Mr Ahsan Aziz
Chair, ICC Pakistan Banking Commission
ICC Pakistan
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Pakistan

27 January 2017

Document 470/TA.866

Dear Mr. Aziz,

Thank you for your query regarding URC 522. Please find below the opinion of the ICC Banking Commission Technical Advisers.

QUOTE

In July 2016, a remitting bank forwarded documents on behalf of its client to a collecting bank, under cover of a collection instruction that was subject to URC 522.

The collection instructions accompanying the documents clearly mentioned that the documents were to be delivered against payment. The presentation included bills of exchange, and a full set of shipping documents including bills of lading (full set 3/3 originals) consigned to the order of the remitting bank, and then further endorsed by it to the order of the collecting bank. The commodity shipped was Basmati Rice.

Upon the remitting bank's enquiry, as to the status of the collection, the collecting bank replied that the documents were delivered to the buyer without payment, which will be settled later between the buyer and the seller. This reply astonished the remitting bank because the collection instruction (delivery against payment) was not followed. The collecting bank defended its actions by replying that 1) it is a local bank with no expertise in handling international trade; 2) the documents were sent to them without prior approval; and 3) that its customer (the drawee) is in agreement with the drawer (the remitting bank's client) and payment will be made in due course.

The remitting bank requested the collecting bank to send a copy of this agreement in order to take up the issue with its client, but without any success.

On the one hand, the collecting bank is expressing its naivety in dealing in international trade and on the other hand, is quoting URC 522 sub-articles 11 (a), (b) and (c) "Disclaimer for acts of an instructed party" in order to discharge itself from the liabilities of a collecting bank, and which is totally irrelevant.

The collection instruction was in English, which is easily understood in the country of the collecting bank. Further to this, the collecting bank enabled its customer to obtain release of the goods by further endorsing the bills of lading to their order.

According to URC 522 sub-article 1 (b), a bank that receives, from a remitting bank, a collection instruction subject to URC 522 has no obligation to handle it. However, in accordance with URC 522 sub-article 1 (c), if a bank decides to refuse to handle a collection it must inform the bank from which it received the collection; no such refusal was sent by the collecting bank. It is not at liberty to ignore the collection instructions and handover/dispose of the documents directly to the drawee.

Thus, in accordance with URC 522 sub-article 4 (a) (i), the collecting bank must act in accordance with the collection instruction it received, which only allowed release of documents against payment. Release of the original documents without payment evidences a failure in its responsibility.

As stated in URC 522 sub-article 5 (d), a remitting bank will either utilize the services of a bank nominated by the principal as the collecting bank or, if no nomination is provided, will utilize the services of a bank of its choice. For this transaction, the collecting bank is nominated by the principal.

URC 522 sub-article 10 (a) states that the goods should not be consigned to or to the order of a bank without prior agreement on the part of that bank.

Nevertheless, in the event that goods are consigned to or to the order of a bank, without any prior approval due to non-correspondent relationship, the collecting bank will charge a fee and endorse the bills of lading as per the remitting bank's instructions. In the given circumstance, the collecting bank should not have endorsed and handed over the documents if they are not well versed with the handling of documentary collections and should have sought the permission of the remitting bank before doing so

There are no funds of the remitting bank involved in this transaction, as its role is as a financial intermediary between the drawer and the drawee; but the Central Bank Regulations on Foreign Exchange in the country where the remitting bank resides make them liable to arrange export proceeds within 120 days from the date of shipment.

The remitting bank is of the firm opinion that the collecting bank is liable to pay because (a) the documents were delivered without payment, (b) the goods have been released, and (c) the collecting bank is unable to return the original documents.

Given the circumstances outlined, we would appreciate the opinion of the ICC Banking Commission in respect of the following:

1. Due to the breach of the remitting bank's instructions, is the collecting bank liable under the documentary collection?

2. Has the remitting bank the right to insist upon payment being effected at the collecting bank's own expense?

UNQUOTE

ANALYSIS

The collection instruction was made subject to URC 522 and, as a consequence, the rules were applicable to the collecting bank, even if it considered itself to be a local bank with little or no international trade experience.

As outlined in URC 522 article 4, the handling of a documentary collection, by a collecting bank, is to be based upon the content of a collection instruction. The instruction to the collecting bank was to deliver the documents against payment (as covered in URC 522 article 2).

