

\$~2

*

IN THE HIGH COURT OF DELHI AT NEW DELHI

Date of Decision: 6th March, 2019

+

CS (COMM) 471/2016 & I.A. 5101/2015

IRIS COMPUTERS LTD

..... Plaintiff

Through: Mr. A.B. Pandey & Ms. Ruchira
Singh, Advocates (M-9810158813)

versus

STATE BANK OF INDIA & ORS

..... Defendants

Through: None.

CORAM:

JUSTICE PRATHIBA M. SINGH

Prathiba M. Singh, J. (oral)

1. The Plaintiff – Iris Computers Ltd. (*hereinafter, 'Plaintiff'*) has filed the present suit for recovery of Rs.1,05,61,556/- along with interest, *pendente lite* and future against three defendants – State Bank of India, Canara Bank and Click Telecom Pvt Ltd. The suit was listed on 17th January, 2018, on which date a Ld. Single Judge of this Court decreed the suit *qua* Defendant No.3 i.e., Click Telecom Pvt. Ltd., who was the consignee of the computers and other hardware supplied by the Plaintiff. Thereafter, the suit was treated as an ordinary suit in respect of Canara Bank and the parties were permitted to file evidence. The Plaintiff filed its affidavit by way of evidence, as also the original documents relied upon by it. For the sake of convenience, the order dated 17th January, 2018 is extracted herein below:

“1. Present Suit has been filed under Order XXXVII of

CPC for recovery of Rs.1,05,61,556/-. At the outset, learned counsel for the plaintiff states that he does not wish to claim any relief against defendant No.1.

2. As per the plaint, defendant No.3 had placed a purchase order dated 15.6.2013 upon the plaintiff for sale and supply of various IT related goods. The value of the goods were Rs. 1,05,61,556/-. Defendant No.3 offered to open a letter of credit (LC) for 100% of the Invoice Value (CIF) at 90 days from the date of the accompanying bill of exchange and furnish it to the plaintiff.

3. In accordance with the assurances, defendant No.3 furnished LC bearing No. 075IOUU31750003 dated 24.6.2013 issued by defendant No.2 on the necessary bill of exchange.

4. The plaintiff pleads that in view of the irrevocable letter of credit the defendants No.2 and 3 have refused to make the payment and hence this court should pass a decree as none of the defendants have taken steps under Order 37 CPC.

5. As far as defendant No.2 Canara Bank is concerned learned counsel had entered appearance on 16.4.2015. Learned counsel for defendant No.2 also appeared before Joint Registrar on 5.10.2015 where Joint Registrar noted that there is delay in entering of appearance of defendant No.2. Thereafter none has appeared for defendant No.2.

6. As far as defendant No.3 is concerned, it entered appearance on 18.4.2016. Thereafter steps were taken by the plaintiff under Order 37 CPC. Defendant No.3 was served with summons for judgment on 19.7.2016. However, defendant No.3 has not filed an application for leave to defend. This is evident from the order of Joint Registrar dated 26.8.2016.

7. As far as defendant No.3 is concerned, in view of the fact that defendant No.3 has not entered appearance, I pass a decree in favour of the plaintiff and against defendant No.3 for Rs.1,05,61,556/-. The plaintiff shall

also be entitled to pendent lite simple interest @ 10% per annum from the date of filing of the suit till recovery. Plaintiff shall also be entitled to costs.

8. As far as defendant No.2 Canara Bank is concerned, a perusal of the documents would show that as per letter of credit the list of documents required are clearly stipulated. Canara Bank on 10.7.2013 sent a communication to the defendant No.1 State Bank of India, banker of the plaintiff indicating discrepancies in the documents submitted by the plaintiff as follows:-

1. "Date of Bill of Exchange is 01 Jul 2013 and 27 Jun 2013.

2. Shipment Terms as per LC is CIF But LR shows freight to pay

3. Original LR as per LC terms not enclosed

4. Delivery challan should be accepted by party stating that goods received in good condition."

9. Learned counsel for the plaintiff submits that the discrepancies are an eyewash and in fact there is no discrepancy in the eyes of law.

10. In my opinion, in view of the fact that Canara Bank has communicated discrepancies in the document a suit under order 37 would not survive against defendant No.2. It would be for the plaintiff to prove that discrepancies noted by the defendant No.2 are not as per law. Accordingly, I consider the suit against Canara Bank/defendant No.2 as an ordinary suit.

