IN THE HIGH COURT AT CALCUTTA
(Ordinary Original Civil Jurisdiction)
COMMERCIAL DIVISION

Present:

The Hon'ble Justice Krishna Rao

CS-COM 63 of 2024

(Old No. CS 110 of 2015)

Phoenix Overseas Ltd.

Versus

Bangladesh Krishi Bank & Ors.

Mr. Bhaskar Roy

… For the plaintiff.

Hearing Concluded On : 19.12.2024

Judgment on : 29.02.2024

Krishna Rao, J.:

1. The plaintiff has filed the instant suit for a decree of US$ 70,243 or the Indian equivalent thereof being Rs.42,14,580/-, along with an interim interest and interest upon judgment at the rate of 18% per annum.

2. The plaintiff is a company incorporated under the Companies Act, 1956, namely, Phoenix Overseas Ltd., having its registered office at 13B, Bidhan Sarani, Chanda Plaza (4th Floor), Kolkata – 700006, Police Station – Amherst Street. However, the name of the plaintiff Company was changed from Phoenix Overseas Pvt. Ltd. to Phoenix Overseas Ltd. vide fresh certificate of Incorporation consequent upon change of name on conversion to Public Limited Company on November 14, 2011.

3. The Plaintiff is engaged in the business of inter alia, exports of diverse commodities and is one of the leading exporters of various Agricultural Commodities, environment friendly packing materials (laminated bags/shopping bags etc.) and handicrafts to different countries in the world from India.

4. The plaintiff is a Trading House recognized by the Government of India and also members of FIEO, APEDDA and SPICES BOARD.

5. The defendant no.1 is the Bangladesh Krishi Bank, owned by the Bangladesh Government, having its head office at 83-85, Motijheel Commercial Area, Dhaka – 1000, Bangladesh, and happens to be one of the leading banks in Bangladesh dealing in Agricultural Commodities. The defendant no. 2 is the Managing Director of defendant no.1. The defendant no. 3 is one of the branch of the Bangladesh Krishi Bank, the proforma defendant no. 5 is the Bank of India, Kolkata Mid Corporate Branch, who negotiated the documents under Letters of Credits and was also the Plaintiff's banker and the defendant no. 4, M/s. SMAH Poultry Farm & Feeds Ltd. Company, which is situated at Bangladesh.

6. On or about 29th March, 2011, the representative of defendant no.4 being SMAH Poultry Farm and Feeds Ltd approached the plaintiff at 13B, Bidhan Sarani, Chanda Plaza (4th Floor), Kolkata – 700006 for purchasing substantial amount of agricultural products on daily basis and it was also mentioned by the representatives of the defendant no.4 that the payments under supplies to be made by the plaintiff to the defendant no.4 would be against irrevocable letters of credit.

7. Pursuant to such agreement between the parties, it was agreed by the plaintiff that the plaintiff would supply the agricultural products of Indian origin to the defendant No.4 only against irrevocable letters of credit covering the amount of each supply to be caused to be opened through their bank by the defendant No. 4 in favour of the plaintiff.

8. The plaintiff by issuance of Six (6) proforma invoices offered to export commodities to the defendant no.4 and such invoices were accepted by the defendant no.4 by applying to defendant no.3 for opening of Letters of Credit and defendant no. 3 issued a total number of Six (6) Letters of Credits during the period from 31st March, 2011 to 25th August, 2011.

9. The advising bank through which the Letters of Credit were advised to the plaintiff was ICICI Bank Limited, Kolkata branch having its office at Rasoi Court, 20, Sir, R.N. Mukherjee Road, Kolkata – 700001.

10. It is submitted by the Plaintiff that upon receipt of the said Letters of Credit, the Plaintiff had exported agricultural products of agreed specifications to the orders of defendant no.3 and fulfilled all its obligations as per the terms and conditions of the Letters of Credit.

11. As per the submissions made by the Plaintiff, during the period of 2011-2012 and 2012-2013, the defendant no.3, deliberately, abnormally, wrongfully and illegally failed, delayed, refused and neglected to release the payment of the plaintiff from 23 days to 181 days, even after allowing grace period of 25 days, without any cogent reason.

