would further appear from the copies of such documents that the appellant had duly acknowledged receipt of the same.

Records further reveal that the appellant did not honour the invocation of Letter of Credit and refused to make payment. This prompted the respondent no. 1 to demand justice. The aforesaid demand for justice having failed to evoke any response, a writ application was filed before this Hon'ble Court which was registered as W.P. No. 9246 (W) of 2015. The appellant contested the said writ application by filing an affidavit. Upon hearing the parties, this Hon'ble Court found the appellant had not established that the Letter of Credit stands vitiated by fraud, the appellant was bound to honour the Letter of Credit, which had duly been invoked within the period of its validity and accordingly directed, that the appellant will proceed to honour the Letter of Credit, within four weeks from the date of communication of such order.

In course of hearing of the present appeal, Mr. Sau, learned advocate representing the appellant has drawn our attention to the agreement dated 19th May, 2009 entered between the respondent no. 1 on one hand and the respondent no. 2 on the other, for supply of electrical energy. Mr. Sau by placing reliance on Clause 14 of such agreement submits that it was the obligation of the respondent no. 1 to disconnect the supply of electricity to the respondent no. 2 when they failed to make payment of the electricity charges. He says that the respondent no. 1 continued to supply electricity without getting payments from the respondent no. 2. He submits that the respondent no. 1 was obliged to disconnect supply once the respondent no. 2 failed to make payment and ought not to have effected supply for the months of February, 2013, March, 2013 and April, 2013. According to Mr. Sau no credit can be given in respect of the aforesaid bills.

Mr. Sau submitted, that the respondent no. 2 had a commercial relationship with the appellant and the respondent no. 2 is a defaulter and its account has been declared to be a Non-performing Asset on 16th January, 2013. The appellant has since filed a case before the learned Tribunal claiming a recovery of a sum of Rs.85,63,73,709.13.

According to the learned advocate representing the appellant, the appellant was not obliged to honour the Letter of Credit, since the account of the respondent no. 2 maintained with the appellant had become a Non-performing Asset and that the respondent no. 1 had already received payment in respect of the energy bill for the month of February, 2013 as admitted in the affidavit-in-reply filed by the respondent no. 1, before the first Court. He submits the order impugned be set aside.

Per contra, Dr. Saha Roy, learned advocate appearing for the respondent no. 1 submits that a Letter of Credit is an independent contract. Once a Letter of Credit is issued, it is the obligation of the bank to honour the same, provided the invocation is in order.

Dr. Saha Roy submits that the invocation in this case has been effected within the period of validity of the Letter of Credit and the bank has unjustly held back their demand. According to Dr. Saha Roy there is no infirmity in the order and the appeal should be dismissed.

We have considered the submissions made by the parties. We have also considered the pleadings on record.

Before we proceed to deal with the rival contention, it would be profitable to note that the opening of a confirmed Letter of Credit constitutes a bargain between the banker and the supplier/seller which imposes on the banker an absolute obligation to pay. Once the conditions mentioned in the Letter of Credit are fulfilled, being the documents accompanying the invocation are duly made over, the bank issuing or confirming a Letter of Credit must honour the same. The bank is not concerned with the underlying contract between the buyer and the seller. Duties of a bank under the Letter of Credit are created by the document itself and not the underling contract as between the buyer and seller.

In the case at hand, the appellant had issued an irrevocable Letter of Credit agreeing to provide revolving Letter of Credit of 100% of the invoice value raised by the respondent no. 1 on the respondent no. 2's account. Admittedly, the document accompanying the invocation being the respective bills for the months of February, March and April, 2013 had duly been served on the appellant. Such fact would also corroborate from the acknowledgement of the appellant which appears on the said document.

As indicated above, the bank cannot be concerned with the transaction or business dealings that it had with the respondent no. 2 or for that matter the respondent no. 1 had with the respondent no. 2, for the purpose of honouring the Letter of Credit when, admittedly, the invocation that had been made by the respondent no. 1, was a valid invocation.

We are afraid that the defense that has been sought to be raised by Mr. Sau about the account of the respondent no. 2 being declared as a Non-performing Asset cannot be a ground, for refusing to honour the Letter of Credit. As discussed above the appellant also cannot be concerned with the contract between the respondent no. 2 and the respondent no. 1.

It is also well settled, that except in case of fraud, which could be established or in case is irretrievable injury, the Court would be reluctant to interfere with the invocation of the Letter of Credit. We find no such case to have been made out.

We find no infirmity in the order passed by the learned Judge and as such, no interference is called for in the present appeal.

The appeal and the connected application are, thus, dismissed.

There shall, however, be no order as to costs.

All parties shall act on the server copies of this order duly downloaded from the official *website* of this Court.

(Raja Basu Chowdhury, J.) **(Tapabrata Chakraborty, J.)**