

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

Reserved on: 22.12.2016

% **Decided on: 20.01.2017**

+ **CS(OS) 745/2015**

MALAYAN BANKING BERHAD

..... Plaintiff

Through: Mr. Sandeep Sethi, Sr. Adv. with Mr.
Kanishk Ahuja, Advocate.

versus

ALLAHABAD BANK

..... Defendant

Through: Mr. Sugam Seth, Advocate along
with Ms. Renukha Iyer, Advocate.

CORAM:

HON'BLE MS. JUSTICE DEEPA SHARMA

JUDGMENT

I.A. 22985/2015 (application on behalf of defendant under Order 37 read with Section 151 CPC for leave to defend)

1. Vide this application the defendant (hereinafter called as "AB") has sought the leave to defend the case.
2. The present suit has been filed by the plaintiff under Order XXXVII of the Code of Civil Procedure (CPC) for the recovery of USD 1,505,267.81 equivalent to ₹11,00,04,972.03p. along with *pendente lite* and future interest at the rate of 12 % per annum from the date of institution of the present suit till its actual realization.

3. The brief facts of the case are that the plaintiff Malayan Banking Berhad (hereinafter called as “MBB”) is a foreign bank of Malaysia. AB is a nationalized bank functioning in India and has one of its branches at Delhi and is working under the supervision of the Reserve Bank of India (hereinafter called as 'RBI') and therefore is bound to adhere to all the norms and international standards for banking practices in its operations. It is submitted that M/s Millennium Wires Pvt. Ltd (‘buyer’) through State Trading Corporation of India Ltd. (STC) had placed an order for purchase of copper wire rods through one M/s Synergic Industrial Materials and Services Pte Ltd, a company in Singapore (‘seller’). There was a contract between the buyer, STC and the seller. At the instance of STC, AB had issued four irrevocable Letters of Credit (LCs), the details of which are as under:

LC No.	Date	Amount In USD	Beneficiary
0189111FLU000150	07.12.2011	371,750 + 3%	Synergic Industrial Materials and Services Pte Ltd
0189111FLU000151	07.12.2011	371,750 + 3%	Synergic Industrial Materials and Services Pte Ltd
0189111FLS000154	17.12.2011	371,750 + 3%	Synergic Industrial Materials and Services Pte Ltd

0189112FLU000159	02.01.2012	371,750 + 3%	Synergic Industrial Materials and Services Pte Ltd
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4. It is submitted that the said LCs were available for negotiation with any bank in Malaysia and were governed by the rules framed by the International Chamber of Commerce (ICC) being the rules contained in Uniform Customs and Practice for Documentary Credits (UCP-600). By virtue of these LCs which were irrevocable in nature, the plaintiff and the defendant entered into a separate and independent contract wherein the defendant i.e. AB had agreed to reimburse the Negotiating Bank i.e. the Plaintiff/MBB the amount due at the maturity of the LCs subject to the presentation of the documents in accordance with the terms of the LCs. The seller submitted the documents to the plaintiff and the negotiating bank i.e plaintiff/MBB forwarded them to AB and AB vide its Swift Message dated 23.12.2011 for LC No. 0189111FLU000150 (hereinafter called as 'LC-50') and 16.01.2012 for LC No. 0189112FLU000159 (hereinafter called as 'LC-59') confirmed the acceptance of the documents and undertook to reimburse the said amount on the maturity dates i.e. 07.03.2012 and 06.04.2012 respectively. In respect of LC No. 0189111FLU000151 and LC No. 0189111FLS000154 (hereinafter called as

'LC-51' and 'LC-54' respectively), AB did not point out any discrepancy in the documents sent to them by MBB on receipt from seller, within five banking days following the day of the presentation as required by Article 16 (d) of the UCP-600 and thus MBB considered it a deemed acceptance of the documents in respect of these two LCs and released the payment under these LCs. It was only vide message dated 31.01.2012 that AB informed MBB that the buyer had informed them that he had not received the goods dispatched as per the documents and had apprehended that the shipping documents were fabricated. This message was duly replied. It is submitted that MBB was not concerned with any dispute between the buyer and the seller and they had to resolve it among themselves in view of the provisions of UCP-600. The buyer i.e. M/s Millennium Wires Pvt. Ltd. along with STC filed a suit CS (OS) 545 of 2012 before this court against AB and others including MBB seeking injunction restraining the defendants from making payment under LCs in question, on the plea that the goods were never shipped by the seller and therefore MBB was not entitled to be reimbursed in terms of LCs. An interim order of stay dated 02.03.2012 was passed. MBB appeared and filed its written statement claiming vacation of stay along with an application for rejection of the plaint and the court vide

order dated 25.10.2013 dismissed the suit. The defendant AB in its written statement in the said suit admitted its liability to reimburse the LCs amount to MBB, the negotiating bank. The order dated 25.10.2013 was challenged before the Division Bench separately vide RFA (OS) No.139/2013 & 142/2013 by M/s Millennium Wires Pvt. Ltd. and STC. The said two appeals were also dismissed vide order dated 10.12.2013 and 17.12.2013. M/s Millennium Wires Pvt. Ltd and STC filed their respective Special Leave Petition No.9689/2014 and 11848/2014 wherein no stay was granted by the Supreme Court.

5. It is contended that despite the stand taken by AB in the said suit, it had failed to reimburse amount even despite several reminders. The plaintiff again served a notice upon AB asking for the reimbursement. Vide letter dated 16.01.2014, AB informed MBB that STC had approached the RBI vide a representation and requested MBB to defer their action till the RBI decides the representation. It is submitted that once a LC is issued by a issuing bank, the issuing bank irrevocably undertake to honor the payment if the documents presented on the face of them are in compliance with the terms of LC irrespective of any dispute that may exist in relation to goods or otherwise between buyer and the seller and the banks are not concerned

with such dispute. Also AB had accepted the documents and undertook to honor the payment on maturity and they cannot retract from their position. On these facts, the plaintiff had alleged that AB is under irrevocable obligation to reimburse the amount under LC-51, LC-50, LC-54 and LC-59 to the plaintiff. It was on these facts that the plaintiff has asked for a decree for a sum of ₹11,00,04,972.03p. along with future and *pendente lite* interest at the rate of 12 % per annum.

