

BEFORE THE DEBTS RECOVERY
APPELLATE TRIBUNAL, AT: MUMBAI

Present: Mr Justice Ashok Menon, Chairperson

Appeal No. 67/2007

Between

MSTC Ltd.

(Formerly Known as Metal Scrap Trading Corporation Ltd.)

... Appellant/s

V/s.

Union Bank of India & Ors.

... Respondent/s

Mr Harjot Singh Alang, i/b M/s. Raval-Shah & Co., Advocate for Appellant.

Mr O.A. Das, Advocate for Respondent No. 1 Bank.

:- Order dated: 05/09/2023:-

The Appellant MSTC Ltd. (formerly, M/s Metal Scrap Trading Corp. Ltd.) is in appeal impugning the judgment and order dated 03.03.2005 in Original Application (O.A.) No. 2355 of 1999. The Appellant is the third defendant in the O.A. that was filed by the first respondent Union Bank of India for recovery of ₹10,81,310.41.

2. The facts in brief required for the determination of this appeal are thus:

The first defendant (the second respondent herein) Aditya Mills Ltd. was a company that was carrying on business in textiles and was also dealing in steel under the name and style, M/s Kanoria Steels a sole proprietorship. At the request of the first defendant, the Applicant Bank opened an irrevocable Letter of Credit on 25.09.1981 for a

period of one year till 24.09.1982, for the proprietorship, in favour of MSTC for a sum of ₹9 lakhs, which was subsequently enhanced to ₹13,50,000/-and a sum of ₹1,35,000/-was kept by the first defendant as margin money. The first defendant thereafter, vide letter dated 08.12.1981, requested the Applicant Bank to amend the aforementioned irrevocable Letter of Credit by deleting the name “Kanoria Steels” and instead substitute it with the words “M/s Aditya Mills Ltd.” Accordingly, the Letter of Credit was amended, and the fact communicated to MSTC informing that the bills may henceforth be drawn in the name of the first defendant instead of the proprietorship Kanoria Steels.

3. On 15.06.1982, the MSTC through the second defendant State Bank of India (SBI, third respondent herein) presented to the Applicant Bank’s branch at Calcutta, a sight draft in the name of Kanoria Steels for ₹80,14,697.69 in respect of a consignment of 68.734 metric tons of melting scrap of stainless steel. The Calcutta branch of the Applicant Bank made the payment to the second defendant “under reserve” and forwarded the documents to the Applicant Bank in Mumbai. The Applicant’s branch at Kolkata was informed that the first defendant had refused to accept the documents as the same is not in the name of the first defendant and consequently, the Calcutta branch was asked to seek a refund of the amount paid to the second defendant, SBI “under reserve” with a covering letter dated 14.07.1982. Instead of refunding the amount, the SBI presented the said set of documents after correcting the name of the drawee by deleting the words “Kanoria Steels” and substituting it with ‘M/s

Aditya Mills Ltd.', vide letter dated 05.08.1982. The second defendant was informed that the substitution of documents was not acceptable under the Uniform Customs and Practice (UCP) and requested the SBI to refund the amount without any further delay. Though reminders were sent to the SBI, there was no response. On 08.10.1982, the Applicant returned the documents to the SBI and again called for reimbursement of the amount with interest. The SBI refused to refund the amount holding onto the explanation that the documents were resubmitted after rectification of the discrepancy. The Applicant Bank thereafter sent a couple of reminders to the SBI to which, there was no response. On 18.10.1982, the SBI refused to make any payment stating that the documents were resubmitted after rectification of the discrepancy pointed out and hence, there was no need of any refund to the Applicant Bank.

4. Thereafter, the Applicant Bank appropriated the margin money of ₹1,35,000/- and also the amounts lying in the current account of the first defendant and Kanoria Steels amounting to ₹1,64,504.40 and ₹1,17,563.21 respectively. By the end of January, the Applicant Bank also had to pay a demurrage charge of ₹2,50,000/- as the consignment was not claimed. The Applicant claimed that after adjusting the margin money and the amounts lying in the current accounts a sum of ₹6,54,442.48 was outstanding, and inclusive of interest at the rate of 18% per annum, the Applicant claims a sum of ₹10,81,310.42 from the defendants.

5. All three defendants contested the claim filing written

statements. The first defendant contended that they were never consulted before the Applicant paid the amount to the second defendant. The documents were never presented to the first defendant till the second week of January 1982, by which time the consignment had deteriorated and had attracted demurrage charges of over ₹2 lakhs. Under the circumstances, it was not worthwhile for the first defendant to take delivery. The first defendant also refused to accept the documents which were furnished beyond the period of the Letter of Credit.

6. The second defendant SBI raised the question of territorial jurisdiction contending that the cause of action took place in Calcutta and hence, the D.R.T. in Mumbai has no jurisdiction. It is also submitted that the documents were rectified and resubmitted to the Applicant well within the validity period of the Letter of Credit. The delay in submitting the rectified documents by the Applicant to the first defendant had resulted in the loss for which, the second defendant is not liable.

