

UCO Bank v. Yes Bank Ltd.

UCO Bank

...Appellant

Yes Bank Ltd.

...Respondent

Case No: Appeal No. 186/2013

Date of Judgement: 22/08/2023

Judges:

Mr Justice Ashok Menon, Chairperson

For Appellant: Mr. Pankaj Vijayan along with Mr Fenil Sangoi, i/b M/s. Intralegal, Advocate.

For Respondent: Senior Counsel Mr. J. P. Sen along with Mr. Arun S., Ms. Priyanka & Mr. Karan K. i/b M/s Cyril Amarchand Mangaldas, advocate.

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Facts:

The case revolves around an appeal (Appeal No. 186/2013) filed by UCO Bank (Appellant) against Yes Bank Ltd. (Respondent) before the Debts Recovery Appellate Tribunal, Mumbai. The Appellant impugned the judgment dated 23.10.2012 of the Debts Recovery Tribunal (D.R.T.)-II, Mumbai, dismissing Original Application (O.A.) No. 3 of 2011 filed by the Appellant under Section 19 of the Recovery of Debts Due to Banks & Financial Institutions Act ('RDDB&FI Act'). The dispute arose due to the invocation of a Stand-by Letter of Credit (SBLC) dated 22.08.2008 issued by the Respondent to the Appellant to secure unpaid indebtedness owed to the Appellant arising from a Letter of Credit (LC) facility granted by the Appellant to a

company named Zoom Developer Pvt. Ltd. ("Zoom"). In 2008, Zoom entered into an agreement for the import of equipment from Project Engineering Management Services (PEMS) for its integrated steel project at Jamshedpur. Zoom approached the Respondent for funding the import by issuing a Foreign Letter of Credit (FLC) to PEMS for 720 days, which the Respondent agreed to. However, the Respondent's FLC was not acceptable in the international market, so Zoom approached the Appellant to establish the FLC, backed by an SBLC to be issued by the Respondent to the Appellant. Accordingly, the Respondent established SBLC No. 001LM02082340001 dated 22.08.2008 in favor of the Appellant up to an aggregate principal amount of ₹45 crores, agreeing to unconditionally honor all demands made by the Appellant, subject to the laws of India and the Uniform Customs and Practice for Documentary Credits (UCP600). The FLC favoring PEMS was initially in Swiss Franc (CHF), but Zoom later requested a change to US Dollars (USD), which the Respondent confirmed on 26.08.2008. The Appellant then issued a fresh FLC No. 190808F0LU0069 in favor of PEMS, valid until 20.09.2008. During March 2009, the Appellant issued three Letters of Undertaking (LOU) dated 06.03.2009, 09.06.2009, and 07.12.2009 in favor of the foreign lender, UCO Bank, Singapore Branch, for the buyer's credit facility provided to Zoom. By June 2009, Zoom had defaulted on paying the Appellant a sum of ₹1,38,72,739/- towards interest. The Appellant invoked the SBLC on 01.07.2009 and called upon the Respondent to pay the amount, but on 02.07.2009, Zoom requested the Respondent not to make the payment, stating that it was making good the default. In a meeting between the Appellant, Respondent, and Zoom on 09.07.2009, the Respondent allegedly contended that the claimed interest payable by the rollover of the credit was not covered by the SBLC. Despite this contention, the Appellant did not lodge a formal protest as the payment was received. On 14.12.2009, the Appellant informed the Respondent that the money under the facility extended to Zoom based on the SBLC would fall due for payment on 04.06.2010. The Respondent reiterated on 08.02.2010 that the extension was not

covered by the SBLC. On 05.06.2010, the Appellant called upon the Respondent to pay ₹47,60,05,078/- together with interest upon invoking the SBLC, which the Respondent refused vide reply dated 08.06.2010. The Appellant issued an advocate's notice calling upon the Respondent to honor its commitment under the SBLC, which the Respondent again refused through its advocate on 06.07.2010, persisting in the wrongful repudiation of its liability.