6. The case of AB in its application seeking leave to defend is that MBB had concealed and suppressed the material facts and there exist several triable issues. It is submitted that MBB is guilty of fraud committed by it in connivance with seller i.e. Synergic Material Services PTE Limited, Singapore and Synergic Industrial Material Services, Malaysia (collectively referred to as "Synergy"). It is submitted that the copper wire had in fact never been shipped and the compliance documents such as bill of lading, survey reports etc. were forged and fabricated and so AB is not liable to reimburse the LCs. It is submitted that AB is not bound by UCP-600. It is however admitted by AB that four LCs No.0189111FLU000150, 0189111FLU000151, 0189111FLS000154 & 0189112FLU000159 were issued by it at the instance of STC. It is submitted that STC received the

documents of first shipment on 17.12.2011 for acceptance of the goods which were shipped on 08.12.2011. These documents were presented by the seller to MBB for payment who sent it to AB. STC conveyed its acceptance on receiving the acceptance from M/s Millennium Wires Pvt. Ltd and AB thereafter forwarded the acceptance to MBB, the actual payment however was to be made after 07.03.2012. As regards the other shipment STC also gave its acceptance for two more shipments after receiving the acceptance from M/s Millennium Wires Pvt. Ltd. (the buyer). However, the payment had to be made after 90 days i.e. on 30.03.2012 and 06.04.2012. The three shipment orders were made on 08.12.2011, 31.12.2011 and 07.01.2012 and goods had to reach India within 25 to 30 days after the date of shipment. When the goods did not reach India in time enquiries were made by STC from the shipping company's local agent namely M/s. Expo Freight Pvt. Ltd. having their local office at Ludhiana and he advised STC to enquire from the exporter as they had not been able to trace any container as per the shipment documents in India. The buyer M/s Millennium Wires Pvt. Ltd vide letter dated 23.01.2012 intimated STC that the exporter/seller i.e. Synergy had played fraud upon STC. STC on enquiry from shipping company's agent in Malaysia namely Diffreight

Agencies (M) Sdn. Bhd came to know that an FIR dated 27.02.2012 had been filed in Malaysia against seller and that the documents submitted by seller were forged and the containers through which the said shipment were allegedly sent were not available at the port on the said dates. STC then informed AB and also rejected the shipment documents in respect of LC-54. AB then immediately contacted MBB asking them to stop the payments against LC but learned that MBB had, in violation of the terms of LC released the money before the expiry of 90 days and made the payment to Mr. Rajeev Singh of Synergy (seller) against the same loan facility under Offshore Foreign Currency Loan which was not part of LC transactions in question. It is submitted that MBB even had released the payment towards LC-54 despite the fact that documents were rejected by AB and these conducts of MBB had showed that it is acting in active connivance with Synergy (seller) and apparently played fraud and has cheated the buyer and AB and STC and siphoned the money against the four LCs without delivering the goods.

7. While it is not disputed that a suit CS (OS) 545/2012 was filed by buyer and STC which was dismissed vide order dated 25.10.2013 as the plaint was rejected, it is submitted that the plaint was rejected as there was

no specific averment of fraud against MBB. It is admitted that the Division Bench in appeals upheld the said order and the SLP filed before the Supreme Court against the order of Division Bench of this Court was also dismissed vide order dated 23.03.2015. It is, however, submitted that the Supreme Court while dismissing SLP gave liberty to the petitioners therein i.e. buyer and STC to pursue their remedies before appropriate forum which has to decide such proceedings on merits without the said decision of the Supreme Court standing in the way. It is submitted that the issue of fraud cheating was thus left open to be adjudicated upon afresh. It is submitted that the said decision of the Hon'ble Supreme Court does not make the defendant bank *per se* liable to make payment to the plaintiff. AB had also vide its letter dated 23.05.2015 referred the matter to RBI, seeking specific guidance with regard to the payment in question on the plea that such payment would amount to violation of FEMA regulations and directions of RBI are still awaited. A reference in this regard as also been made by STC before RBI and the said reference is also pending before RBI. STC had also filed a criminal complaint before the Director of Serious Fraud Investigation Office (SFIO), Barakhamba Road Police Station against Synergy and other persons and Mr.Rajeev Singh, MD of Synergy and

complaint is registered under Diary No.24A dated 29.06.2015 and SFIO has forwarded the complaint to Connaught Place Police Station. It is submitted that Synergy, M/s Millennium Wires Pvt. Ltd and STC are necessary parties and so suit is bad for non-joinder of necessary party. It is submitted that the plaintiff has not acted with reasonable prudence and in a diligent manner and thus not entitled to any money. It is submitted that following triable issues arises in the present case:

(i) Whether the Civil Court has jurisdiction to entertain the present suit considering the pendency of the investigation before RBI and Police officials?

(ii) Whether the suit of the plaintiff is barred by law?

(iii) Whether the plaintiff has committed serious fraud and irreparable injury would be caused to the parties if the claims of the Plaintiff are allowed?

(iv) Whether the Plaintiff has acted against the mandate of the Letters of Credit?

(v) Whether the Plaintiff has acted in an independent capacity of a banker and not as an agent of the Defendant bank?

(vi) Whether the Plaintiff ought to have acted in a prudent manner and cannot take advantage of its own wrong?

(vii) Whether the defendant bank is liable to pay any amount to the plaintiff?

(viii) Whether the present suit is bad for concealment of material facts from this Hon'ble Court?

(ix) Whether the present suit is bad as the same cannot be adjudicated without the impleadment and evidences of necessary parties including STC, Synergy and Millennium Wires?

(x) Any other relief?

The reliance is also placed on the findings in the cases of ***Standard Chartered Bank (China) Limited Shenzhen Branch vs. State Bank of Patiala & Ors*** 207 (2014) DLT 631 and ***Sunil Enterprises and Another vs. SBI Commercial & International Bank Ltd.*** (1998) 5 SCC 354. On these facts it is submitted that leave to defend be granted to the defendant.

8. MBB in its reply to the said application has reiterated its case in the plaint. It is submitted that there is no triable issue in this case. It is submitted that the stand/decision taken by AB in the present application is contrary to position taken by AB in their written statement filed by them in suit CS (OS) 545/2012 (hereinafter called as 'the injunction suit') filed by buyer and STC wherein AB had admitted its liability under LCs and committed to reimburse the money to MBB. In written statement of the injunction suit AB had admitted the acceptance of the documents and its liability to make payment on the due date in terms of UCP-600. It is further

submitted that the rejection by AB of the LC-54 is not in accordance with Article 16 of the UCP-600 which fact is also noted by the learned Single Judge in the said injunction suit. It is submitted that there is no FEMA violation as far as MBB is concerned and AB has taken a false plea. It is further submitted that the defendant's plea is moonshine and it has not been able to raise any triable issue.

