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IN THE HIGH COURT OF DELHI AT NEW DELHI

Date of Reserve: August 19, 2009
Date of Order: August 26, 2009

+OMP 631/2008

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M/s Era Infra Engineering Ltd.
Through: Mr. Manoj Kumar Singh, Advocate

26.08.2009
...Petitioner

Versus

M/s. Emerald Mineral Exim (P) Ltd. & Anr **...Respondents**
Through: Mr. Adhip Iyer with Ms. Mandira Mitra, Advocates

JUSTICE SHIV NARAYAN DHINGRA

1. Whether reporters of local papers may be allowed to see the judgment?
2. To be referred to the reporter or not?
3. Whether judgment should be reported in Digest?

JUDGMENT

1. By this petition under Section 9 of the Arbitration & Conciliation Act, 1996, the petitioner has sought relief that respondent no.1 should be restrained from encashing or taking any action in encashing the Letter of Credit (LC) bearing numbers:

- a. *No.0071 LC 127908 issued on 26th July 2008 for the amount of Rs.1,72,36,799/-.*
- b. *No.0071 LC 134508 issued on 28th August 2008 for the amount of Rs.2,18,85,962/-.*
- c. *No.0071 LC 138008 issued on 12th September 2008 for the amount of Rs.2,44,34,760/-.*

2. The petitioner has based this petition on an agreement dated 11th July 2008 entered between petitioner and respondent No.1. The respondent no.2

is the bank with whom the LC was opened. It is not in dispute that the bank was not a party to the agreement between petitioner and respondent No.1. LCs were opened by petitioner with respondent No.2 at the persuasion of respondent no.1 so that respondent No.1 could start procurement of goods in terms of the agreement. Respondent no.1 in order to secure the interest of petitioner offered to issue back-to-back cheques to the petitioner and issued the same with the result that petitioner opened with these LCs wherein the beneficiary was respondent no.1 and the bank was State Bank of India, SSI Branch, Bhuvanpur. These LCs were irrevocable in favour of beneficiary i.e. respondent no.1. The petitioner wants an injunction in respect of these LCs to be issued by the Court on the ground that the respondent no.1 had not complied with the terms and conditions of the basic agreement dated 11th July 2008.

3. The short question involved in this petition is whether respondent no.1 can be restrained from encashing the LCs opened in its favour by respondent no.2. An LC is an independent contract between the bank and the beneficiary. It is the admitted case of the petitioner that the letter of credit opened by respondent no.2 was irrevocable. The LC does not contain the arbitration clause under which the disputes under the LC can be referred to any arbitrator. Since the LC is an independent contract, even if it was opened at the instance of petitioner, the rights of respondent no.1 under the LC flow from LC. The LC opened by respondent no.2 provides for payment of guaranteed amount without any contest, demur or protest and without any reference to the petitioner. Under these circumstances, the provisions of Section 9 cannot be invoked by the petitioner to stifle the normal commercial transaction. It is petitioner's own case that the petitioner was given post-

dated cheques by respondent no.1 in lieu of opening of LC by petitioner. It is the petitioner 's own case that the material which was to be procured by respondent no.1 was received through shipment and in fact respondent no.1 on presentation of document as required under LC had received the payment.

4. The position regarding use of Section 9 in respect of LC was made clear by the Supreme Court in *Federal Bank Ltd. v. V.M. Jog Engineering Ltd.* AIR 2000 SC 3166 and it was further restated by this Court in *Impex Trading Gmbh v Annunay Fab. Ltd. & Ors* 2008(1) ARBLR 50 (Delhi). It is now settled law that in case of any irrevocable bank guarantee or Letter of Credit, the buyer cannot be granted an injunction against the bank on the ground that there was a breach of contract by the seller. The bank, who issued the bank guarantee or with whom the letter of credit is opened, has no authority to dishonour the bank guarantee or the letter of credit if the party complies with the terms and conditions of the bank guarantee or letter of credit. Where the bank is satisfied about the documents presented to it and finds them in conformity with the documents mentioned in the letter of credit, the bank is bound to honour the demand made by the seller of encashment of letter of credit. The bank cannot refuse payment on the ground that the buyer is claiming that there was a breach of contract. The bank cannot decide the question of breach and refuse payment to the seller. The banking practices are uniform throughout the world and banks follow uniform code. Under Article 4A of UCP 600-Uniform Customs & Practice for Documentary Credits (2007 Revision) the obligations of banks towards beneficiary are as follows:

“a. A credit by its nature is separate transaction from the sale or other contract on which it may be based. Banks are in no way concerned with or bound by

such contract, even if any reference whatsoever to it is included in the credit. Consequently, the undertaking of a bank to honour, to negotiate or to fulfill any other obligation under the credit is not subject to claims or defences by the applicant resulting its relationships with the issuing bank or the beneficiary.”

5. In *United Commercial Bank v Bank of India and Ors.* AIR 1981 SC 1426, the Supreme Court held, “Courts ought not to grant injunctions restraining the performance of the contractual obligations flowing out of a Letter of Credit or a Bank Guarantee between one bank and another. The Supreme Court further observed, “The banker owes a duty to the buyer to ensure that the documents tendered by the sellers under a credit are complied with those for which the credit calls and which are embodied in terms of paying of negotiating bank and the bank issuing or confirming a letter of credit is not concerned with the underlying contract between buyer and the seller”.

6. In view of my above discussion, I find no merits in this petition. The petition is hereby dismissed. No orders as to costs.

August 26, 2009
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SHIV NARAYAN DHINGRA J.