

Case 864: CISG 9; 25; 30; 49 (1); 53; 60; 66; 67; 74; 78; 79

People's Republic of China: China International Economic and Trade Arbitration Commission [CIETAC]
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The seller, a Korean company, entered into a contract with the buyer, a Chinese company, for the purchase of art paper. After issuing the letter of credit (L/C), the vessel carrying the goods sank and all goods were destroyed. Later, the seller's bank received a notice of rejection of payment stating that the documents provided by the seller were not in conformity with the L/C.

Pursuant to article 67 CISG, the Arbitration Tribunal concluded that the seller had fulfilled its obligation to deliver the goods, and that the risk of loss had passed to the buyer when the goods passed over the ship's rail. The Arbitration Tribunal noted that the L/C issued by the issuing bank was only a payment arrangement provided by the buyer. Even though the L/C expired and ceased to be effective before the seller was paid, the buyer was not discharged from its obligation to pay the price.

The Arbitration Tribunal deemed that according to articles 30 and 53 CISG, in the relationship between the buyer and the issuing bank, the buyer must pay the price of the goods before it can receive the documents. Therefore, the buyer cannot refuse to make the payment alleging that it did not receive the seller's bill of lading.

The Tribunal further noted that there was no evidence showing that the damage was due to the seller's omission. Therefore, pursuant to article 66 CISG, the buyer had the obligation to pay the price after the risk of loss or damage to the goods had passed to it.

The Arbitration Tribunal also ruled that, according to article 49 (1) (a) CISG, the discrepancies found in the documents did not constitute a fundamental breach of contract. Therefore, it held that the buyer could not terminate the contract or discharge itself from the obligations under the contract.

The Tribunal, however, did not accept the seller's claim for the payment of penalty interests it had to pay to the bank, since the penalty resulted from the documents' discrepancies caused by the seller's own omission.