11. Reference may be had to the judgment of this court in FAO(OS) 283/2015 titled M/s. Anil Timber Private Limited vs. M/s. ING Vyasa Bank Limited & Ors. dated 3.8.2015, wherein this court noted as under

"7.The law with regard to letters of credit is quite well settled. The bank negotiating the documents is not concerned with the underlying contract between the seller and the purchaser nor is it

concerned with the goods. The bank only has to see whether the documents presented to it are in terms of the letters of credit or not. Once the bank finds that the documents are not discrepant, it is bound to release the payment to the beneficiary."

12. Hence, it is only after the bank which has issued letter of credit accepts the documents and holds that the documents are not discrepant the bank is bound to release payment to the beneficiaries. In the present facts the bank has communicated discrepancies in the document and hence cannot be said to be bound to make the payment unless the plaintiff proves that the discrepancies stated are erroneous/mala fide.

13. Plaintiff may file affidavit by way of evidence in its favour within four weeks from today.

14. List on 9.4.2018.

IA No.5373/2016 & IA No.17879/2014

In view of the above order, these applications have become infructuous and stand disposed of."

2. After passing of the said order, the State Bank of India – Defendant No.1 was deleted from the array of parties on 20th July, 2018. Liberty was also granted to the Plaintiff to place on record any further documents. The matter was then listed before the Joint Registrar for marking of exhibits. Defendant No.2 - Canara Bank (*hereinafter*, 'Canara Bank'), however stopped appearing in the matter. The Plaintiff has filed its affidavit by way of evidence of Mr. R. Sundaresan, General Manager - Legal & HR, whereby the witness has exhibited the following documents:

- (a) **Exhibit PW1/1** – letter of authority by the Plaintiff in favour of Mr. R Sundaresan;
- (b) **Exhibit PW1/2** – Plaint filed by the Plaintiff, and signed by the authorised representative at point 'A'.

- (c) **Exhibit PW1/3** – request for amendment of the letter of credit by Defendant No.2 – Canara Bank, dated 26th June, 2013;
- (d) **Exhibit PW1/3 (again)** – A copy of the letter of credit;
- (e) **Exhibit PW1/4** – Bill of Exchange dated 1st July, 2013 bearing endorsement of acceptance by Canara Bank;
- (f) **Exhibit PW1/5** – Commercial invoice no. W101-22-1306-148 dated 27th June, 2013, bearing endorsement of receipt by Click Telecom Pvt. Ltd.;
- (g) **Exhibit PW1/6** – Delivery challan no. W101-2101306-319 dated 27th June, 2013, bearing endorsement of receipt by Click Telecom Pvt. Ltd.;
- (h) **Exhibit PW1/7** – Packing List on W101-21-1306-319 dated 27th June, 2013, bearing endorsement of receipt by Click Telecom Pvt. Ltd.;
- (i) **Exhibit PW1/8** – Goods consignment note no. 100351111 dated 27th June, 2013, bearing endorsement of receipt by Click Telecom Pvt. Ltd.;
- (j) **Exhibit PW1/9** – Cover letter and communication dated 1st July, 2013, sent to State Bank of India, along with all documents satisfying the letter of credit, which was forwarded to Canara Bank;
- (k) **Exhibit PW1/10** – Request letter by State Bank of India to Canara Bank, for making payment against the bank guarantee;
- (l) **Exhibit PW1/11** – Communication dated 10th July, 2013 sent by Canara Bank, setting out the discrepancies;
- (m) **Exhibit PW1/12** – Letter dated 1st August, 2013, by the Plaintiff to Canara Bank, in response to letter dated 10th July, 2013;

- (n) **Exhibit PW1/13** –Letter dated 25th September, 2013 sent by Plaintiff to Canara Bank, requesting for payment;
 - (o) **Exhibit PW1/14** - Letter dated 4th October, 2013 sent by Plaintiff to Canara Bank, requesting for payment;
 - (p) **Exhibit PW1/15** – Letter dated 21st August, 2013, written by State Bank of India to Canara Bank inquiring about the status of payment;
 - (q) **Exhibit PW1/16** – Letter dated 4th November, 2013 sent by Canara Bank to State Bank of India, denying entitlement of the Plaintiff to the payment;
 - (r) **Exhibit PW1/17 (colly)** – Notice of demand dated 13th January, 2014, by Plaintiff to Canara Bank, along with supporting postal receipts;
 - (s) **Exhibit PW1/18** – Response to the notice of demand by State Bank of India dated 3rd February, 2014;
 - (t) **Exhibit PW1/19** - Response to the notice of demand by Canara Bank dated 24th February, 2014.
3. On 3rd October, 2018, considering the fact that none was appearing for Canara Bank, the following order was passed:

“Issue court notice to Mr. Rakesh Pathak counsel who had entered appearance on behalf of Canara Bank. An SMS intimation be given on his Mobile No.9810112993. Notice be also sent by e-mail “PathakR7@gmail.com” In addition, notice be also issued to the Legal Manager, Canara Bank, Nariman Point Branch, Mittal Tower, C-Wing, Ground Floor, Nariman Point, Mumbai - 400021, returnable on 19th November, 2018. The Bank to file an affidavit before the next date as to whether prior to opening of the Letter of Credit No.S201-22-1107-067 for a sum of Rs.1,05,61,556/-, any deposits were taken from M/s. Click Telecom Pvt. Ltd., Defendant

No.3. If no affidavit is filed before the next date, the Court would be forced to conclude that the letter of credit was issued after taking the requisite deposits and the matter would proceed further. Learned counsel for the Plaintiff is permitted to serve this order on the counsel for the Bank and on the Bank directly. Dasti.”

4. Canara Bank was duly served through its counsel and it then filed an affidavit on 12th November, 2018, in compliance of the above order, which reads as under:

“I, Vineet Kumar, aged 36 years, working as Senior Manager, Canara Bank, Nariman Point Branch, Mumbai, resident of Flat No.-1201, Canara Bank Quarter, Gandhinagar, Vikhroli West, Mumbai Pin-400083, do hereby solemnly affirm and declare as under:

1. That Deponent is conversant with facts of the case regarding Letter of Credit No.S201-22-1107-067 (Wrong Letter of Credit No) Actual Letter of Credit No.075IOUU131750003 Dated 24th June 2013 for a sum of Rs.1,05,61,556/- and competent to file this affidavit.

2. That Deponent is filling this affidavit in compliance of the Order dated 03rd Oct. 2018 of J. Prathiba M. Singh on the basis of information available at present with the Bank.

3. That no requisite deposit from M/s Click Telecom Pvt. Ltd. was taken to open the above-mentioned letter of credit which was not valid.

4. That Bank was victim of fraud to extent of Rs.35.15 crores and all documents regarding Click Telecom Pvt. Ltd. were seized by CBI (Bank Securities and Fraud Cell) 4th Floor, Plot No.C-35A “G” Block, Bandra Kurla Complex, Bandra East Mumbai – 400098 for criminal investigation against Click Telecom Pvt. Ltd. and its directors/other companies.”

5. Despite filing the above affidavit, none appeared for Canara Bank. Again, notice was directed to be issued to Canara Bank which has now been duly served. Ld. counsel for the Plaintiff submits that he also informed Mr. Pathak, the counsel for Canara Bank. Despite the same, none appears for Canara Bank.

6. The transaction between the Plaintiff – Iris Computers Ltd and Defendant No.3 - Click Telecom Pvt. Ltd. was for supply of computers and peripherals. Click Telecom Pvt. Ltd. had got issued a letter of credit through Canara Bank to safeguard the payment to be made to the Plaintiff. The case of the Plaintiff is that it made supplies to the consignee - Click Telecom Pvt. Ltd. and submitted all the documents to the bank for receiving payment under the letter of credit. However, Canara Bank raised the following discrepancies on 10th July, 2013 [**Exhibit PW1/11**]:

"We are in receipt of your bills under the above referred LC and found the following discrepancies:

1. Date of Bill of Exchange is 01-JUL-2013 and 27-JUN-2013.

2. Shipment terms as per LC is CIF but LR shows freight to pay.

3. Original LR as per LC terms not enclosed (consignee copy).

4. Delivery challan should be accepted by party stating that goods received in good condition."

7. It is submitted by Ld. counsel for the Plaintiff that none of the discrepancies are actually valid and tenable. He further submits that all the relevant documents have been placed on record and despite the same, Canara Bank is refusing to honour the letter of credit.

8. A perusal of the documents on record show that originally, letter of

credit dated 24th June, 2013 [**Exhibit PW1/3**] was issued by Canara Bank. The same was amended in respect of one clause i.e. the negotiating bank. The said amendment was accepted by the Plaintiff and the negotiating bank was duly changed to State Bank of India. The amended letter of credit has been placed on record [**Exhibit PW1/3A**].

9. The Plaintiff has also placed on record the original invoice containing the acknowledgment and seal of Click Telecom Pvt. Ltd., showing receipt of all the goods, the delivery challan, packing list and goods consignment note dated 27th June, 2013, which it had received [**Exhibits PW1/5, PW1/6, PW1/7, and PW1/8**]. The original receipt of the container company which transported the goods in 240 boxes has also been placed on record.