7. The third defendant also has a similar contention regarding the rectification of the document and resubmitting it. A sum of ₹50,000/- paid as a deposit by the first defendant was also returned to them.

8. After examining the records and the affidavits filed by the parties, the Ld. Presiding Officer came to the conclusion that the first defendant could not be held liable since the documents did not reach within the time so as to enable them to take delivery of the import. The challenge to the territorial jurisdiction was also negated for the

reason that the request to issue a Letter of Credit was received by the Applicant Bank at Mumbai. Since a part of the cause of action arises in Mumbai, the D.R.T. at Mumbai had the jurisdiction to try the application as provided under Sec. 19 (1)(c) of the Recovery of Debts Due to Banks and Financial Institutions Act, 1993 ('RDDB & FI Act', for short). Relying upon the decision in *United Commercial Bank vs. Bank of India AIR 1981 SC 1426*, the Ld. Presiding Officer held that payment made "under reserve" indicates that the recipient was under obligation to refund it on demand. Hence, the O.A. was allowed as against defendants Nos. 2 & 3 directing them to pay a sum of ₹10,81,310.42 together with simple interest at the rate of 12% p.a. with effect from the date of application till realisation, jointly and severally. The O.A. as against the first defendant was dismissed.

9. The third defendant MSTC Ltd. is aggrieved with the judgment and hence, in the appeal. The grounds taken by the Appellant in challenging the impugned judgment are that the documents were presented through the third respondent SBI prior to the expiry of the Letter of Credit and the errors were rectified within time. Hence, the documents ought to have been forwarded to the second respondent within time by the first respondent Bank. Had the second respondent refused to accept the same on the basis of errors, only then could the first respondent have been justified in seeking a refund making the payment with the endorsement "under reserve" without even referring the matter to the second respondent at whose instance the Letter of Credit was issued, is entirely arbitrary, unilateral, unjustified and unreasonable. The rectified/amended documents were submitted by

the third respondent to the first respondent well within time and therefore, there was no embargo in proceeding to hand over the documents to the second respondent for claiming the imported goods. It is further stated that the error in mentioning the name of Kanojia Steels in place of the second respondent Aditya Mills Ltd. was only an inadvertent error. It is also stated that for all practical purposes, M/s Kanoria Steels and M/s Aditya Mills Ltd were one and the same business entity which is specifically admitted in the O.A. It is further submitted that the reasons for which the second respondent was exonerated from the liability should have been good enough for exonerating the Appellant as well from the claim put forth by the Applicant in the O.A. Hence, it is prayed that the O.A. may be allowed as against the Appellant be dismissed.

10. Heard the Ld. Counsel appearing for both sides. Records perused.

11. The only question that arises for consideration in this appeal is whether the first respondent was justified in claiming a refund of the amount which was paid by their Calcutta Branch to the third respondent with the endorsement "under reserve". It is an admitted case that despite being informed about the amendment to the Letter of Credit, the name of "M/s Kanojia Steels" was mentioned in place of "M/s Aditya Mills" in the documents. The second respondent could not have taken delivery of the goods with the wrong name in place. Hence, there was no point in forwarding documents to the second respondent. The first respondent could not, therefore, have

been found fault with for returning the documents to the SBI with a request for refund since the payment was made “under reserve” by the Calcutta Branch of the first respondent. I find support in the decision of the Hon’ble Supreme Court in the case of *United Commercial Bank* (supra) wherein it is held that where contracts for the supply of goods are entered through banks, the paying bank must strictly adhere to the terms of the Credit Letter and it is not concerned with the sales contract. In that case, the goods described in the documents tendered in the bank were not identical to those specified in the Credit Letter and it was held that the payee bank is duty-bound to refuse to the payment to the beneficiary. It is also held that in the said decision that a payment “under reserve” is understood in banking transactions to mean that the recipient of money may not deem it as his own but must be prepared to return it on demand. It was also held that the balance of convenience clearly lies in allowing normal banking transactions to go forward. There is no provision in the UCP for rectifying the documents and representing them. The Ld. Counsel appearing for the Appellant relied on the decision in *Govind Rubber Ltd vs. Louis Dreyfus Commodities Asia Pvt. Ltd. (2015) 13 SCC 477* to argue for the position that commercial documents between the parties must be interpreted in such a manner as to give efficacy to the contract rather than invalidate it. It is submitted that a common sense approach should be adopted rather than a narrow, pedantic and legalistic interpretation.

12. The decision relied upon the Ld. Counsel for the Appellant is not applicable to the facts of the present case. In the cited decision the question was with regard to the interpretation of a commercial

document with regard to the arbitration clause.

I find no reason to interfere with the finding of the D.R.T. in the impugned judgment. The Appeal is, therefore, dismissed as being devoid of any merits.

Sd/-

Chairperson

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DRAAT MUMBAI