Uc Gas Engineering Ltd. Vs. State Bank of Mysore and anr.

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Court : Delhi

Decided On : Dec-05-2002

Reported in : 2003(66)DRJ210

Judge : J.D. Kapoor, J.

Appeal No. : IA 5601/1998 in S. No. 1363/1998

Appellant : Uc Gas Engineering Ltd.

Respondent : State Bank of Mysore and anr.

Advocate for Def. : G.L. Rawal, Adv. for defendant no. 2

Advocate for Pet/Ap. : S.K. Maniktala, Adv

Disposition : Application dismissed

Judgement :

J.D. Kapoor, J.

1. It is needless to say that Bank guarantee cannot be invoked against the terms of Bank guarantee. I deem it needless to refer to the catena of decisions rendered by the Supreme Court down the lines and over the period that invocation of bank guarantee has to be strictly in terms of Bank guarantee. A party seeking injunction against the invocation of bank guarantee has to establish prima facie element of

fraud and irretrievable loss and injury of the kind which is liable to be compensated which would make it impossible for the guarantor to reimburse himself in case he succeeds finally.

2. Admittedly in the instant case neither the plea of fraud nor that of irretrievable injury has been taken in specific terms. The solitary objection raised by the plaintiff is that the letter of invocation is not as per terms and conditions of Bank guarantee and as such it was not invokable. The terms of the Bank guarantee resorted by the applicant/plaintiff is as under:-

'1. That in consideration of the above mentioned premises the Guarantor do hereby unconditionally and irrevocably guarantee to the Purchaser the payment of an amount no exceeding Rs. 10,00,000/- (Rupees Ten lacs only) purely against the first written demand from the Purchaser, stating that the sum mentioned therein not exceeding Rs. 10,00,000/- (Rupees Ten Lacs only) is due failure to fulfill supplier's obligations in regard to performance of the said equipment as stipulated in the Purchase Contract and the supplier has not been able to rectify the same as per terms and conditions of the purchase contract.

2. That such statement of demand specifying nature of failure on the part of supplier and inability to rectify any default informed, within one month or within reasonable time mutually agreed, whichever is longer, shall be construed and deemed s final and unquestionably binding on the Guarantor both in regard to the amount demanded as also in regard to the failure of the supplier as aforesaid. The Guarantor also agrees that such demand may be made directly or routed through the bankers of Shivan Rosins Pvt. Ltd., the Purchaser herein.'

3. Another important term of the Bank guarantee was that as per the terms and conditions of the Purchase Contract dated 7.3.1996, the Warranty period of the Equipment has been fixed at a period of 12 months starting from 23rd June, 1997 and the supplier i.e. the plaintiff had agreed to furnish an unconditional Bank Guarantee for Rs. 10 lacs to secure the obligation of the supplier in regard to performance of the said equipment.

4. The letter of invocation is as under:-

'We are enclosing herewith the original Bank Guarantee No. 40/97-97 for Rs. ten lac due on 22.6.1998. As M/s UC Gas Engineering Ltd. (supplier) has not fulfilled the obligation as per the terms and conditions contained in the contract dtd. 7.3.1996. We hereby call upon the Bank to invoke the said Bank guarantee and pay us a sum of Rs. ten lacs at the earliest and oblige.'

5. On the contrary, learned counsel for defendant No. 2 has relied upon another letter dated 16.5.1998 which according to him is in strict terms of Bank guarantee. The relevant extracts of the letter are as under:-

'You have given unconditional & irrevokable Bank Guarantee for Rs. Ten Lakh dated 18.8.97 on behalf of U.C. Gas Engg. Ltd. of Ambadeep Bldg., K.G. Marg, New Delhi.

We hereby inform you that M/s. U.C. Gas Engg. Ltd has failed to fulfill its obligation in regard to the performance of the equipments as stipulated in the purchase contract read with Annexure B.

M/s. U.C. Gas Engg. Ltd. has also failed and unable to rectify the default informed from time to time. Copies of few letter of U.C. Gas admitting the defaults are attached for ready reference.'

6. The main premise of the contention of the learned counsel for the applicant/plaintiff is that the letter dated 16.5.1998 was neither sent through Bank nor was the plaintiff intimated thereabout nor has any reference been made in subsequent letter dated 20.6.1998. Be that as it may, the defendant No. 2 had made it clear to the Bank that applicant/plaintiff has not fulfilled its obligation as per its terms and conditions and also specifically mentioned that applicant/plaintiff has failed to fulfill its obligation with regard to the performance of the equipments and has also failed to rectify the defects informed from time to time. So much so there has been joint meeting between the parties in this regard. The testimony to this meeting is apparent from the minutes of the meeting dated 28.5.1998 which is duly signed by the applicant/plaintiff. The relevant extracts are as under:-

'Following points were discussed and agreed:

1. All action to be started for rectifying the problems of DIP for trouble free continuous operation.

2. Immediately establish norms of combustion in consultation with Mr. Tarun Bansal.

3. All our outstanding payments (excluding interest) of Rs. 1,56,000/- is to be made as final payment by Mr. Tarun Bansal.

4. Bank Guarantee given by UC Gas to Shivan will be returned before due date.'

7. Admittedly there are no specific allegations of fraud brought out in the plaint. Mere bald allegations of fraud are not sufficient to scuttle the effect of Bank guarantee. The only dispute is with regard to the non-performance of the obligation by defendant No. 2. It is not for the bank to ascertain the nature of disputes between the contracting parties. The obligation upon the Bank is to encash Bank guarantee the moment it receives communication from the person in whose favor Bank guarantee has been executed that the other party has failed to fulfill terms and conditions of the agreement. In the instant case it was unconditional Bank guarantee. It is not the case that defendant No. 2 has played fraud in obtaining the Bank guarantee neither is that no deliberations or meetings took place between the parties for pointing out defects in the equipment and the steps taken by the plaintiff to remove it. At earliest given point of time the breaches were specifically mentioned in terms of Bank guarantee.

8. Conspectus of aforesaid facts shows that plaintiff has not established a prima facie case for injunction against the invocation of Bank guarantee. As a consequence, application is dismissed. Ex-parte injunction is vacated.

S.No. 1363/1998

List on 4th March, 2003.