10. The letter of Canara Bank has raised discrepancies which have been set out above. A perusal of the discrepancies raised shows that the stand of Canara Bank is not valid and tenable. The first discrepancy i.e. the date of bill of exchange being 1st July, 2013 or 27th June, 2013 is not at all a discrepancy. A perusal of the bill of exchange which is placed at page 8 [**Exhibit PW1/4**] shows that the same is dated 1st July, 2013, but in the text of the bill of exchange, the date is mentioned in bracket as 27th June, 2013. Thus, this is not a discrepancy which could have been raised by Canara Bank.

11. The second discrepancy in respect of the lorry receipt, is that the freight has not been paid. The consignor's copy did not mention receipt of the freight. The Plaintiff however submitted the original consignee copy of the receipt, which is on record, which shows that the freight has been paid. This consignee copy was submitted to the bank vide letter dated 1st July, 2013 [**Exhibit PW1/9**]. The third discrepancy raised was about the original

lorry receipt which has also been submitted by the Plaintiff to the bank.

12. The final condition i.e. certificate by the consignee that the goods were received in good condition, is not a condition in the letter of credit. The letter of credit merely requires the following documents to be submitted:

“DOCUMENTS REQUIRED

1) ONE FULL SET OF ORIGINAL & 3 COPIES OF DELIVERY CHALLANS, SHOWING THE ACTUAL QUANTITY SHIPPED.

2) SIGNED COMMERCIAL INVOICE IN TRIPLICATE ISSUED BY IRIS COMPUTERS LTD.

3) PACKING LIST IN TRIPLICATE.

4) BILL OF EXCHANGE DULY PRE ACCEPTED BY THE APPLICANT/DRAWEE IN ORIGINAL & COPY.

5) CONSIGNEE COPY OF LORRY RECEIPT OF IBA APPROVED TRANSPORT OPERATORS MADE TO ORDER OF CANARA BANK NARIMAN POINT MUMBAI A/C CLICK TELECOM PVT LTD”

13. A perusal of the documents required shows that the delivery challans were to be submitted and not a certificate that the goods were received in good condition. The original invoice, along with the other necessary documents placed on record, as **Exhibits PW 1/5 – PW 1/6** clearly show that the goods were delivered to Click Telecom Pvt. Ltd. They bear the seal of the company.

14. Curiously enough, when this Court, on 3rd October, 2018 directed Canara Bank to file its affidavit as to the status of the letter of credit and whether any amount was retained by the bank from Click Telecom Pvt. Ltd., to honour the letter of credit, the bank’s response is that no deposit was taken from Click Telecom Pvt. Ltd. for issuance of letter of credit and that the bank was a victim of fraud played by Click Telecom Pvt. Ltd. Any bank

which is issuing a letter of credit has some basic responsibility. It is clear from a perusal of the affidavit that the bank has not followed even the basic responsibility of ensuring some security for the letter of credit which is issued by it. If Click Telecom Pvt. Ltd. has played any fraud with the bank, the same is not the subject matter of the present case and the said issue does not concern the Plaintiff, which is the supplier of goods. Canara Bank does not dispute issuance of the letter of credit. On the strength of the Letter of Credit, the Plaintiff has made supplies of the goods.

15. The Supreme Court in ***Federal Bank Ltd. v. V.M. Jog Engineering Ltd. and Ors. (2001) 1 SCC 663***, held as under:

“55. In several judgments of this Court, it has been held that Courts ought not to grant injunction to restrain encashment of Bank guarantees or letters of credit. Two exceptions have been mentioned - (i) fraud, and (ii) irretrievable damage. If the plaintiff is prima facie able to establish that the case comes within these two exceptions, temporary injunction under Order 39 Rule 1 CPC can be issued. It has also been held that the contract of the bank guarantee or the letter of credit is independent of the main contract between the seller and the buyer. This is also clear from Articles 3 and 4 of UCP (1983 Revision). In case of an irrevocable bank guarantee or letter of credit the buyer cannot obtain injunction against the banker on the ground that there was a breach of the contract by the seller. The bank is to honour the demand for encashment if the seller prima facie complies with the terms of the bank guarantee or the letter or 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. While doing so it must take reasonable care. It is not permissible for the bank to refuse payment on the ground that the buyer is claiming that there is a breach of contract. Nor can the bank try to decide this question of breach at that stage and refuse payment to the seller. Its obligation under the document having nothing to do with any dispute as to breach of contract between the seller and the buyer. As to its knowledge of fraud or forgery, we shall presently deal with it."

