

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

+ CS(OS) 1990/2003

Date of Decision: 13.02.2013

AUDIO DEVICES

..... Plaintiff

Through: Mr J.C. Seth, Adv. with Mr
M.K. Pathak, Adv.

Versus

BANK OF INDIA & ANR.

..... Defendant

Through: Ms. Sumati Anand, Adv.

CORAM:

HON'BLE MR. JUSTICE M.L. MEHTA

M.L. MEHTA, J. (Oral)

1. This suit for recovery of Rs.27.00 lakh was filed by the plaintiff against the defendants under Order 37 CPC, However, it was treated as an ordinary suit and was tried as such.

2. The plaintiff firm operating at New Delhi, had supplied 354 UPS systems to M/s Goyal Computers of Lucknow in pursuant to an order dated 6th July 2002. An agreement in this regard was executed between both the parties on 17th August 2002 at New Delhi. As per one of the terms of this agreement, an irrevocable Letter of Credit (L.C.) was to be given by M/s Goyal Computers in favour of the plaintiff. Consequently, the said M/s Goyal Computers arranged a L.C. from the defendant bank on 02.12.2002 for a sum of Rs. 27.00

lakh and forwarded the same to the plaintiff vide letter of even date. As per Clause 6 of the L.C., payment was to be made by the defendant bank on receipt of invoice and copy of delivery challan duly signed by M/s Goyal Computers. The plaintiff supplied the goods in terms of the said contract to M/s Goyal Computers against invoices and challans, duly signed and acknowledged by the latter. The plaintiff, vide its letter dated 14.01.2003, asked its bankers M/s. ICICI bank Ltd., New Delhi to collect the L.C. amount of Rs. 27.00 lakh from the defendant bank. Along with the said letter, the plaintiff submitted original L.C., six challans and six invoices duly signed by M/s Goyal Computers, two Bank Guarantees (B.G.) of Rs.50,000/- each in favour of M/s Goyal Computers along with receipt acknowledging advance of Rs.6,77,160/-. The ICICI Bank forwarded, vide its letter of 21.01.2003, the L.C. and all these documents to the defendant for payment. The defendant bank vide its letter dated 28.01.2003 asked the ICICI Bank to remove certain deficiencies so that payment could be released. The ICICI Bank, vide its letter dated 01.02.2003, clarified the alleged discrepancies and requested for the release of the payment. The defendant bank having failed to respond in any manner, the ICICI Bank vide its letter of 27.03.2003, requested it to inform the fate of the said Letter of Credit submitted on 21st January 2003. Since no response was received from the defendant bank, the plaintiff got issued legal notice dated 27.05.2003 calling upon the defendant bank to make payment of Rs. 27.00 lakh against the L.C. The defendant bank, vide its response dated 19.06.2003, again reiterated the documents being

held at their end due to the said discrepancies. It was also stated that they are engaged in correspondence with the collecting banker (ICICI Bank) and the final decision will be taken in this regard soon. The ICICI Bank, vide its letter dated 27th June 2003, again informed the defendant bank about having already clarified their queries by their letter dated 01.02.2003. The defendant bank was again requested to make the payment immediately. Subsequently, the defendant bank, vide its letter dated 10.07.2003, returned the documents to ICICI Bank stating that the drawee did not accept the bills for payment. The amount of the L.C. remaining unpaid, the plaintiff filed the instant suit seeking recovery of the said amount along with interest @ 14% per annum from the due date of payment till realization.

3. So far as the transactions between the plaintiff and M/s Goyal Computers, including supply of goods in pursuance of order, execution of agreement between the two, and issue of L.C. by the bank at the instance of M/s Goyal Computers, are concerned, the same are not in dispute. The correspondence that ensued between the plaintiff and the defendant bank, as noted above, is also not in dispute. The defendant bank contested the suit on various other grounds. It was its first plea that Delhi Courts had no territorial jurisdiction. It was also a preliminary objection that the suit was not maintainable for want of non-joinder of M/s Goyal Computers, as a necessary party. Further, it was also its Preliminary Objection that there is no privity of contract between the plaintiff and the defendant bank. On merits, the suit was contested, by the defendant, on the ground that the documents

submitted by the plaintiff's banker-ICICI were not as per the terms of the L.C. It was stated that the invoices and the challans were not signed by any partner or authorized representative of M/s Goyal Computers; that the documents did not contain acknowledgement receipt of Rs.6,77,160/-; that M/s Goyal Computers had requested them to hold the documents as there was some dispute regarding quality of the goods supplied; that the original L.C. was not sent by the plaintiff and lastly that, the L.C. was, in fact, never invoked by the plaintiff. On these averments of the parties, the case was set for trial on the followings issues:

