

THE HIGH COURT OF DELHI AT NEW DELHI

% Judgment Pronounced on: 01.11.2011

+ CS(OS) No. 1045/2005

ASIAN GLOBAL LTD.

..... Plaintiff

Through: Mr. Abhijat & Ms. Liza Baruah,
Advs.

versus

BUSINESS SOUL'S ASSOCIATES LTD. & ANR.

Defendants

Through: None

CORAM:-

HON'BLE MR JUSTICE V.K. JAIN

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

V.K. JAIN, J. (ORAL)

1. This is a suit for declaration, permanent injunction and mandatory injunction.

The plaintiff entered a contract with defendant no.1 to import of 1000 MT(-/+10%) Heavy Melting Scrap at the rate of \$ 270 per MT for a total sale consideration of US\$ 2,70,000/-. The goods were to be exported to India from any African or European port at the option of the exporter. The payment was to be made to defendant no.1 by means of an irrevocable DLC (Documentary Letter of

Credit) to be issued by Prime Word Bank and acceptable to the banker of defendant no.1. The amount was payable 100% at sight against presentation of shipping documents at plaintiff's bank counter. The plaintiff accordingly got a letter of credit issued by defendant no.2 – Standard Chartered Bank, which was transferred to defendant no.1. A Bill of Lading dated 20.5.2005 was then sent by defendant no.1 to the plaintiff giving details of 12 containers and indicating shipment of the scrap on 20.5.2005.

2. When the plaintiff tried to track the containers mentioned in the Bill of Lading on the website of the shipping company, namely, M/s MSC Shipping Agency, it transpired that the containers referred in the Bill of Lading did not belong to that shipping company and, in fact, there were 14 containers as against the 12 containers shown in the Bill of Lading as provided to the plaintiff by the defendant no.1, those containers were meant for some other party and the goods in those containers were to be delivered at Ludhiana, though the goods to the plaintiff company were to be delivered at Nhava Sheva Port, Mumbai, from where they were to be transported to ICD TKD, New Delhi.

3. The case of the plaintiff is that the Letter of Credit

has been obtained from it by the defendant no.1 by playing fraud and supplying forged documents and, in fact, no goods were actually exported by defendant no.1 to India for being delivered to be plaintiff company. The plaintiff has accordingly sought a declaration that the Bill of Lading dated 20.5.2005 as also the commercial invoice, packing list, pre-shipment certificate and certificate of origin provided to it by the defendant no.1 are forged documents. The plaintiff has also sought an injunction directing the defendant no.2 to return the documents received by it from defendant no.1 for collection of USD 54779.40 on account of the plaintiff and not to debit the account of the plaintiff to the extent of the aforesaid amount, for the benefit of defendant no.1.

4. Vide interim order dated 02.8.2005, this Court directed the defendant no.2 not to release the amount of USD 54779.40 to defendant no.1 on the strength of Bill of Lading which the defendant no.1 had provided to the plaintiff company. The interim order was made absolute on 26.4.2007. Defendant No.1 was proceeded ex parte on 26th April, 2007. The defendant no.2 has not filed any written statement contesting the suit.

5. Ex.PW1/B is the sale contract between the plaintiff and defendant no.1. Vide this contract, the defendant no.1 agreed to export 1000 MT Heavy Melting Scrap to the plaintiff company for an aggregate amount of US\$ 2,70,000/- and the delivery was to be made within 40 days from the date of workable L/C in the bank of defendant no.1.

6. Ex.PW1/D is the shipping bill which the defendant no.1 supplied to the plaintiff company. As per the Bill of Lading 'Ex.PW1/D', the consignment was shipped to the plaintiff company in 12 containers, numbers of which have been given in the document. The goods purported to have been shipped on board, Vessel MSC Gabriella voyage no.095 and the port of discharge was shown as Nhava Sheva Sea Port, India. The place of delivery was indicated as ICD TKD, New Delhi. The Bill of Lading purports to be issued by Ocean & Sea Ltd. for Meek Container Lines.