From URC 522 article 1, it can be seen that the process flow for handling a collection instruction is not that the remitting bank must seek prior approval from the collecting bank before forwarding it, but rather that the collecting bank has the right to refuse to act on the collection instruction when received, as mentioned in URC 522 sub-article 1 (b).

If a collecting bank chooses not to act on a collection instruction, it must inform the remitting bank accordingly, without delay, as required by URC 522 sub-article 1 (c). For this transaction, the collecting bank gave no such advice and handled the collection in a manner that was not consistent with the instructions that it had received, or in accordance with URC 522.

By releasing documents to the drawee, without receiving payment, the collecting bank acted outside the authority and instructions given by the remitting bank. This is further underlined by the fact that the collecting bank endorsed the bill of lading thereby allowing the drawee to secure the release of the goods.

The query suggests that the remitting bank is allowed to dispatch or consign the goods to (or to order of) the collecting bank without prior agreement because the collecting bank will charge a fee for endorsing the bill of lading. This is not in line with URC 522 sub-article 10 (a), which indicates that the goods should not be dispatched directly to the address of a bank or consigned to or to the order of a bank without prior agreement on the part of that bank. Further, if the goods are dispatched or consigned to a bank without prior agreement, such bank has no obligation to take delivery of the goods, which remain at the risk and responsibility of the party dispatching the goods.

The fact that the drawee and drawer appear to have made a settlement agreement outside the documentary collection does not influence or alter the obligation of the collecting bank to comply with the collection instruction and the content of URC 522.

The reference to URC 522 sub-articles 11 (a), (b) and (c) is not relevant to this transaction, as the collecting bank acted contrary to the collection instructions it received from the remitting bank.

CONCLUSION

1. The collecting bank acted contrary to the content of the collection instruction and the applicable provisions of URC 522 and, as such, is liable to effect payment for the value of the collection.
2. Yes, the remitting bank has the right to insist upon payment being at the collecting bank's own expense.

   However, as URC 522 does not impose any undertaking on a collecting or presenting bank, enforcement of the payment obligation lies outside URC 522.

The opinion(s) rendered on this query reflect the opinion of the ICC Banking Commission's Technical Advisers based on the facts under "QUOTE" above. They do not necessarily reflect the opinion of the ICC Banking Commission until the Banking Commission renders its approval or disapproval of these opinion(s) at the next scheduled meeting.

The reply given is not to be construed as being other than solely for the benefit of guidance and there should be no legal imputation associated with the reply offered.

If this query relates to a matter currently under consideration by the courts, the ICC Banking Commission will refrain from considering it for adoption as an opinion.

Neither the ICC nor any of its employees, nor any member of the Banking Commission, including the Chairman, Vice-Chairmen or Technical Advisers shall be liable to any person for any loss or damage arising out of any act or omission in connection with the rendered opinion(s).

Yours sincerely,

David Bischof,
Senior Policy Manager, Banking Commission

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Dear Ms. Ooghe,

Thank you for your query regarding UCP 600. Please find below the opinion of the ICC Banking Commission Technical Advisers.

QUOTE

The expiry place of a documentary credit, subject to UCP 600, was restricted to the counters of the confirming bank.

A requirement of the credit was:

+FACTORY ACCEPTANCE TEST CERTIFICATE COUNTERSIGNED BY MR. XXX (NAME) ON BEHALF OF "ABC" AND/OR MR. YYY (NAME) ON BEHALF OF NAME OF "XYZ FOR HI-TECH AND TRADING."
+THE SIGNATURE OF (NAME) AND/OR (NAME) MUST BE IN THE FOLLOWING MANNER:
(NAME OF THE APPLICANTS REPRESENTATIVE) ON BEHALF OF (NAME OF THE COMPANY) SUCH SIGNATURES MUST BE VERIFIED BY THE NOMINATED BANK PRIOR TO PRESENTATION OF DOCUMENTS.

The beneficiary presented its documents to the second advising bank, containing among others, "Factory Acceptance Test Certificate" countersigned as follows:

MR. XXX (NAME) ON BEHALF OF "ABC" AND MR. YYY (NAME) ON BEHALF OF NAME OF "XYZ" (NOTE: without mentioning "FOR HI-TECH AND TRADING").

The second advising bank presented the documents to the confirming bank, which refused to honour, stating the following discrepancy in its SWIFT MT734 (Advice of Refusal):

"Factory Test certificate signed by MR. YYY (NAME) ON BEHALF OF NAME OF XYZ instead of XYZ FOR HI-TECH AND TRADING."

The second advising bank responded to the confirming bank as follows: