

* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

% **Date of decision: 17th January, 2022.**

+ **CS(COMM) 29/2022**

SATISH KANSAL

..... Plaintiff

Through: Mr. Abhishek Aggarwal, Advocate.

Versus

SYNERGY TRADECO NV & ANR.

..... Defendants

Through: Mr. Ajay Monga with Mr. Ateev Mathur and Mr. Amol Sharma
Advocates for HDFC Bank/R-2.

CORAM:

**HON'BLE MR. JUSTICE AMIT BANSAL
[VIA VIDEO CONFERENCING]**

JUDGMENT

AMIT BANSAL, J. (Oral)

IA No.719/2022(for exemption)

1. Allowed, subject to all just exceptions.
2. The application is disposed of.

IA No.720/2022(u/S. 12A of the Commercial Courts Act, 2015)

3. For the reasons stated in the application, the same is allowed.

IA No.718/2022(u/O.XXXIX R.1&2 CPC)

4. By way of the present application under Order XXXIX Rule 1 & 2 of the Code of Civil Procedure, 1908 (CPC), the plaintiff seeks restraint order against payments to the defendant no.1 of amounts covered under the Letter

of Credit (LC) No.027LC01212850007 dated 12th October, 2021 and LC No.027LC01212600008 dated 24th September, 2021, which are due for payments on 17th January, 2022 and 28th January, 2022 respectively.

5. Notice in the said application was issued on 14th January, 2022 and parties were asked to file short submissions. Short submissions have been filed on behalf of the defendant no.2/HDFC Bank.

6. None appears on behalf of the defendant no.1.

7. The case of the plaintiff is that sale orders for certain goods/materials were placed by the plaintiff on 13th September, 2021 and 5th October, 2021 with the defendant no. 1 and Letters of Credit (LCs) drawn on the defendant no.2/HDFC bank were opened on 24th September, 2021 and 12th October, 2021 in the sum of US\$ 1,50,877.05 and US\$ 49,589.39. On 2nd December, 2021 and 18th December, 2021, when the goods/materials, which was a subject matter of LCs, were received by the plaintiff, they were found to be defective. Reliance is placed on the e-mails dated 23rd December, 2021 and 16th January, 2022, to contend that the defendant no.1 has acknowledged that the goods supplied by the defendant no.1 to plaintiff were defective.

8. Counsel for the plaintiff relies upon Clauses 43P and 45A of the LC dated 24th September, 2021 to contend that the description of goods/materials supplied by the defendant no.1 did not match the description mentioned in the LCs as also the partial shipment was not allowed in terms of the LCs. Therefore, it is submitted that fraud has been played upon the plaintiff by the defendant no. 1. It is further contended that irretrievable injustice would be caused if the aforesaid amounts under the LCs are remitted to the defendant no.1.

9. Counsel appearing on behalf of the defendant no.2/HDFC bank submits that the case pleaded by the plaintiff is not that of egregious fraud and irretrievable injustice. The case of the plaintiff is that out of the four containers supplied by the defendant no.1 to the plaintiff, only two containers have defective goods. Therefore, at best, the case made out by the plaintiff is with regard to breach of contract and it is not the case of fraud.

10. It is further submitted that SBI, Antwerp has already added its confirmation to the LCs and therefore, SBI, Antwerp has become liable to pay the defendant no.1 and consequently, draw upon the account of the defendant no.2 for the amounts under the LC No. 027LC01212850007. The acceptance of the documents was conveyed by the defendant no. 2/HDFC bank to SBI, Antwerp on 27th November, 2021 stating that the documents are in accordance with the LC. In respect of second LC No. 027LC01212600008, it is stated that the documents have been accepted by the defendant no.2/HDFC bank and in view thereof, the defendant no.2/HDFC bank would be liable to pay the advising bank, namely, Belfius Bank.

11. Reliance is placed on the judgments of the Supreme Court in ***United Commercial Bank Vs. Bank of India & Ors.***, (1981) 2 SCC 766 and ***Millennium Wires P Ltd Vs. State Trading Corp. of India Ltd.***, (2015) 14 SCC 375.

12. Reliance is also placed on Articles 5, 16(a), (c) and (f) of the Uniform Customs And Practices For Documentary Credits (UCP 600), which are rules agreed upon by the International Chamber of Commerce that apply to financial institutions for issuing LCs, to contend that honouring of LCs in

terms of the conditions contained in the LCs is essentially for the continuation of international trade and commerce. It is further contended that the plaintiff has approached the Court at the last minute and has not even paid the requisite Court Fees.