12. The Plaintiff have repeatedly made requests to the defendant nos. 1 to 4 and several e-mails and letters were sent regarding the delay of payment by the defendant nos. 1 to 4 to the plaintiff.

13. The plaintiff vide its e-mails dated 14th February, 2011; 11th April, 2011; 25th April 2011; 21st June, 2011; 23rd June, 2011 and 24th June, 2011, took up the matter with the defendant no.3 regarding the inordinate delay in payment.

14. Thereafter the plaintiff on 12th November, 2011, vide a swift message, which was sent by the Negotiating Bank, which is the Bank of India, Kolkata of the plaintiff to the defendant no.3 and informed that the plaintiff reserves right to claim interest for overdue period as per UCPDC 600 and also requested to release the outstanding payments.

15. On or about 6th August, 2012, the Negotiating Bank – Bank of India, Kolkata sent Six (6) more swift messages to the defendant no.3 claiming the overdue interest.

16. That again on 7th February, 2013, the Negotiating Bank – Bank of India, Kolkata sent Six (6) more swift messages to the defendant no.3, claiming a sum of US$ 40970, equivalent to Indian Rs. 24,58,200/-, towards an overdue interest upto 15th January, 2013 from the Letters of Credit.

17. Thereafter again the plaintiff on several occasions made requests by sending reminders vide emails and letters dated 16th January, 2013; 29th January, 2013; 26th August, 2013; 17th September, 2013; 15th January, 2014 and 20th March, 2014, which were sent to the defendant no.2 to make immediate payment of overdue interest.

18. The plaintiff further mentioned that they have also made a request to the FIEO (Federation of Indian Exporters' Organization) vide a letter dated 14th February, 2013 to establish communication with the defendant no.1 but they failed to respond and the Negotiating Bank – the Bank of India has also made a representation to the Indo-Bangladesh Joint Business Council, Banking Sub Group, State Bank Of India, Mumbai, on or around 27th February, 2013, and as desired by them, on 31st May, 2013, the defendant no.5 sent a statement regarding lodgement of claim for US $40970, equivalent to Rs. 24,58,200/-.

19. On or about 14th June, 2013, Indo-Bangladesh Joint Business Council, Banking Sub Group, State Bank of India, Mumbai, wrote to their counterpart in Bangladesh Banking Sub Group (Bangladesh side) Sonali Bank, Dhaka and vide letter dated 30th June, 2013 and reminder letter dated 24th June, 2014 they requested the defendant no.1, which is the Bangladesh Krishi Bank, HO, Dhaka to take necessary steps for settlement of the dispute between the parties, however no response was received till date.

20. The plaintiff further made a request to the Joint Director General of Foreign Trade, Government of India vide letter dated 5th August, 2013 requesting them to intervene and take up the matter with the appropriate forum in Bangladesh. Accordingly, on or about 19th or 22nd July, 2013, Director General of Foreign Trade, Kolkata wrote to High Commission of India, Dhaka, Bangladesh to take appropriate actions.

21. After that the High Commission of India in Dhaka, vide a letter No.DAC/E&C/208/20/2013, dated 16th June, 2013, had directed the Defendant No.1 to settle the Plaintiff's legitimate claim. However, inspite receipt of such letter, the defendant no.1 failed to disburse the interest on account of delayed payment.

22. On or about 1st December, 2013, the plaintiff received a letter, No.ID (Trade)13(91)3/2013-14/2563, sent by the Bangladesh Krishi Bank, Head Office: Dhaka, alleging that the claims made by the plaintiff on account of delay of payment are not justified hence rejected by the

Bangladesh Krishi Bank on the grounds stating that the plaintiff is claiming interest *"from the date of sending the documents by the Negotiating Bank"*.

23. The plaintiff in response to the letter sent by the defendant no.1 on 1st December, 2013, sent another letter dated 15th January, 2014, addressing the defendant no.1 and categorically denied the allegations made therein.