9. I have heard arguments and perused the relevant record.

10. The present suit has been filed by MBB under Order XXXVII of CPC which provides a summary procedure. In a summary suit the defendant is not entitled to defend the suit as in the ordinary suit except with the permission of the court. It has to apply for leave to defend and make out a substantial defence, based on which the court may grant permission to defend the suit either unconditionally or on such terms as the court deems just and proper. The principles for granting leave to defend have been discussed extensively from time to time by the various courts and the Supreme Court in the case of ***M/s Mechelec Engineers and Mfg. vs. M/s Basic Equipment Corporation*** 1977 AIR 577 has enumerated the principles governing the grant of leave in a summary suit as under:

"(a) If the Defendant satisfies the Court that he has a good defence to the claim on its merits the plaintiff is not entitled

to leave to sign judgment and the Defendant is entitled to unconditional leave to defend.

(b) If the Defendant raises a triable issue indicating that he has a fair or bona fide or reasonable defence although not a positively good defence the plaintiff is not entitled to sign judgment and the Defendant is entitled to unconditional leave to defend.

(c) If the Defendant discloses such facts as may be deemed sufficient to entitle him to defend, that is to say, although the affidavit does not positively and immediately make it clear that he has a defence, yet, shows such a state of facts as leads to the inference that at the trial of the action he may be able to establish a defence to the plaintiff's claim the Plaintiff is not entitled to judgment and the Defendant is entitled to leave to defend but in such a case the Court may in its discretion impose conditions as to the time or mode of trial but not as to payment into Court or furnishing security.

(d) If the Defendant has no defence or the defence set up is illusory or sham or practically moonshine then ordinarily the Plaintiff is entitled to leave to sign judgment and the Defendant is not entitled to leave to defend.

(e) If the Defendant has no defence or the defence is illusory or sham or practically moonshine then although ordinarily the Plaintiff is entitled to leave to sign judgment, the Court may protect the Plaintiff by only allowing the defence to proceed if the amount claimed is paid into Court or otherwise secured and give leave to the Defendant on such condition, and thereby show mercy to the Defendant by enabling him to try to prove a defence".

11. Clearly the burden is upon the defendant to *prima facie* show to the court that the defence taken by him is not illusory or shame or moonshine but it has substantive defence which raises the triable issues.

12. In this case the admitted facts are that four letters of credit i.e. LC-50, LC-51, LC-54 and LC-59 were opened by STC through AB payable to seller through MBB who is a negotiating bank. There exists a contract between the parties to this suit under the four LCs. It is also an admitted fact that MBB had forwarded the documents presented by the seller to AB and AB had cleared the documents for LCs after consultation with STC and the buyer. Though the documents in respect of one LC-54 were rejected but the information of such rejection was not conveyed to MBB within the five working banking days as contemplated under Article 16 (d) of UCP-600 and also in respect of LC-51 there was no information from AB within five working days from the date of presentation of the documents. It is also an admitted fact that MBB had made the payment against all the four LCs to the beneficiary i.e. the seller. Admittedly, there was a prior litigation between the parties i.e. M/s Millennium Wires Pvt. Ltd i.e. buyer and STC on injunction filed CS (OS) 545/2012 against AB including MBB and others i.e. the M/s Millennium Wires Pvt. Ltd. alleging that M/s Millennium Wires Pvt. Ltd. was manufacturer of copper wire etc and that STC an international trading house. The Shipping Agent/defendant no.5 who had issued Bill of lading, defendant no.6, the forwarder was the agent

of defendant no.5. Defendants no.7 and 8 were the courier companies and defendant no.9, the company in charge of carrying out the inspection of the goods exported by seller and defendants no.10 and 11 were the marine cargo insurance company and defendant no.12, the Government Port authority monitoring inward and outward movement of the vessels. Buyer and STC entered into an Associateship Agreement on 02.12.2011 for import of cast copper wire rods. The LCs were opened by the STC through defendant AB payable to the sellers through negotiating bank i.e. MBB. In that case the buyer had alleged that it had received the documents showing dispatch of the goods but the goods were not delivered by the seller and that the seller had played fraud on them.

13. The buyer and STC admitted the receipt of the documents from seller and its acceptance and conveyance of such acceptance to AB. In the said suit an injunction was issued against AB from honoring said four LCs and against MBB from making any payment under the said LCs. AB in its written statement had taken the following stand:

(17) That in reply to para 17 of the plaint it is submitted that after receiving from Plaintiff No.2 acceptance of the sets of documents received from the Defendant No.4, the answering Defendant No.1 communicated the same to the Defendant No.4 advising the due dates of payment in respect of the following three LCs:

- a) 0189111FLU000150
- b) 0189111FLS000154
- c) 0189112FLU000159

*(19) That in reply to para 19 of the plaint it is submitted that consequent upon acceptance by the Plaintiff No.2. the answering Defendant No.1, having advised acceptance of the documents drawn under three of the aforesaid four Letters of Credit, the answering **Defendant No.1 is under obligation to make payments on the due dates in terms of the provisions of the Uniform Customs and Practice for Documentary Credits (UCP-600).** It is submitted that the Plaintiff No.2 has to provide necessary funds to the Defendant No.1 for making payments as aforesaid.*

*21. That in the contents of para 2 of the plaint needs no reply from the answering Defendant No.1. **It is submitted that Banks deal only with documents and not goods covered therein.***

*26. That in reply to para 26 of the plaint it is **reiterated that the answering Defendant No. 1 is under obligation, under UCP -600 to make payment of the three sets of documents accepted by the Plaintiff No.2 on their respective due dates.** It is submitted that the Plaintiff No. 2 is liable to provide funds for the same. It is further submitted that the Plaintiff No. 2, despite having not accepted, cannot refuse payment of the Fourth LC on the ground of fraud when there is no discrepancy in the documents and in such circumstances the Plaintiff No.2 has to provide the funds to the answering Defendant No.1 also for the Fourth LC. The non-acceptance of documents by Plaintiff No.2 in such circumstances is of no consequence. It is denied that in such circumstances the answering Defendant No. 1 will be solely liable, as alleged.*

*39. That para 39 of the Plaint does not relate to the answering Defendant No.1 and such needs no reply from the answering Defendant No.1. **Further it is submitted that***

Banks assume no liability or responsibility arising out of genuineness, falsification or legal effect etc. of any document dealt with.

