

NATIONAL COMPANY LAW APPELLATE TRIBUNAL

Compensation Application No.150 of 1999

In the matter of:

Wasan Exports Pvt. Ltd.

...Applicant

Vs.

Canara Bank & Ors.

...Respondents

Appearance:

Mr. Kotla Harshavardhan, Advocate for the Applicant.

Ms. Khushboo Aggarwal, Advocate for Respondent No.1.

Mr. Mahesh Kasana, Advocate for Respondent No.2.

22.05.2019

Today the case is listed for orders on the application filed by the Applicant for summoning the concerned person to produce documents, which according to the Applicant are necessary for adjudication of the present dispute.

Heard learned Counsel for the parties and perused the record.

The Applicant has filed the present application for summoning the person concerned to produce the following documents from Respondent No.1 and National Archives of India, which are as follows:-

From Respondent No.1	<ol style="list-style-type: none">1. All records in possession of Respondent No.1 pertaining to and in relation to Letter of Credit No.1588/ESCLC/167/ 96 dated 15.05.1996, opened by Respondent No.3 herein in favour of the Applicant herein.2. All records in possession of Respondent No.1 pertaining to and in relation to Letter of Credit No.1588/ESCLC/189/ 96 dated
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	<p>12.06.1996, opened by Respondent No. 3 herein in favour of the Applicant herein.</p> <p>3. All records in possession of Respondent No.1 pertaining to and in relation to Letter of Credit No.1588/ESCLC/198/ 96 dated 20.06.1996, opened by Respondent No. 3 herein in favour of the Applicant herein.</p> <p>4. All records in possession of Respondent No.1 pertaining to and in relation to Letter of Credit No.1588/ESCLC/199/ 96 dated 19.08.1996, opened by Respondent No. 3 herein in favour of the Applicant herein.</p> <p>5. All records in possession of Respondent No.1 pertaining to and in relation to Letter of Credit No.1588/ESCLC/215/ 96 dated 27.09.1996, opened by Respondent No. 3 herein in favour of the Applicant herein.</p>
From National Archives of India	<p>1. All records of the erstwhile Monopolies and Restrictive Trade Practices Commission, pertaining to and in relation to UTPE 197 of 1997 and Compensation Application No.150 of 1999.</p>

In response to the above application, Respondent No.1 filed reply stating that the Applicant has sought direction of this Tribunal to produce all the records in possession of them, but only Letter of Credit No.1588/ESCLC/199/ 96 dated 19.08.1996 pertains to the subject matter of the present Compensation Application. It is stated that original Letter of Credit, once they are opened by a Bank, vest with the beneficiary of the said Letter of Credit. Therefore, the original Letter of Credit shall either be with the Applicant or with the Bank of the Applicant and it is not with the Respondent No.1. It is stated that as per Banking Companies (Period of Preservation of Records) Rules, 1985 (hereinafter referred to as 'Banking Rules'), Banks may preserve specific records for a period of not less than five years and certain records for a period of not less than eight years. In line of the above Banking Rules, the Respondent No.1 has also formulated its code of practice. Further, neither the Banking Rules nor manual of instructions of Respondent No.1 mandate to preserve any record pertaining to Letter of Credit for any specific period. Therefore, the records pertaining to Letter of Credit No.1588/ESCLC/167/96, Letter of Credit No.1588/ESCLC/189/96 Letter of Credit No.1588/ESCLC/198/96 and Letter of Credit No.1588/ESCLC/215 is not available with the Respondent No.1 and has already been destroyed. It is stated that the Compensation Application was disposed of by the Competition Appellate Tribunal on the ground of non-maintainability vide its order dated 15.04.2011. The Applicant preferred a Civil Appeal No.8934-35 of 2013 before the Hon'ble Supreme Court, which was finally allowed on 10.01.2018. Hence, Respondent No.1 was not obliged to maintain the record of Letters of Credit including Letter of Credit No.1588/ESCLC/199/96 dated 19.08.1996. It is further stated that on receipt of the present application, the Respondent No.1 upon a thorough search was able to locate only one file consisting of photocopies of a few documents pertaining to Letter of Credit No.1588/ESCLC/199/96 dated 19.08.1996, along with the files pertaining to the court record.

Respondent No.1 also raised an objection stating that the present application is not maintainable as the same is not supported by the Affidavit of a person competent to file the present application on behalf of the Applicant Company. Mr. Jatinder Wasan claiming himself to be authorized person has preferred the instant application, however, no board resolution in his favour has been filed with the instant application.

Hence, Respondent No.1 prayed for dismissal the present application.

Learned Counsel for Respondent No.2. Mr. Mahesh Kasana appeared and submitted that Respondent No.2 does not want to file any written objections to the application and he will make only oral submission. The Counsel opposed the said application of the Applicant and submitted that the application is not in accordance with law and is not maintainable as it is filed at a very belated stage.

The objection raised by Respondent No.1 that the application is not maintainable on the ground that the same is not supported by the affidavit of a person competent to file the present application on behalf of the Applicant Company and no board resolution is filed in favour of Mr. Jatinder Wasan, from the record I find that authorisation of Mr. Jatinder Wasan is filed along with Vakalatnama. So, this objection is not maintainable.

As per Respondent No.1 the records pertaining to Letter of Credit No.1588/ESCLC/167/96, Letter of Credit No.1588/ ESCLC/ 189/96 Letter of Credit No.1588/ESCLC/ 198/96 and Letter of Credit No.1588/ESCLC/215 are not available with them as the same have already been destroyed. Respondent No.1 has stated that upon a thorough search they were able to locate only one file consisting of photocopies of a few documents pertaining to Letter of Credit No.1588/ESCLC/199/96 dated 19.08.1996, along with the files pertaining to the court record.

In view of the above, Respondent No1. is directed to produce the documents mentioned in the list of documents annexed with the

application, which are available with them through concerned person within one month.

So far summoning of records from the National Archives of India is concerned, it is noted that National Archives has already forwarded one set of Compensation Application No.150 of 1999 to this Appellate Tribunal. As regards records in respect of UTPE 179 of 1997 is concerned, the Office is directed to summon the records from the National Archives, if any, available with them.

The application is accordingly disposed of.

Learned Counsel Mr. Kotla Harshavardhan appearing on behalf of the Applicant submits that they will not produce any other witness and the matter may be listed for Respondents' evidence.

In view of the above statement, Respondents are directed to file their evidence by way of affidavit along with list of witnesses before the next date with copies to the parties.

List on 11th July, 2019 for Respondents' evidence.

(Peeush Pandey)
Registrar