24. At the request of the Plaintiff, the Indo Bangladesh Chamber of Commerce and Industry, Dhaka, interfered in the matter, and issued a BRPD Circular No. 6 dated 12th March, 2014, addressing all the local Banks/Foreign Exchange Dealers in Bangladesh for settlement of all bills within value date/maturity date for supply of goods against Letters of Credits but in spite of that the defendant no.1 did not take any steps regarding the amount due to the plaintiff.

25. The plaintiff issued a notice of demand through its Advocate on 30th June, 2014 and once again on 31st October, 2014 demanding to pay the overdue interest within 15 days of the date of receipt of such notice.

26. In spite of service of serval reminders as well as legal notice, the defendants failed to come forward to pay the outstanding to the plaintiff and accordingly the plaintiff has filed the present suit.

27. After filing of the suit, the plaintiff has filed an application being G.A. No. 400 of 2016 for deletion of the name of the original defendant no. 5, namely, M/s SMAH Poultry Farm and Feeds Limited as well as amendment of claim for US$ 1,44,434 i.e. equivalent to Indian Rs. 86,66,040/- to US$ 70,243 equivalent to Indian Rs. 42,14,580/-. The application filed by the plaintiff was allowed by an order dated 05.04.2016, accordingly, the plaint was amended by deleting the name of M/s SMAH Poultry Farm and Feeds Limited from the Cause Title of the suit and amending the prayer portion of the plaint.

28. On receipt of notice, only the defendant no. 1 and 3 have filed their written statement but the other defendants have not filed any written statement. Subsequent to filing of the written statement, none appears on behalf of the defendant and the suit is proceeded accordingly.

29. The plaintiff in order to prove its case had examined 'One' witness and exhibited a total number of "19' documents, from "Exhibit A to Exhibit S. He also filed an application under Section 65(B) of the Evidence Act, 1872, to prove the following documents :

Exhibit A: *Certified Copy of Letter of Credit, being No. 051211010040, dated 31st March, 2011.*

Exhibit B: *Letter of Credit, being No. 051211010047, dated 20th April, 2011.*

Exhibit C: *Letter of Credit, being No. 051211010080, dated 16th August, 2011.*

Exhibit D: *Letter of Credit, being No. 051211010083, dated 25th August, 2011.*

Exhibit E: *A copy of a swift message dated 11th November, 2011, sent by the Bank of India, Mid Corporate Branch to Bangladesh Krishi Bank.*

Exhibit F: *Copy of a swift message dated 11th November, 2011, sent by the Bank of India Mid Corporate Branch to Bangladesh Krishi Bank.*

Exhibit G: *Copies of some swift messages dated 6th August, 2012 sent by the Bank of India Mid Corporate Branch to Bangladesh Krishi Bank are exhibited collectively.*

Exhibit H: *Copy of swift message dated 7th February, 2013, sent by the Bank of India Mid Corporate Branch to Bangladesh Krishi Bank.*

Exhibit I: *Copies of emails dated 16th January, 2013; 29th January, 2013; 11th September, 2013; 15th January, 2014 and 20th March, 2014 sent to the Managing Director, Bangladesh Krishi Bank by the Plaintiff are exhibited collectively.*

Exhibit J: *Copy of a letter written by Bank of India Mid Corporate Branch to Indo-Bangladesh Joint Business Council regarding the bank-to-bank transaction, dated 27th February, 2013.*

Exhibit K: *Copy of the reply to the letter dated 27th February, 2013, which was sent by the Indo-Bangladesh Joint Business Council on 14th June, 2013.*

Exhibit L: *Copies of letters dated 30th June, 2013 of Sonali Bank Limited with copy to Indo-Bangladesh Joint Business Council regarding the payment of the overdue interest are exhibited collectively.*

Exhibit M: *Copy of a letter dated 5th August, 2013, sent to the High Commission of India in Bangladesh.*

Exhibit N: *Copy of a letter dated 19th July, 2013 written by S.K. Prosad, Foreign Trade Development Officer for Additional Director General of Foreign Trade to the Ambassador, High Commission of India in Bangladesh.*