13. I have heard the counsels for the parties. The law with regard to judicial interference in payments under LCs has been summarised by the Supreme Court in ***United Commercial Bank Vs. Bank of India*** (supra). Reference may be made to paragraph 43 of the said judgment, which is set out below:

*“43. A letter of credit sometimes resembles and is analogous to a contract of guarantee. In ***Eliau v. Matsas*** Lord Denning, M. R., while refusing to grant an injunction stated:*

*... a bank guarantee is very much like a letter of credit. The courts will do their utmost to enforce it according to its terms. They will not, in the ordinary course of things, interfere by way of injunction to prevent its due implementation. Thus they refused in ***Malas v. British Imex Industries Ltd.*** But that is not an absolute rule. Circumstances may arise such as to warrant interference by injunction.*

*A bank which gives a performance guarantee must honour that guarantee according to its terms. In ***R.D. Harbottle (Mercantile) Ltd. v. National Westminster Bank Ltd.***, Kerr J. considered the position in principle. We would like to adopt a passage from his judgment at page 761:*

It is only in exceptional cases that the courts will interfere with the machinery of irrevocable obligations assumed by banks. They are the life-blood of international commerce. Such obligations are regarded as collateral to the underlying rights and obligations between the merchants at either end of the banking chain. Except possibly in clear cases of fraud of which the banks have notice, the courts will leave the merchants to settle their disputes under the contracts by litigation or arbitration as available to them or stipulated in the contracts. The courts are not concerned with their difficulties to enforce such claims ;

these are risks which the merchants take. In this case the plaintiffs took the risk of the unconditional wording of the guarantees. The machinery and commitments of banks are on a different level. They must be allowed to be honoured, free from interference by the courts. Otherwise, trust in international commerce could be irreparably damaged.

The observations of Kerr, J. have been cited with approval by Lord Denning, M. R. in Edward Owen Engineering Ltd. v. Barclays Bank International Ltd.”

14. The judgment in **Harbottle** (supra) was also referred to and followed by the Supreme Court in **Millenium Wires** (supra). In this regard, reference may be made to paragraphs 9, 10 and 12 of the said judgment, which are as under:

“9. Nothing in the plaint except the above two extracts has even come close to being an allegation against the negotiating bank. In the above two extracts, there is expression of mere apprehension of the plaintiffs that the negotiating bank was in active collusion with the Synergic Companies. No explanation or justification has been made in the plaint as to how this active collusion came about or what makes the plaintiff suspect so. It is true that in the plaint not all the evidence with respect to the allegations is to be adduced, however, a comprehensive narration of facts that constitute the cause of action has to be given in the plaint. It is plain and clear that no cause of action, whatsoever, may be deduced against the negotiating bank from the above two extracts which form part of the plaint.

10. Furthermore, both the learned Single Judge and the Division Bench have discussed the law relating to letter of credit and UPC-600 in great detail. In view of that, the following observations of the Court in R.D. Harbottle (Mercantile)Ltd. v. National Westminster Bank Ltd., should suffice: (QB pp. 155 H-156 B)

Banks must be allowed to honour their guarantees without interference except in clear cases of notice of fraud to the bank. The merchants take risk which are not to be imposed on the banks. Such interference will deter trust in international commerce.

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12. It would suffice to say here that injunctions against the negotiating banks for making payments to the beneficiary must be given cautiously as constant judicial interference in the normal practices of market can have disastrous consequences as it affects the trustworthiness of the Indian banks and markets.

15. It is a settled position of law that contracts in respect of Bank Guarantees and LCs are independent of the main contract between the parties. Therefore, even if there is a breach of the main contract between the parties, that cannot be a ground for injuncting payments under the Bank Guarantees/LCs. Letter of Credit is an irrevocable obligation undertaken by the issuing bank, to honour the same if the documents in terms of the said LC are submitted by the beneficiary.

16. It is normal practice in international trade that LCs are issued by the buyers through their banks in favour of the seller through the seller's banks, more particularly when buyer and seller are located in different jurisdictions/countries. LCs are the bedrock on which international trade and commerce is based. The goods are supplied by the seller to the buyer on the strength of the LCs provided by the buyer in favour of the seller, which functions as an assurance that once the goods are shipped and the documents in respect thereof are presented by the seller, the payment would be assured. The courts should be loathe to interfere with the mechanism of LCs as it would have an impact on the efficacy and functioning of international trade.