Arguments by Parties:

Appellant (UCO Bank): a. The issuing bank cannot dishonor the SBLC by sitting in judgment over the default claim of the beneficiary. b. The terms of the SBLC are similar to a bank guarantee, and being unconditional and irrevocable, the issuer must make payment upon being informed of the default by the customer. c. The SBLC is an independent contract not based on any underlying contract, and the issuer cannot investigate the default, which is the prerogative of the beneficiary. d. The dispute between the buyer and seller shall have no bearing on the liability of the issuing bank. e. Article 14(h) of UCP600 stipulates that if the SBLC contains a condition without stipulating documents to indicate compliance, the bank shall disregard the condition. f. Variation of the contract is not a defense to dishonor an SBLC, as the issuing bank cannot investigate whether there has been a violation of the underlying contract by the beneficiary. g. If the customer is aggrieved by the wrongful invocation by the beneficiary, they can proceed against the beneficiary, but no fault can be attributed to the bank for making payment under the SBLC. h. No confirmation from the Respondent is required because the SBLC is for 720 days, and payment can be refused only if there is an allegation of fraud. i. The D.R.T. erred by comparing the FLC with the Buyer's Credit, as the issue is whether the SBLC can be dishonored due to a variation of the underlying contract. j. If Zoom cannot restrain the Appellant from invoking the SBLC on the ground of variation of the underlying

contract, its banker (Respondent) also cannot do so. k. Relied on cases like Drive India Enterprise Solutions Ltd vs. Haier Telecom (India) Pvt. Ltd. & Ors, U.P. State Sugar Corporation Ltd. vs. M/s Sumac International Ltd., Standard Chartered Bank vs. A. B. Engineering Corporation Ltd. & Ano., NCC Ltd & Ors vs. Sembcorp Gayatri Power Ltd. & Ano., and DLF Industries Ltd. vs. Hong Kong and Shanghai Banking Corporation Ltd. to support the argument that SBLCs, like bank guarantees, must be honored as per their terms, and courts cannot interfere except in cases of fraud or irretrievable loss.

Respondent (Yes Bank Ltd.): a. Under the SBLC, the Respondent is liable to pay only if the claim was made in terms of the SBLC and in conformity with the laws of India and UCP600. b. The Appellant voluntarily, unilaterally, and independently issued LOUs in favor of the foreign lender without the knowledge and concurrence of the Respondent, which was mandatory under the terms of the SBLC. c. There was a departure from the agreed terms of the SBLC, and therefore, the Respondent is not liable to pay any amount to the Appellant. d. The claim of the Appellant arises under the LOUs issued independently and without the knowledge and concurrence of the Respondent, discharging the Respondent of its obligation under the SBLC. e. FLC and LOU are necessarily two different facilities/transactions, legally and from a regulatory perspective, with different contracting parties. f. The terms and conditions under the SBLC must be observed strictly, and if not, the issuing bank would be within its right to refuse to honor the SBLC, and no cause of action would arise against the bank. g. Relied on cases like United Commercial Bank vs. Bank of India, United Bank of India Ltd. vs. Nederlandsche Standard Bank, and Pavia & Co., S.P.A. vs. Thurmann-Nielsen to support the argument that the terms of a letter of credit must be strictly complied with, and the bank is not bound to honor drafts unless they are in strict accordance with the credit.

Court's Elaborate Opinions:

The court observed that the Appellant's application before the Recovery Officer did not seek any action regarding the valuation of the properties or raise any contention regarding the insufficiency of the reserve price fixed for the property. The court noted that the Appellant did not have any such contention apart from objecting to not obtaining their consent before proceeding against the property and for establishing their pari passu charge. The court held that a "fishing expedition" at this belated stage in the appeal cannot be entertained. The court found no merit in the application (I.A. No. 355/2022) and dismissed it.

Sections and Laws Referred:

Recovery of Debts Due to Banks & Financial Institutions Act ('RDDB&FI Act') a. Section 19 (Filing of recovery applications)

Uniform Customs and Practice for Documentary Credits (UCP600) a. Article 14(h) (Conditions without stipulation of documents)

Cases Cited:

Drive India Enterprise Solutions Ltd vs. Haier Telecom (India) Pvt. Ltd. & Ors (2011 Legal Eagle 3269)

U.P. State Sugar Corporation Ltd. vs. M/s Sumac International Ltd. (1996 Legal Eagle 2000)

Standard Chartered Bank vs. A. B. Engineering Corporation Ltd. & Ano. ((1996) 5 SCC 450)

NCC Ltd & Ors vs. Sembcorp Gayatri Power Ltd. & Ano. (2017 Legal Eagle (AP) 278)

DLF Industries Ltd. vs. Hong Kong and Shanghai Banking Corporation Ltd. (1999 LawSuit (Del) 80)

United Commercial Bank vs. Bank of India ((1981) 2 SCC 766)

United Bank of India Ltd. vs. Nederlandsche Standard Bank
(1961 SCC OnLine Cal 44)

Pavia & Co., S.P.A. vs. Thurmann-Nielsen ((1952) 2 Q.B.84)