Exhibit O: *Copies of a letters dated 1st September, 2013; 1st October, 2013; 2nd October, 2013; 3rd November, 2013; 1st December, 2013 written by High Commission of India, Dhaka, to the plaintiff with a copy given to the Ministry of Commerce General Manager Foreign Trade Policy members secretary banking supply route regarding the claim of overdue interest.*

Exhibit P: *Copy of a letter dated 24th February, 2014 written by S.K. Prosad, Foreign Trade Development Officer for Additional Director General of Foreign Trade to the High Commission of India* *regarding another non-payment of overdue interest by Bangladesh Krishi Bank.*

Exhibit Q: *Copy of another letter sent by Achintya Kumar Roy, Foreign Trade Development Officer for Additional Director General of Foreign Trade to the High Commission of India on 2nd July, 2014.*

Exhibit R: *Copy of letter dated 9th January, 2014 sent by the High Commission of India, Dhaka regarding non-settlement of overdue interest, in this regard the plaintiff has forwarded a copy of a reply vide its reference No. ID(Trade) 13/2013-2014/1972 dated 3rd November, 2013, which was received by the Plaintiff from the Head Office of Bangladesh Krishi Bank, are all exhibited collectively.*

Exhibit S: *Another Letter of Credit, being no. 051211010051 dated 27th April, 2011.*

30. Exhibits A to Exhibits D and Exhibit S, proves that Letters of Credits were issued by the ICICI Bank in favour of the Plaintiff Company.

Exhibit E to Exhibit H, are swift messages sent by the Plaintiff to the Defendants, which proves that Plaintiff had initially tried to connect and communicate with the defendants regarding the payment of overdue amount.

Exhibit I to Exhibit R, are several copies of emails and letters sent by the Plaintiff to various organizations, i.e. Indo-Bangladesh Joint Business Council, High Commission of India in Bangladesh, Director General of Foreign Trade, Ministry of Commerce, General Manager

Foreign Trade Policy, and to the Defendant No.1, Bangladesh Krishi Bank, regarding the payment of overdue interest.

31. The Letters of Credit issued by the defendant bank stipulates terms regarding applicable rules of latest UCP Version. As per Article 14(6) of the UCP-600, the Letters of Credit, issuing bank shall have a maximum of five banking days, following the day of presentation to determine if a presentation of documents is complying or not and in case of discrepancy in the documents presented is notified to the Negotiating Bank in the Seller's Country, within five banking days, the presentation will be deemed to have been accepted by the Letter of Credit issuing bank and the buyer.

Article 16(iii) of the UCP-600 reads as follows:

> *"An issuing bank will be responsible for any loss of interest, together with any expenses incurred, if reimbursement is not provided on first demand by a reimbursement bank in accordance with the terms and conditions of the credit."*

32. The plaintiff had given a grace period of twenty five (25) days against the Letters of Credit, payable at sight, opened by the defendant no. 3 but the defendant deliberately refused to release payment of the plaintiff from 23 days to 181 days even after allowing the grace period of 25 days. By a Swift Message dated 12th November, 2011, the plaintiff's Banker, the defendant no.5 informed to the defendant no.3 that "*We reserve the right to claim interest for overdue period as per UCPDC-600*".

33. This Court finds that during the year 2011-2012 and 2012-2013, the defendant no.3 has deliberately delayed the payment of the plaintiff from 23 days to 181 days even after allowing 25 days of grace period even after receipt of the materials by the defendant no.4 without any demur or protest and thus the defendants no.1 to 4 are liable to pay the interest on delayed payment of US$ 48116 up to 30th June, 2013 and further interest at the rate of 18% per annum from 12th May, 2015 i.e. from the date of presentation of plaint till the realization of the said amount. This Court finds that the plaintiff has not proved with regard to the damages as claimed by the plaintiff.

34. In view of the above, the defendant nos. 1 to 4 are directed to pay US$ 48611 with interest at the rate of 18% per annum from 12th May, 2015 till the date of realization of the decretal amount to the plaintiff.

35. **C.S-COM/63/2024 (Old C.S. No. 110 of 2015)** is thus **disposed of**. Decree be drawn accordingly.

(Krishna Rao, J.)