7. A perusal of Ex.PW1/F, which is the tracking report on the website of MSC Shipping Agency would show that container nos.MSCU2400208, MSCU2344906, MSCU1016184, GSTU2823934, MSCU1608183, ITLU6830371, TPHU6584782, MSCU2838961,

MSCU1147440 pertained to the Bill of Lading No.MSCUMP003090 (9 containers) and containers No. CRXU2199760, MSCU2885599, MSCU0114150, TTNU3003697, GSTU4404325 pertained to the Bill of Lading No.MSCUMP003082 (5 containers) and they were destined from Mumbai. The search carried out on 01.5.2005 indicated the port of discharge as Mumbai in respect of 9 containers. The search carried out on 27.5.2005 showed the port of discharge of all the 14 containers as Mundra and final destination at Ludhiana. The search carried out on 24.6.2005 showed that the port of discharge as well as the final destination was Mumbai in respect of 5 containers for Bill of Lading No.MSCUMP003082. It would thus be seen that, in fact, none of the containers mentioned in the Bill of Lading 'Ex.PW1/D' was to discharge the goods at Nhava Sheva Sea Port, Mumbai.

8. The plaintiff company sent an e-mail dated 09.6.2005 to the Maputo Exports at [maputo.exports@msc.co.mz.](mailto:maputo.exports@msc.co.mz), referring to the order placed by it with defendant no.1 for import of 12 containers of Heavy Melting Scrap and also referring to Bill of Lading of

Meek Line provided to it by defendant no.1 as also the 9 containers, number of those which were mentioned in the Bill of Lading 'Ex.PW1/D'. The plaintiff informed the shipping company that the containers referred in the letter were booked for delivery at Ludhiana as against their requirement for discharge at Nhava Sheva Port and delivery at ICD TKD, New Delhi. A reply to this e-mail was sent by Maputo on the same date informing the plaintiff that the mentioned containers were not shipped on board the MSC Gabriella 95R and the shipper in respect of those containers were Great Star Limited and a port of delivery was at Mumbai.

The plaintiff also received an e-mail from Mr. Saurabh Kapoor of MSC informing it that they were not aware of involvement of Meek Line and as per the information provided by the Maputo, the Bill of Lading issued for the containers mentioned on the Bill of Lading provided by the plaintiff was divided in two Bills of Lading bearing nos. MSCUMP003032 & MSCUMP003080. Shipper of the consignment was Rapid Global Ltd. and the consignee was United Exports & Importers Ltd., Singapore. The plaintiff company also sent a letter dated 11.7.2005 to Meek

Line, giving all the facts and alleging a fraud with it by providing a fake Bill of Lading dated 20.5.2005. No reply to this letter was, however, received by the plaintiff from the Meek Line.

8. It would thus be seen that a fraud was played on the plaintiff company by the defendant no.1. The containers mentioned in the Bill of Lading 'Ex.PW1/D' sent by defendant no.1 provided to the plaintiff company did not contain Heavy Melting Scrap, which the defendant no.1 had agreed to sell to the plaintiff company. In the Bill of Lading, the port of discharge was shown as Nhava Sheva Sea Port, Mumbai, in respect of all the 12 containers mentioned therein, whereas, in fact, these containers were to discharge at ports other than Nhava Sheva Sea Port, Mumbai and, in any case, the goods sent in those containers were neither shipped by the defendant no.1 nor were they meant to be delivered to the plaintiff company.

It is also quite evident that either the Bill of Lading 'Ex.PW1/D' is a forged document or that the company which issued this Bill of Lading was acting in connivance with the defendant no.1. Since the defendant no.1 did not actually ship the Heavy Melting Scrap, which it had

contracted to sell to the plaintiff company and got the letter of credit 'Ex.PW1/C' opened on the basis of a misrepresentation made to the plaintiff company and played a fraud on it, the plaintiff company is entitled to an injunction restraining the defendant no.2 from making any payment to defendant no.1 under the Letter of Credit which it had opened on the request of the plaintiff company.

9. For the reasons given hereinabove, the defendant no.1 is restrained from invoking the Letter of Credit 'Ex.PW1/C', which the plaintiff company had got opened with the defendant no.2 – Standard Chartered Bank. The defendant no.2 – Standard Chartered Bank is directed to return, to defendant no.1, the documents which it had received from defendant no.1 for collecting US Dollar 54779.40 on account of the plaintiff company. The defendant no.2 is also restrained from debiting the amount of US Dollar 54779.40 to the account of the plaintiff company. The plaintiff shall also be entitled to the costs of the suit from defendant no.1.

The suit stands disposed of.

(V.K. JAIN)
JUDGE

NOVEMBER 01, 2011

KJ