17. Merely because there is a dispute between the buyer and the seller with regard to the contract of supply of goods, that cannot be ground for interfering with the LC. Therefore, the courts have recognized only two exceptions to the aforesaid principle where courts would pass an injunction

in respect of payments under an LC, in cases of ‘egregious fraud and irretrievable injustice’. It has repeatedly been held by the courts that ‘egregious fraud’ has to be a fraud of the kind which goes to the very root of the matter.

18. Applying the aforesaid principles, in my opinion, no case for interference with the LCs has been made out by the plaintiff. Admittedly, in the present case, the documents have been duly presented by the defendant no.1 to its bankers, who, in turn, have sought acceptance from the defendant no.2/HDFC bank and such acceptance has been conveyed to the bankers of the defendant no.1 by the defendant no.2/HDFC bank.

19. E-mails relied upon by the plaintiff refer to the fact that the defendant no.1 is looking into the issues raised by the plaintiff with regard to the goods/materials and have assured the plaintiff that they will get back on the said issue. There is no admission on part of the defendant no.1 that the goods/materials supplied were defective. Even as per the plaintiff, the goods were in conformity, in two out of the four containers. It may be relevant to note that in *Millenium Wires* (supra), the Supreme Court was seized of a case where the goods were not even shipped by the supplier to the buyer. Therefore, injunction cannot be granted in respect of payments under the LCs based on the said e-mails.

20. This Court is in agreement with the submission of the counsel for the defendant no.2/HDFC bank that at best, the plaintiff has made out a case for breach of contract and in the event the grievance of the plaintiff is not remedied by the defendant no.1, the plaintiff would have recourse of filing appropriate legal proceedings against the defendant no.1.

21. I am of the view that grave prejudice shall be caused to the reputation of the defendant no.2/HDFC bank if it is prevented from honouring its obligations as per the norms of the international banking system. Reference may also be made to Articles 5 and 34 of the UCP 600, which is set out below:

“UCP 600 - Article 5

Documents v. Goods, Services or Performance

Banks deal with documents and not with goods, services or performance to which the documents may relate.

UCP 600 - Article 34

Disclaimer on Effectiveness of Documents

A bank assumes no liability or responsibility for the form, sufficiency, accuracy, genuineness, falsification or legal effect of any document, or for the general or particular conditions stipulated in a document or superimposed thereon; nor does it assume any liability or responsibility for the description, quantity, weight, quality, condition, packing, delivery, value or existence of the goods, services or other performance represented by any document, or for the good faith or acts or omissions, solvency, performance or standing of the consignor, the carrier, the forwarder, the consignee or the insurer of the goods or any other person.”

A perusal of Articles 5 and 34 of the UCP 600 clearly provides that banks assume no accountability and responsibility for the defectiveness or falsification of the goods or documents.

22. In view of the above, I am of the considered view that no case is made out by the plaintiff for grant of interim injunction to restrain payment under the LCs.

23. Accordingly, the present application is dismissed.

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24. Let the plaint be registered as a suit.

25. Issue summons in the plaint. Counsel appears for the defendant no.2 and accepts summons.

26. Summons be issued to the defendant no.1 through all permissible modes. Summons shall indicate that the written statement be filed by the said defendant within thirty days of the receipt of the summons. Defendant no.2 shall also file written statement within thirty days from today. Along with the written statements, the defendants shall also file an affidavit of admission/denial of the documents of the plaintiff, without which the written statements shall not be taken on record.

27. Liberty is given to the plaintiff to file replication, if any, within fifteen days from the receipt of the written statements. Along with the replication filed by the plaintiff, an affidavit of admission/denial of the documents of the defendants, be filed by the plaintiff.

28. The parties shall file all original documents in support of their respective claims along with their respective pleadings. In case parties are placing reliance on a document, which is not in their power and possession, its detail and source shall be mentioned in the list of reliance, which shall be also filed with the pleadings.

29. If any of the parties wish to seek inspection of any documents, the same shall be sought and given within the timelines.

30. List before the Joint Registrar on 16th March, 2022 for completion of service and pleadings. Thereafter, the matter may be listed before the Court.

AMIT BANSAL, J

JANUARY 17, 2022

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