51. That in reply to para 51 of the Complaint it is denied that the three LCs cannot be honoured by the answering Defendant No.1. it is reiterated that the answering Defendant no. 1, is under obligation under UCP-600 to make payment of the documents on the respective due dates. Further it is reiterated that under UCP -600 the Defendant No. 1 Bank assumes no liability or responsibility arising out of genuineness, falsification or legal effect etc. of any document dealt with by it.

14. The Court in that suit has observed as under:

12. The LCs will be hereafter be referred to by the last three digits of their respective numbers. The documents placed on record reveal the following details in respect of each LC:

(i) LC No. 150, opened on 7th December 2011, was negotiated by Defendant No. 4 with Defendant No. 1 on 14th December 2011. Acceptance of the same was conveyed by Defendant No. 1 to Defendant No. 4 on 23rd December 2011. The relevant bill of lading for shipment of the goods was dated 8th December 2011. In respect of the said LC the payment has been made by Defendant No. 4 to Defendant No. 2.

(ii) As regards LC No. 151, it was opened on 7th December 2011 and was negotiated by Defendant No. 4 with Defendant No.1 on 12th December 2011. The relevant bill of lading is dated 9th December 2011. Defendant No. 1 by its letter dated 31st December 2011 conveyed to Defendant No. 4 that it would not be able to accept the LC. In respect of the said LC, the payment has already

been made by Defendant No. 4 to Defendant No. 2.

(iii) As regards LC No. 154, it was opened on 17th December 2011 and was negotiated by Defendant No. 4 with Defendant No. 1` on 22nd December 2011; the relevant bill of lading is dated 31st December 2011; payment has already been made by Defendant No. 4 to Defendant No. 2 against the said LC.

(iv) LC No. 159 was opened on 2nd January 2012 and negotiated by Defendant No. 4 with Defendant No. 1 on 6th January 2012; acceptance of the LC was conveyed by Defendant No. 1 on 16th January 2012 and the bill of lading is dated 7th January 2012.

13. It is stated that when the documents were received from Defendant No. 1 with respect to LCs 150, 154 and 159, "the Plaintiffs came to know that Defendant No. 2 company had manufactured courier receipt to demonstrate export and had falsely declared that fax message have been sent and further fabricated other documents to prove exports." It is further stated that documents received against LC No. 151 were rejected by Plaintiffs and duly communicated to Defendant No. 1 on the basis of discrepancies. The documents pertaining to LC No. 150 alleged to have been sent by Defendant No. 2 to Plaintiff No. 2 on 8th December 2011 through courier and the documents pertaining to LC No. 154 alleged to have been sent by courier on 31st December 2011 were never received by Plaintiff No. 2 or by Plaintiff No. 1. However, manufactured courier receipts "pertaining to alleged dispatch were sent by Defendant No. 2 to Defendant No. 1 Bank." When Plaintiff No. 1 tried to trace the said couriers through internet it found that no such documents were in fact dispatched since the courier receipts themselves were fabricated. It is stated that DHL informed Plaintiff No. 2 that the shipment documents were in fact not handed over to DHL Express, Malaysia. Likewise, in respect of the documents pertaining to LC No. 159 the

courier agency confirmed that the said documents did not exist. On 23rd January 2012 Plaintiff No. 1 informed Plaintiff No. 2 of the abovementioned fraud played by Defendant No. 2.

15. There are numerous allegations of fraud against Defendant No. 2. However, as regards Defendant No. 4 the specific allegations are contained in para 17 wherein it is averred that “the Plaintiffs apprehend that Defendant No. 4 Bank (which is the Negotiating/Beneficiary Bank) is in active collusion with the Defendant Nos. 2 and 3”.

30. The law in regard to the LCs can therefore, be summarised as under:

(i) The Court should be slow in granting an order of injunction restraining the realization of a bank guarantee or a LC;

(ii) There are two exceptions to the above rule. The first is that it must be clearly shown that fraud of an egregious nature has been committed and to the notice of the bank. The second is that injustice of the kind which would make it impossible for the guarantor to reimburse himself, or would result in irretrievable harm or injustice to one of the parties concerned, should have resulted.

(iii) It is not enough to allege fraud but there must be clear evidence both as to the fact of fraud as well as to the bank’s knowledge of such fraud.

31. In the present case, as noted hereinbefore, the allegations against Defendant No. 4 are in paras 17 and 47 of the plaint. The allegation in para 17 is only that the Plaintiffs apprehend that Defendant No. 4 Bank “is in active collusion with Defendant Nos. 2 and 3.” In para 47, the allegation is that Defendant No. 4 “has also wrongly negotiated with the Defendant No. 2 without correctly verifying the documents giving rise to suspicion, that it is hands in glove with Defendant No. 2”

37. In the present case, it is seen that as regards LC No. 159 Defendant No. 1 confirmed the acceptance of the documents. Therefore, Defendant No. 4 cannot be faulted

for making payment against the said LCs to Defendant No. 2. It cannot be said that Defendant No. 4 had no prior permission to make payment to Defendant No. 2. As regards two of the LCs i.e., Nos. 151 and 154, there was no response from Defendant No. 1 within a period of five days after the said LCs were presented for payment by Defendant No. 4. As already pointed out, the refusal to honour the LCs came beyond the period of five days after negotiation. In terms of UCP-600, Defendant No. 1 refuses payment when the non-acceptance is communicated beyond the period of five days. As regards LC No. 150, Defendant No.1 conveyed its acceptance of the documents on 23rd December 2011. In any event, since it was beyond the period of five days after negotiation.

38. Viewed from any angle, there is nothing on record to show that Defendant No. 4 had any knowledge of fraud alleged to have been claimed by Defendant No. 2 on the Plaintiffs before it made payment to it. As already pointed out, the mere repetition of the allegation that Defendant No.4 is in collusion with Defendant Nos. 2 and 3 is not sufficient to give rise to a cause of action against Defendant No.4 for the grant of injunction relief.

39. For the aforesaid reasons, the Court is satisfied that the plaint does not disclose any cause of action for the grant of reliefs as prayed for by the Plaintiffs and against Defendant Nos. 1 and 4. As regards Defendants 2 and 3, Plaintiffs have to pursue other remedies that are available to them in accordance with law since in any event the issues (b) and (c) have been rendered infructuous even prior to the filing of the suit.

15. The STC and M/s Millennium Wires Pvt. Ltd approached the division bench vide separate appeals. The division bench passed an order dated 10.12.2013 in RFA (OS) No.139/2013 of STC. The relevant paragraphs of the order in appeal are reproduced as under:

10. Contrary to this, STC had argued that with respect to LCs 150, 154 and 159, “the plaintiffs (i.e. STC and MWPL) came to know that the Defendant No. 2 company had manufactured courier receipt to demonstrate export and had falsely declared that fax message have been sent and further fabricated other documents to prove exports”. With respect to LC 151, STC had argued that the documents received were duly rejected and this fact was communicated to Allahabad Bank.

11. In this context, Allahabad Bank’s stand was that “after receiving from Plaintiff No. 2 acceptance of the sets of documents received from the Defendant No.4, the answering Defendant No.1 communicated the same to the Defendant No. 4 advising the due dates of payment in respect of the following three LCs: (a) 0189111FLU000150 (b) 0189111FLS000154 (c) 0189112FLU000159.” Thus, the Allahabad Bank confirms that with respect to these 3 LCs, at the least, complying presentation was made, and that acceptance from STC (and Millennium) was made.

12. The foreign bank contended that in terms of UCP-600 once the LC stands paid by the negotiating bank, it is an irrevocable undertaking of the issuing bank to make the payment especially when it has accepted the documents and agreed to pay on the date of maturity. It is stated that there is no allegation of fraud against Allahabad Bank, the Synergic Companies and the foreign bank, the plaint had to be rejected. The foreign bank also relied on the judgment of the Supreme Court in *United Commercial Bank v. Bank of India*, (1981) 2 SCC 766. It stated that payments were made by it (the foreign bank) to Allahabad Bank without any knowledge of fraud and therefore, Allahabad Bank was obliged to honour its commitment under each of the LCs in terms of UCP-600. As regards LCs 150, 154 and 159, the foreign bank, in line with the stand of Allahabad Bank, maintains that the documents were accepted by STC, and thus, no dispute arises in that regard. As regards LC 151, the foreign bank argues that, again, notice under Article 16 of UCP-600 was made, such that payment under the LC

could be enjoined within the framework of UCP-600, which is argued to regulate the entire LC transaction, as opposed to the contractual relations between STC/Millennium and the Synergic companies.

13. The foreign bank also sought vacation of the interim stay granted by the order dated 2nd March 2012. Reliance was placed upon Articles 4, 5, 15 and 16 of UCP-600 to argue that the underlying contract is independent of the letter of credit, which constitutes a distinct agreement to pay upon complying presentation in terms of UCP-600. Specifically, it was argued that once the documents required to release the payment under the LC have been presented, and are in compliance with the requirements under the terms of the LC, then the bank is under an obligation to make the payment irrespective of the views of the purchaser, as any dispute that the latter may have against the seller is to be raised inter se in alternate proceedings. Thus, it was argued that “as there is no discrepancy in the documents ... non acceptance of documents by Plaintiff No.2, in such circumstances, is of no consequence.”

19. The bank’s obligation, in this case of the foreign bank, is to honour the LC, and in the words of the Court,

“if the seller prima facie complies with the terms of the Bank Guarantee or Letter of Credit, namely, if the seller produces the documents enumerated in the Bank Guarantee or Letter of Credit. If the Bank is satisfied on the face of the documents that they are in conformity with the list of documents mentioned in the Bank Guarantee or Letter of Credit and there is no discrepancy, it is bound to honour the demand of the seller for encashment.”

20. This obligation is not affected merely because the buyer disputes the due performance of the contract. The obligation is unaffected, as long as the documents presented are in accordance with the terms of the LC. That is the essence of the documentary autonomy of the LC. In this case, the

documents presented for LCs 150, 154 and 156 were in order, and this was never disputed by STC or Millennium. Quite to the contrary, STC admitted to having conveyed its acceptance with respect to these three LCs to Allahabad Bank. As regards LC 151, the foreign bank's position is that the documents complied with the requirements under the LC, and, the obligation therefore, to pay was triggered. Here, Article 16, UCP-600 is crucial, which reads as follows:

"Discrepant Documents, Waiver and Notice:

(a) When a nominated bank acting on its nomination, a confirming bank, if any, or the issuing bank determines that a presentation does not comply, it may refuse to honour or negotiate.

(b) When an issuing bank determines that a presentation does not comply, it may in its sole judgement approach the applicant for a waiver of the discrepancies. This does not, however, extend the period mentioned in sub-article 14 (b).

(c) When a nominated bank acting on its nomination, a confirming bank, if any, or the issuing bank decides to refuse to honour or negotiate, it must give a single notice to that effect to the presenter.

The notice must state:

(1) that the bank is refusing to honour or negotiate; and

(2) each discrepancy in respect of which the bank refuses to honour or negotiate; and

(3) (a) that the bank is holding the documents pending further instructions from the presenter; or

(b) that the issuing bank is holding the documents until it receives a waiver from the applicant and agrees to accept it, or receives further instructions from the presenter prior to agreeing to accept a waiver; or

(c) that the bank is returning the documents; or

(d) that the bank is acting in accordance with instructions previously received from the presenter.

(d) The notice required in sub-article 16 (c) must be given by telecommunication or, if that is not possible, by other expeditious means no later than the close of the fifth banking day following the day of presentation.

(e) A nominated bank acting on its nomination, a confirming bank, if any, or the issuing bank may, after providing notice required by sub-article 16 (c) (iii) (a) or (b), return the documents to the presenter at any time.

(f) If an issuing bank or a confirming bank fails to act in accordance with the provisions of this article, it shall be precluded from claiming that the documents do not constitute a complying presentation.

(g) When an issuing bank refuses to honour or a confirming bank refuses to honour or negotiate and has given notice to that effect in accordance with this article, it shall then be entitled to claim a refund, with interest, of any reimbursement made.”

21. Article 16(f), therefore, casts a responsibility on the issuing and confirming banks to be diligent in following the provisions of Article 16, failing which the documents would be deemed to constitute complying performance for the purpose of releasing payment under the LC, with or without the waiver from the buyer. Crucially, the decision as to whether the documents constitute complying presentation is solely that of the issuing bank (i.e. its “sole judgment”, in terms of the sub-clause (b), in this case, Allahabad Bank), which may, in case a discrepancy in the documents is found, approach the buyer for a waiver. However, in a case where the issuing bank does decide that the documents do not meet the compliance requirements under the LC, in terms of clause (c), such notice must be given “no later than the

close of the fifth banking day following the day of presentation.”

