Finance for Development

Banking Commission

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

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

QUOTE
Issuing Bank: XYZ Bank, Country S

Advising Bank: DEF Bank, Country E

Second Advising Bank: GHI Bank, Country U

Nominated Bank: FNB Bank, Country P

<u>Case Particulars:</u>

LC amount: USD 582,125.00

Tenor: 60 days from bill of lading date

Maturity date: 16-Oct-2017

Bill amount: USD 582,125.00

<u>Summary:</u>

The nominated bank received the advice of the letter of credit via a SWIFT MT710 message that had been routed to them through the advising bank and second advising bank, for onward advising to the beneficiary.

The nominated bank advised the credit to the beneficiary on 06-Jul-2017 without any undertaking to negotiate.

On 17-Jul-2017, the beneficiary presented documents to the nominated bank in the amount of USD 582,125 for negotiation and onward dispatch to the issuing bank.

Without any commitment to negotiate, the documents were dispatched to the issuing bank by courier service on 18-Aug-2017, to their given postal address in Country S.

On 21-Aug-2017, the courier service informed the nominated bank that the package had not been delivered due to the reason of the bank's address and asked for the correct address to deliver the package.

On 22-Aug-2017, the nominated bank's financial institutions department contacted the issuing bank by email to confirm the correct postal address in order to deliver the documents without any further delay.

In response, the issuing bank replied that it had moved its Regional Operation from Country S to Country M and provided its address in Country M.

On 25-Aug-2017, the documents were delivered to the issuing bank's address for onward presentation to the applicant.

On 30-Aug-2017, the nominated bank received an advice of the issuing bank's acceptance, via a SWIFT MT998 message through the advising bank, for USD 582,125.00 with the maturity date stated as 16-Oct-2017. This message was conveyed without any responsibility on the part of the advising bank.

After the lapse of the maturity date, i.e., 16-Oct-2017, the nominated bank sent several follow-up SWIFT messages to the issuing bank claiming the bill amount under their irrevocable acceptance to pay at maturity.

The advising bank relayed two SWIFT MT998 messages of the issuing bank dated 09-Nov-2017 and 05-Dec-2017 indicating that the applicant and beneficiary had agreed to settle the bill directly between themselves outside the LC and asked the nominated bank to wait for their further instructions and confirmation of payment from applicant to beneficiary.

The nominated bank seriously contested the content of these SWIFT MT998 messages in various SWIFT messages dated 10-Nov-2017, 23-Nov-2017, 24-Nov-2017, 13-Dec-2017, 15-Dec-2017 and 21-Dec-2017, indicating that the issuing bank is irrevocably bound to honour the complying presentation at the time of maturity and the said bill cannot be settled outside the LC as per applicable rules of UCP 600, and demanded immediate settlement of their overdue bill under international rules and regulations. The handling of documents and payment must be handled in line with the instructions stipulated in the nominated bank's covering schedule attached with the documents.

On 21-Dec-2017, the advising bank sent a SWIFT MT998 message relaying a message of the issuing bank that they had acted according to the request and consent of both the beneficiary and applicant to settle the bill directly outside the LC with a release letter being presented to them. However, the issuing bank had noted the nominated bank's objection for settlement outside the LC and confirmed that they will launch an investigation and revert back with the results and confirm their commitment to honour under their LC.

On 20-Feb-2018, the advising bank relayed another SWIFT MT998 message of the issuing bank indicating that they had concluded their investigation and found the following facts:

- Applicant had committed fraud and the issuing bank's legal team had registered the case with Country D Court (country of the applicant).
- Applicant had full intention of cheating the issuing bank and did so by taking the beneficiary into consideration.
- The issuing bank will settle the bill amount though applicant has defaulted and defrauded them.
- The issuing bank's detailed settlement plan will be communicated to a member of the nominated bank's legal team.

After a lengthy process of follow-ups, the issuing bank responded by SWIFT MT998 messages, relayed through the advising bank on 04-Jun-2018 and 19-Jul-2018, that the COO of the issuing bank is working on a settlement plan and currently coordinating with their legal team.

Upon regular follow-ups by the nominated bank, for the settlement plan as communicated by the issuing bank, the advising bank relayed another SWIFT MT998 message of the issuing bank on 04-Jun-2018 and conveyed the case number 1234/2017 with the Country D Court and requested the nominated bank to contact their concerned officer handing this matter directly by email (address provided) to ensure efficient communication and without going through the advising bank.

On 19-Jul-2018, the advising bank relayed another SWIFT MT998 message of the issuing bank, indicating that the issuing bank's COO is working on the settlement plan and asked the nominated bank to directly coordinate with the issuing bank's legal representative to obtain the full details of their legal case against the applicant in Country D.

On 18-Sep-2018, the issuing bank relayed its SWIFT MT998 message to the nominated bank, through the advising bank, indicating that their legal counsel is coordinating with the Country D Court to recover the bill amount, and as soon as the arrangement is complete the issuing bank's legal counsel will communicate with a member of the nominated bank's team without any delay.

In response to the above SWIFT message, the nominated bank clearly declared to the issuing bank by SWIFT MT999 messages sent through the advising bank on 09-Oct-2018, 30-Oct-2018 and 30-Nov-2018 that as per UCP 600 an issuing bank's irrevocable undertaking is enforceable against an issuing bank even if an applicant is unable or unwilling to reimburse it and the legal case is their internal matter. Hence, they are under a legal obligation to reimburse the nominated bank under the irrevocable letter of credit, without further delay. Since 30-Nov-2018, no response has been received from the issuing bank.

Further, we are not aware of any legal proceeding initiated in this matter by any party nor has the nominated bank received any court / legal notice or lawyer letter / intimation, etc.

In light of the above explanation and case history, we request your kind consideration and attention on the merits of this case against the issuing bank for the immediate settlement of the claim of the bill amount, duly accepted by the issuing bank, to pay at maturity. Please let us have your official opinion confirming that the issuing bank is liable to pay the bill amount and also the interest due to delay in payment.

Please also let us know the responsibility of the advising bank and second advising bank in this case.

UNQUOTE

ANALYSIS

On 30 August 2017, the nominated bank received, via a SWIFT MT998 message routed through the advising bank, an advice indicating that the issuing bank accepted the presentation for USD 582,125.00, and citing the payment maturity date as 16 October 2017.

At a much later date, the issuing bank apparently learned that the transaction was fraudulent and stated that, in view of the circumstances. it would offer a scheduled settlement. However, in accordance with UCP 600 sub-article 7 (a), provided stipulated documents are presented to the issuing bank and that they constitute a complying presentation, the issuing bank must honour on the presentation maturity date, i.e., 16 October 2017.

Rescheduling of the payment maturity date is tantamount to an amendment and, in accordance with UCP 600 sub-article 10 (a), requires the agreement of the beneficiary. There is no evidence that the issuing bank received the beneficiary's consent to extend the payment terms and, as such, the issuing bank should have honoured and paid the beneficiary on 16 October 2017.

The advising banks, in advising the credit, acted in accordance with UCP 600 article 9 and have no further responsibilities.

CONCLUSION

The issuing bank should have honoured the payment in full on 16 October 2017. Any claim for interest is outside the scope of UCP 600.

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,

Andrew Wilson
Permanent Observer to the United Nations
Interim Director, Financefor Development
International Chamber of Commerce