“1. Whether this Hon'ble Court has territorial jurisdiction to entertain the present suit? OPD.

2. Whether suit is bad for non-joinder of necessary party? OPD.

3. Whether there is any privity of contract between the plaintiff and defendant Nos. 1 and 2? OPD.

4. Whether plaintiff is entitled to recover the suit amount or any lesser amount from the defendant Nos. 1 and 2? OPP.

5. Relief.”

4. The plaintiff examined himself as PW-1 and Mr. Achal Grover as PW-2. The defendant Bank examined its Chief Manager Mr. A.N. Mishra as its only witness DW-1.

5. With regard to Issue No. 2, it may be noted that an application for impleadment was filed by M/s Goyal Computers which was dismissed by this Court vide order dated 02.08.2007 holding that the instant suit was based on Letter of Credit, which is an independent contract between the plaintiff and the defendant. Further, it was also noted that as regards inter se dispute between the plaintiff and M/s Goyal Computers, the latter has also filed a suit against the plaintiff in Lucknow. The said order having become final, no further discussion is required on this issue and it is accordingly held that the suit is not bad for non-joinder of M/s Goyal Computers.

Issue No. 1

6. The submission of learned counsel for the defendant was that the whole bundle of facts constituting the transaction arose in Lucknow and since there was no cause of action at Delhi, this Court would have no jurisdiction. This is apparently, an ill conceived submission of the learned counsel. It is settled law that cause of action, which consists of bundle of facts, means every fact which if transversed, would be necessary for the plaintiff to prove in order to support his right to a judgment. It has come in the testimony of the plaintiff witnesses, and is also not denied by the defendant, that the contract between the plaintiff and M/s Goyal Computers was arrived at New Delhi and that the goods which were manufactured by the plaintiff at Delhi were supplied by it from here. Further, it is also not disputed that pre-supply inspection of the goods was carried by M/s Goyal Computers at Delhi. It is not only execution of the contract that was in Delhi, but, even a

part performance thereof was also in Delhi as the goods were supplied by the plaintiff from Delhi. The L.C. that was arranged by M/s Goyal Computers at Lucknow would not oust the jurisdiction of Delhi Courts. The execution of L.C. per se would not confer any jurisdiction on Lucknow Courts. The invoices raised, and accepted by M/s Goyal Computers also specifically stipulated that all disputes were subject to jurisdiction of Delhi Courts. The contract between the plaintiff seller and defendant bank is nothing but a consideration undertaken and promised to be paid by the banker on behalf of the buyer. It is not the L.C. which is to decide the place of jurisdiction, but, other bundle of facts forming part of the transaction. The letter of Credit is only collateral to the main commercial contract between the buyer and the seller.

7. In the case of **South East Asia Shipping Co. Ltd. Vs. M/s. Nav Bharat Enterprises Pvt. Ltd. & Ors., JT 1996 (3) S.C. 656**, the Supreme Court held that merely by the fact that the Bank Guarantee was executed in Delhi and were transmitted to Bombay from Delhi, it will not constitute a cause of action to Delhi Courts. Similar was the view of the Division Bench of this Court in **DLF Industries Limited Vs. ABN Amro Bank and others, 2000(3) Arb. LR 600 (Delhi)**. The judgments in these cases apply in full force to the present case.

8. Further, it is settled law that a bank has to honour a Bank Guarantee or Letter of Credit subject to, of course, two exceptions viz. when there was fraud or irretrievable injury. Where a contract for supply of goods is entered through banks, the paying bank must strictly

adhere to the terms of the L.C. The obtaining of a Letter of Credit constitutes a bargain between the banker and the vender of goods which imposes on the banker an absolute obligation to pay.

9. In view of all this, I have no doubt to say that Delhi Courts have territorial jurisdiction. The issue is decided accordingly.

Issue No. 3

10. The submission in this regard of the learned counsel for the defendant is also highly misconceived. From the catena of decisions it is settled that the letter of credit constitutes a valid contract between the seller and the bank and is independent and enforceable against the bank. It is also settled law that dispute between the buyer and the seller with regard to the quality of the goods is one concerning the underlying contract and is not the concern of the bank, which has issued the letter of credit. The bank would only be concerned with the contract evidenced by the letter of credit which is an absolute obligation to pay, provided the documents are not discrepant. It is so held in **Accord Alloys Limited Vs. Pee Ell Alloys & Anr., 150 (2008) Delhi Law Times 564; I.T.C. Limited Vs. Debts Recovery Appellate Tribunal, (1998) 2 Supreme Court Cases 70 and United Commercial Bank Vs. Bank of India and Others, (1981) 2 Supreme Court Cases 766.** In view of the law laid down in these judgments, no further discussion is required to hold that with the issue of letter of credit by the defendant at the instance of the buyer M/s. Goyal Computers, a privity of contract ensues executed between the plaintiff

and the defendant bank. The issue is decided accordingly in favour of the plaintiff.

Issue No. 4

11. The main thrust of the defence of the defendant is that the documents which were submitted by the plaintiff's banker, namely ICICI Bank, were not in order as per the terms of the L.C. and since the discrepancies were not removed by the plaintiff or its banker, the L.C. amount was not released. It was also their case that drawer of the L.C., M/s. Goyal Computers did not accept the bill, alleging there to be disputes regarding quality of goods. From the correspondence that ensued between the plaintiff's bank and the defendant, it would be noticed that the defendant, throughout, had been finding excuses to delay the encashment of the L.C. and had in fact managed to do so till the L.C. got expired in due course.

12. The ICICI Bank on receipt of L.C. and documents from the plaintiff forwarded those to the defendant bank vide its letter dated 21.01.2003. The defendant bank replied the same vide letter dated 28.01.2033 (Ex. PW2/2) pointing out that the acknowledgement receipt of Rs.6,77,160/- was not received and that the two Bank Guarantees of Rs.50,000/- each were also not received by M/s. Goyal Computers and that the challans and all the invoices were not signed by an authorized person/partner of M/s Goyal Computers. However, vide another letter dated 31.01.2033 they acknowledged having already received the two Bank Guarantees of Rs.50,000/- each in favour of M/s Goyal Computers as also the acknowledgement receipt of advance of

Rs.6,77,160/-. They, however, maintained non-compliance of condition No. 6 of the L.C. namely the invoices and the challans having not been signed by any partner or authorized representative of M/s Goyal Computers. The ICICI Bank vide its letter on 01.02.2003 (Ex.P-2) informed the defendant bank about the documents being in order in all respect. It is noted that the initial plea regarding non receipt of acknowledgement of advance money as also two bank guarantees was apparently false to the knowledge of the defendant bank as these documents were already received by them and this was so confirmed by the ICICI Bank in its letter Ex. P-2.

13. Clause 6 of the L.C., on which the defendant bank relied, alleging that the invoices and the challans were not signed by any partner or authorised representative of M/s. Goyal Computers, needs to be looked at carefully. It reads thus:

“Payments will be made on receipt of invoices and copies of delivery challan signed by M/s. Goel Computers.”

14. The defendant's plea was that the challans and the invoices which were sent by ICICI Bank, did not appear to be signed by the partner or the authorized representative of M/s Goyal Computers. It was their case that since the signatures appearing on the invoices and the challans did not tally with the signatures of the partner of Goyal Computers, as per the bank record, these were found to be not in consonance of Clause 6 of the L.C. Admittedly, the defendant bank at no point of time ever informed the plaintiff or its banker that the

initials appearing on the invoices and challans were not legible or as to who was to sign the invoices and the challans on behalf of M/s. Goyal Computers. A look at the Clause-6 would evidence that it was nowhere stipulated that the challans and invoices were to be signed by the partner or authorized representative of M/s Goyal Computers or as to who was to be such a person. Undisputedly, the invoices and challans bore the signatures of one Mr. Ravi. The testimony of both the witnesses of the plaintiff to the fact that Ravi was the Manager of M/s. Goyal Computers as also brother of the two partners and husband of the third partner of the said firm, was not disputed. It was also not disputed that letter dated 01.12.2002 (Ex. PW1/3) accompanying letter of credit, was signed by the said Ravi as authorized signatory of M/s Goyal Computers. The testimonies of these witnesses, that inspection of the goods was carried by Mr. Ravi and that Ravi was seen to be working in the office of M/s Goyal Computers, are also unassailed. The signatures on all these invoices and challans are of Mr. Ravi along with the stamp (as appearing on Ex.PW1/3) of M/s Goyal Computers.

15. From all this, it could be seen that Ravi was authorized signatory of M/s Goyal Computers. The plea of the defendant that these invoices and the challans were not in terms of the said Clause-6 of the Letter of Credit is completely devoid of any merit and substance.

16. The defendant having not responded positively, the plaintiff was constrained to write to M/s Goyal Computers to get the L.C. extended as it was expiring on 01.03.2003. There being still no response, the ICICI Bank wrote a letter dated 27.03.2003 (Ex.P-4) to the defendant

to know the fate of the L.C. It was only after the issue of legal notice dated 27.05.2003 (Ex.P-6) that the defendant bank responded vide Ex. D-8 and again reiterated the aforesaid discrepancies in the documents. It was at this stage that it was also alleged that the L.C. that was submitted was the photocopy and not the original. It was also for the first time that the L.C. was alleged to be a bill for collection. It is noted that nowhere in the previous correspondence the defendant bank termed the said L.C. to be a bill for collection, rather, in its letter of 28.01.2003, it had stated that the irregularities may be removed to enable the release of payment. Based on this reply (Ex.D-8), the learned counsel for the defendant sought to contend that the L.C. was never invoked by the plaintiff and it was only an outward bill for collection which was submitted. This strange and unfounded plea created doubt in the bonafide of the defendant. This was nowhere the case of any one that what was given by the defendant was not the L.C. on behalf of M/s. Goyal Computers, but a bill for collection. It was on this unfounded premise that the defendant's witness had also stated that the bill for collection was put to M/s. Goyal Computers for acceptance, but they did not accept the same for payment alleging the supplies made by the plaintiff having been rejected by the Government department. Similar plea was reiterated by the defendant in its letter dated 10.07.2003 (Ex.D-7) whereby all the documents were returned by it to ICICI Bank on the ground that the drawer did not accept the bill for payment. It is noted that it is only after the receipt of legal notice that new discrepancies were devised namely the original of the

L.C. was not submitted and the drawee did not accept the bill for payment on account of deficiencies in quality of the goods supplied. In answer to a question, the defendant witness admitted that the defendant bank never wrote to the plaintiff or the ICICI Bank that the L.C. was not invoked. If the submission of the documents, as per the terms of the L.C. and calling upon the defendant to make payment thereof, was not to be taken as invocation of the L.C., then I do not understand as to what according to the defendant would amount to invocation. It is noteworthy that what was returned by the defendant bank to ICICI Bank was not the photocopy of L.C., but the original LC and that would further substantiate the malafide of the defendant. The defendant seems to have conveniently forgotten that it was not to get any permission of Goyal Computers to pay the L.C. amount, but was duty bound to honour its commitment under the letter of credit. It is reiterated that the bank issuing letter of credit has no concern with any question that may arise between the seller and purchaser of the goods. In this regard, reference can be made again to the cases of **I.T.C. Limited** and **United Commercial Bank** (supra).

Relief

17. In view of my findings on the above issues, the suit of the plaintiff stands decreed against defendant Bank for a sum of Rs.27.00 lakh with interest @ 9% per annum from 01.02.2003 till realization. Decree be drawn accordingly.

M.L. MEHTA, J.

FEBRUARY 13 , 2013/awanish

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