22. Thus, in case the payment under the LC is to be enjoined, a notice under Section 16 is mandatory, within the terms of that article. In this case, as regards LCs 150, 154 and 159, the documents were accepted by Allahabad Bank, and no notice was given under Section 16, thus rendering payment under those LCs by the foreign bank proper. As regards LC 151, the only LC as regards which STC/Millennium claim to have rejected the documents, two points are important: first, that under Article 16, UCP, it is the sole judgment of Allahabad Bank to determine whether the documents constitute a complying presentation, and if that bank does so determine, the non-acceptance by the buyer (STC/Millennium) is not determinative. However, if Allahabad Bank were to determine that the documents do not constitute complying presentation, the same could be waived by STC/Millennium. In this case, however, as regards LCs 150, 154 and 159, no such question arose; whereas with regard to LC 151, the refusal to honour the LC by Allahabad Bank (after receiving notice of non-acceptance by STC) came after 5 days from presentation of the LC by the foreign bank. In such a case, the terms of Article 16(d), read with 16(f), are clear, in that payment under the LC subsequently by the foreign bank cannot be objected to.

16. The RFA (OS) No.139/2013 was also dismissed in terms of order dated 10.12.2013 in RFA No. 142/2013. These orders were challenged by STC and M/s Millennium Wires Pvt. Ltd, before the Supreme Court. The Supreme Court vide its order dated 23.03.2015 dismissed the appeals. The relevant paragraphs are extracted as under:

8. The major contention of the appellants herein is that the High Court has committed grave error in dismissing the suit under Order VII Rule 11 as it acted against the settled principles of procedure with respect to application under Order VII Rule 11. According to the appellants, in such an application, the Court ought to have looked into the averments contained in the plaint only and it cannot look into the written statement or any other evidence filed by the Defendant. The Plaintiffs/appellants have, inter alia, relied on *Saleem Bhai v. State of Maharashtra*, (2003) 1 SCC 557, *Popat Kotecha Property v. State Bank of India Association*, (2005) 7 SCC 510, and *Sopan Sukhdeo Sable v. Asst. Charity Commissioner*, (2004) 3 SCC 137.

10. Nothing in the plaint except the above two extracts even come close to being an allegation against the Negotiating Banks. In the above two extracts, there is expression of mere apprehension of the Plaintiffs that Negotiating Banks were 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 allegations is to be adduced however, a comprehensive narration of facts that constitute 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.

14. Furthermore, it appears that the Malayn Bank had forwarded the documents presented by the Synergic Companies to the Allahabad Bank. Out of four Letters of Credit, Allahabad Bank had accepted the presentation of documents in two Letters of Credit with the consultation of the STC. Only one of the presentation was rejected while there is no information with respect to the response of the Allahabad Bank on presentation of documents of the fourth Letter of Credit. Even on the Letter of Credit for which the presentation was rejected, the response was made after 19 days while UPC-600 provides that rejection or any

objection against the presentation must be communicated to the negotiating bank of the beneficiary within 5 days.

15. In the circumstances as narrated above and in light of the settled law on the point of injunction against the banks to honour their guarantees, we are of the view that these appeals are to be dismissed and accordingly appeals are dismissed.

16. Before we part with, it would be most appropriate for us to point out that the appellants can pursue their remedies against the Synergic Companies in appropriate forum by instituting appropriate proceedings, if so advised. However, we make it clear that the opinion expressed by us in this judgment shall not stand in the way of deciding such proceedings on merits.

17. In view of the above facts, it is apparent that in the earlier suit AB had clearly admitted its liability to make the payment under four LCs honouring the terms and conditions of those four LCs and following the procedure laid down in UCP-600. It is apparent that fraud by the seller was the plea raised in the earlier suit by the buyer and the STC and based on this plea the injunction was sought qua these four LCs whereby MBB and AB were sought to be enjoined from releasing the money under the four LCs. The court, however, rejected the claim of the buyers i.e. Millennium Wires Pvt. Ltd and STC and the injunction was refused and this order was confirmed by the Supreme Court in SLP. It is argued on behalf of AB that the Apex court had given permission to pursue the remedies in appropriate forum by instituting appropriate proceedings on the plea of fraud being

played by the buyer upon the seller and so this court should grant them leave to defend the suit. It is however argued by the learned counsel for MBB that the permission to institute a fresh suit on the plea of fraud was in fact given by the Supreme Court to the plaintiffs in that suit i.e. Millennium Wires Pvt. Ltd and STC and no permission was given to AB. It is submitted that AB cannot come before this court taking the plea of fraud allegedly played by buyer upon the seller because the contract between AB and MBB is an independent contract and at no stage AB had taken the stand that MBB had violated any terms and conditions of the said contract. Learned counsel for MBB has argued that the law relating to letters of credit is founded on principles of autonomy of the credit and doctrine of strict compliance and has also relied on the findings of the Supreme Court in **UBS AG vs. State Bank of Patiala** (2006) 5 SCC 416 and has particularly referred to paragraphs 22 & 35 of the said order which are reproduced as under:

“22. The main contention raised on behalf of the appellant Bank is that since it had no knowledge of any fraud perpetrated by the constituent of the respondent Bank before making payment under the letter of credit in question, the respondent Bank could not refuse to reimburse the appellant Bank of payments already made to the beneficiary under the letter of credit before such intimation was received. It was also the case of the appellant Bank that since it had no

knowledge of the fraud said to have been committed with regard to the bills of lading and the letter of credit itself, it negotiated documents presented before it by the beneficiary and made payment accordingly as per the instructions of the respondent Bank.

35. The facts of these three appeals are clear and simple. The letters of credit were issued by the issuing bank to the confirming bank with a request to inform the beneficiary that an irrevocable letter of credit had been established for the sum indicated therein to be paid by the appellant Bank on negotiation of documents to be presented by the beneficiary. Such documents having been presented by the beneficiary to the appellant Bank, it made payment under the letter of credit to the beneficiary and was entitled to receive reimbursement for the same from the respondent Bank. If the fraud had been detected earlier and the appellant Bank had been informed of such fraud and put on caution prior to making payment, the respondent Bank may have had a triable issue to go to trial. That is not so in these three cases. In these cases, the fraud was detected after the letters of credit had been negotiated and hence such fraud alleged to have been committed by the constituent of the respondent Bank cannot be set up even as a plausible defence in the suit filed by the appellant Bank.”

18. The Supreme Court has clearly held in **UBS AG's** case (supra) that when a bank makes the payment following the contract between the negotiating bank and the beneficiary bank and any fraud subsequently detected cannot be set up as a defence in a suit filed for reimbursement of such payment by negotiating bank. In the averment in written statement of in suit No.545/2012, AB had clearly admitted the fact that it had cleared the

documents received from MBB after obtaining the green signal from STC and it was based on this clearance by AB that MBB had made the payment. In its written statement AB had claimed reimbursement from STC as it was STC who had opened the LC with AB. The Supreme Court had also in the case of *United Commercial Bank vs. Bank of India and Others* (1981) 2 SSC 766 clearly held that the paying bank must strictly adhere to the terms of credit letter and it is not concerned with the sale contract. It is a settled preposition of law that the obligation of the bank is absolute. In the case of *I.T.C. Limited vs. Debt Recovery Appellate Tribunal & Others* (1998) 2 SCC 70, the court has clearly held as under:

“15. The principles regarding the payment of amounts covered by bank guarantees or irrevocable Letters of Credit are fairly well settled. They have been discussed in detail in several cases and there is an exhaustive discussion of the principles in U.P. Coop. Federation Ltd. v. Singh Consultants & Engineers (P) Ltd. [(1988) 1 SCC 174] Reference was also made by the learned counsel before us to the judgment of the Calcutta High Court in United Commercial Bank v. Hanuman Synthetics Ltd. [AIR 1985 Cal 96] (to which one of us, Suhas C. Sen, J. was a party). It will be noticed that the above cases do say that the bank has to honour the bank guarantee or Letter of Credit subject of course to the cases of two exceptions where there was fraud or irretrievable injury. In the present case, the contention for the Bank is based on fraud or misrepresentation by the appellant. That is stated to be the cause of action in the plaint.

17. It is now well settled that the question whether goods were supplied by the appellant or not is not for the Bank. This point has already been decided by the decision of this Court in U.P. Coop. Federation case [(1988) 1 SCC 174] referred to above. In that case it was stated (at p. 193) by Jagannatha Shetty, J. as follows: (SCC para 45)

“The bank must pay if the documents are in order and the terms of credit are satisfied. The bank, however, was not allowed to determine whether the seller had actually shipped the goods or whether the goods conformed to the requirements of the contract. Any dispute between the buyer and the seller must be settled between themselves. The courts, however, carved out an exception to this rule of absolute independence. The courts held that if there has been ‘fraud in the transaction’ the bank could dishonour beneficiary's demand for payment. The courts have generally permitted dishonour only on the fraud of the beneficiary, not the fraud of somebody else.”

(emphasis supplied)

It will be noticed from the italicised underlined portion in the above passage that there will be no cause of action in favour of the bank in cases where the seller has not shipped the goods or where the goods have not conformed to the requirements of the contract. The Bank, in the present case before us, could not, by merely stating that there was non-supply of goods by the appellant, use the words “fraud or misrepresentation” for purposes of coming under the exception. The dispute as to non-supply of goods was a matter between the seller and buyer and did not, as stated in the above decision, provide any cause of action for the Bank against the seller.

23. In the result we hold that an allegation of non-supply of goods by the sellers to the buyers did not by itself amount, in law, to a plea of “fraud” as understood in this branch of the law and hence by merely characterising alleged non-movement of goods as “fraud”, the Bank cannot claim that there was a cause of action based on fraud or

misrepresentation. Nor is the case before us one where there is an allegation of presentation of forged or fraudulent documents.”

19. The Supreme Court in the case ***Federal Bank Limited vs. V. M. Jog Engineering Ltd. and Others*** 2001 (1) SCC 663 has clearly held that the court should not issue injunctions restraining encashment of the bank guarantee or letter of credit on the ground of breach of the main contract between the buyer and the seller as the contract of the bank guarantee or letter of credit is independent of the main contract and the only exception is fraud. As regards the fraud it is necessary to prove that the bank had knowledge about it. The court has categorically stated as under:

“65. Summarising, we hold that when the plaintiff buyer has no case that the appellant Negotiating Bank had any knowledge of fraud, and when it took precaution in getting clearance for the document from the Issuing Bank on 20-3-1998 and such clearance was given on 23-3-1998 by the latter, it was not open to the Issuing Bank to contend that on fresh scrutiny in May 1998 it found that the documents were not in conformity with the letters of credit or that the buyer had so informed them. Prima facie, the appellant was in the position of a holder in due course. Points 2 and 3 are decided in favour of the appellant.”

20. In this case AB had at no stage before filing of the application for leave to defend had raised the plea that MBB was having the knowledge of fraud allegedly played by the seller at the time when the money was

released under the LC to the seller. Mere allegation in the application for leave to defend that MBB had acted in connivance with the seller without disclosing any facts to infer such conspiracy or fraud, is not sufficient for grant of leave to defend. AB had admitted that MBB released the money in respect of two LCs only after the nod to do that, was given by AB. As soon as the documents were confirmed by AB, MBB was under obligation to clear the payment and accordingly it did. Contention of AB that the time for payment was 90 days under the LC has no bearing because the liability to pay was crystallized on the day AB conveyed the acceptance of the document to MBB and the period of 90 days was only that MBB had to make the payment within 90 days. The covenant does not say that payment was to be made only on expiry of 90 days. AB had failed to convince the court that MBB was to clear the payment only on expiry of 90 days period from the date the documents were accepted. It is also admitted fact that the rejection of documents qua LC-54 was conveyed to MBB only after expiry of five working days as contemplated in UCP-600. Also no communication was sent to MBB by AB regarding acceptance or rejection of the documents relating to LC-51 within the stipulated period under Article 16 (d) of UCP-600. The rejection of the documents must be conveyed no later

than the close of the five working days of bank following the day of presentation of the documents. MBB had acted as per the terms of LC and there is nothing on record to show that it had acted dishonestly or fraudulently.

21. Learned counsel for AB has relied on *Standard Chartered Bank* (supra) and has submitted that in the said case on the same facts, the court had granted leave to defend. The facts in this case are however different from the facts in the present case. The suit was filed by Standard Chartered Bank against defendants no.1, 2 and 3 i.e. State Bank of Patiala who had issued the standby letter of credit (in short SBLC) in favour of plaintiff bank and defendant no. 3 was the seller of the goods to defendant no.2 who was the buyer. This SBLC was issued at the instance of defendant no.2 and which was also extended twice. It was when defendant no.3 did not pay for the banking facility extended by Standard Chartered Bank that the Standard Chartered Bank invoked the SBLC and submitted the bill of exchange. State Bank of Patiala defendant no.1 although by one swift message agreed to pay to the plaintiff, however subsequently it refused to make the payment on the ground that the claim of the Standard Chartered Bank was incomplete as per SBLC terms. Defendant no.3 therein admitted the breach

of contract with defendant no.2 and in view thereof the defendant no.1 had stopped the payment to be made pursuant to SBLC. Defendant no.2, the seller instituted a suit for mandatory injunction against State Bank of Patiala wherein the State Bank of Patiala made a statement that they were not going to make any payments to the plaintiff. The said suit was dismissed. In that case the contentions of defendants no.1 and 2 i.e. State Bank of Patiala and the seller that fraud had been played on defendant no.2 since defendant no.3 did not deliver the goods, the SBLC in favour of plaintiff is not required to be honoured. It was on these facts that the court observed as under:

8. The principal contention of Defendant Nos. 1 and 2 is that fraud has been played on Defendant No. 2 and since Defendant No. 3 did not deliver the goods to Defendant No. 2 the SBLC in favour of the Plaintiff is not required to be honored. There is no doubt that normally a letter of credit is an independent contract from the contract between the parties. However, if the contract between the parties itself is vitiated by fraud, the same would vitiate the entire transaction. The exception for fraud on the part of the beneficiary seeking to avail the credit is a clear application to the maxim "ex trupi cause non oriture", that is, "fraud unravels all", and the courts will not be party to the fraud played by a dishonest person. The system of confirmed irrevocable documentary credits that has developed in international trade, was to give the seller of goods an assurance of payment before he parts with the goods. However, the bank's duty to the seller is only vitiated if there is fraud on the part of the seller and not if there is a

discrepancy in goods supplied. In U.P. Cooperative Federation Ltd. vs. Singh Consultants and Engineer (P) Ltd., : 1988 (1) SCC 174 their Lordships held:

24. I may notice that in India, the trend of law is on the same line. In the case of Texmaco Ltd. v. State Bank of India: AIR 1979 Cal 44] one of us (Sabyasachi Mukharji, J.) held that in the absence of special equities arising from a particular situation which might entitle the party on whose behalf guarantee is given to an injunction restraining the bank in performance of bank guarantee and in the absence of any clear fraud, the bank must pay to the party in whose favour guarantee is given on demand, if so stipulated, and whether the terms are such have to be found out from the performance guarantee as such. There the court held that where though the guarantee was given for the performance by the party on whose behalf guarantee was given, in an orderly manner its contractual obligation, the obligation was undertaken by the bank to repay the amount on "first demand" and "without contestation, demur or protest and without reference to such party and without questioning the legal relationship subsisting between the party in whose favour guarantee was given and the party on whose behalf guarantee was given", and the guarantee also stipulated that the bank should forthwith pay the amount due "notwithstanding any dispute between the parties", it must be deemed that the moment a demand was made without protest and contestation, the bank had obliged itself to pay irrespective of any dispute as to whether there had been performance in an orderly manner of the contractual obligation by the party. Consequently, in such a case, the party on whose behalf guarantee was given was not entitled to an injunction restraining the bank in performance of its guarantee. It appears that special equities mentioned therein may be a situation where the injunction was sought for to prevent injustice which was irretrievable

in the words of Lord Justice Danckwerts [Vide Corrigendum No. F.3/Ed BJ/43 dated 8-9-88] in Elian and Rabbath v. Matsas and Matsas [(1966) 2 LLLR 495].

9. This Court in National Highways Authority of India Vs. Elsamex-TWS-SNC Joint Venture, : 150 (2008) DLT 215 held that if prima face case is made out that an element of fraud exists on the part of the beneficiary or if there exists a special equity in the form of preventing irretrievable injustice then alone an injunction may be issued. Further, fraud has to be of an egregious nature and not a dispute that goods supplied are not as per contract. Considering the fact that the Defendants have clearly made out a case of fraud of an egregious nature wherein no goods have been supplied at all, I am of the considered opinion that it is a fit case where leave to defend is required to be granted to Defendants No. 1 and 2.

In that case following the said principle the court had observed that the defendants had clearly made out a case of egregious nature wherein no goods have been supplied at all. In this case however MBB had already released the money under the LC in the circumstances mentioned above. In the present case however it is apparent that MBB had acted bonafidely. In the earlier suit AB had clearly in its written statement admitted his liability of payment under four LCs in terms of provisions UCP-600. Also in para 21 of its written statement AB had clearly stated "*that the banks only deal with the documents and not goods covered therein*". Also there is a finding in the judgment dated 28.10.2013 where this court in the earlier litigation

has clearly held in para 38 as reproduced above that viewing from any angle there is nothing on record to show that defendant no. 4 (MBB) had any knowledge about the fraud and further held that the allegations were not sufficient to give rise to a cause of action against defendant no. 4 (MBB).

22. The findings in *Sunil Enterprises's* case (*Supra*) are on different facts. In that case, on the facts of the case the Court was satisfied that there was an element of fraud and so the leave to defend was granted. However, in this case, the issue of fraud being played by MBB already stands determined by order of this Court dated 28.10.2013 which was confirmed by Supreme Court as discussed above. Therefore, even if there was any fraud being played by the seller, it stands finally determined that MBB had no knowledge of it. It seems that AB is contesting the case of the buyer and the STC whose claim for injunction had failed in the earlier suit against AB as well as MBB on the plea of fraud being played by the seller in connivance with MBB. The defendant AB is bound to honour the terms and conditions of the LC which is an independent to the agreement between the buyer and the seller. In this regard, the following observation

of the Court in *R.D.Harbottle (Mercantile) Ltd. vs. National Westminster Bank*, (1977) 3 WLR 752 is sufficient to resolve the controversy:

"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."

23. From the above, it is apparent that the allegation of fraud on the part of MBB is merely a bald allegation not supported by any facts on record. The defendant AB has failed to bring on record any triable issue or any issue which needs enquiry and investigation. The application for leave to defend is, therefore, rejected and the present suit of the plaintiff/MBB is hereby decreed for a sum of ₹11,00,04,972.03p. along with *pendente lite* and future simple interest till its realization at the rate of 9% per annum in terms of Section 34 of the Code of Civil Procedure. Decree sheet be prepared. No orders as to cost.

**DEEPA SHARMA
(JUDGE)**

JANUARY 20, 2017
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