16. Ld. counsel for the Plaintiff has also relied upon the judgment of this Hon'ble Court in ***National Steel Ind. Ltd. v. Bhiwani Cold Rolling Mills Ltd.*** [CS(OS) 176/1997 decision dated 1st August, 2012] to persuade this Court that banks ought to honour letters of credit, which form the lifeline of commerce and they should not be permitted to raise frivolous plea to refuse the payment. A perusal of the judgment shows that the Court has taken a strict view insofar as banks are concerned that they have a duty to honour bills of exchange and letters of credit issued by them. The relevant portion of the said judgment delivered by Valmiki Mehta J., is set out herein below:

"18. The proposition of law cannot be disputed that a bank is entitled to refuse payment under a letter of credit if the documents which are presented for negotiation and payment under a letter of credit are not negotiated as per the terms of the letter of credit. Let us therefore see the relevant terms of letter of credit in this regard so as to determine whether the defendant no. 2 was justified in rejecting payment under the letter of credit by the telegram Ex.P-9.

19. When we look at the letter of credit, the relevant term in the present case is term no.(ii) and which reads "Accepted bill of exchange (pre acceptance of

MES Ltd. required)". A reading of this term therefore in my opinion makes it more than abundantly clear that there was no requirement as claimed by the defendant no.2 that it must also be established by the plaintiff that the acceptance of Bill of Exchange on behalf of the defendant no.1-company was by its authorized signatory. If I allow such a defence to be accepted, then, as held by the Supreme Court in the catena of judgments, the commercial world and commercial transactions of sale will fail. If the bank was of the view that the Bill of Exchange could only be accepted by a specified person, and who as per the bank ought to be the authorized official, then, the term should have been worded accordingly, otherwise, there would be grave fraud which would be perpetuated upon the beneficiaries of letters of credit inasmuch as in all cases where banks want to refuse payment under the letter of credit (where the entity on whose behalf the letter of credit is issued is a company) then the bank will simply say that the person who has signed on behalf of the company has not been proved to be the authorized signatory, and therefore, the letter of credit cannot be paid. Said interpretation of a term of a letter of credit cannot be accepted as the entire purpose of letter of credit in a commercial world will be frustrated. This I say so because how can a buyer, and for whose benefit a letter of credit is issued (and who is the plaintiff in this case) can ever at all dream that the bank will refuse payment under the letter of credit by stating that the officer who signed on behalf of the buyer-company was not authorized, though it is not a term in the letter of credit that the acceptance of the Bill of Exchange must be accompanied by a Board's resolution of the company or a power of attorney in favour of the person/official/employee who accepts the Bill of Exchange. In fact, it is not unknown that this issue is an issue with regard to indoor

management of a company i.e. the authority of a person to act or not to act on behalf of the company is to be presumed in favour of third person such as the plaintiff in this case and, more so, in cases of letters of credit which only have a term that there should be an accepted Bill of Exchange and nothing more. There indeed was an accepted Bill of Exchange in this case. The Bill of Exchange was accepted by an officer of the defendant no.1 company/buyer. Nothing further thereafter need be gone into as regards the authority or alleged lack of authority in the person who signs on behalf of the company. As I have already said such strained interpretation of letter of credit will negate the whole purpose of a letter of credit whose object is to ensure certainty of payment in the commercial world. I must say that really the defendant no.2-bank is refusing to pay under letter of credit because it must be that it has failed to secure itself adequately for issuance of letter of credit from the beneficiary/defendant no.1-company. Ordinarily, a bank which issues a credit takes sufficient securities or monies from the applicant of the letter of credit, and thereafter issues the letter of credit of the bank guarantee. Obviously, since the defendant no.1-company has gone into liquidation, and therefore, the defendant no.2 will not be able to recover the amounts which it has to pay under the bank guarantee to the plaintiff, therefore, the defendant no.2- bank is taking unnecessary defences, however in my opinion, to refuse payment to a seller of goods viz the plaintiff in this case will be a gross injustice to a seller of goods who sold the goods being secured in that belief.”

17. On the basis of the pleadings and the documents on record, there is no doubt that the Plaintiff has supplied goods to Click Telecom Pvt. Ltd. A letter of credit is a monetary instrument which has to be honoured by a bank

and the bank cannot go into the merits of the dispute, if any, between the supplier and the purchaser. In the present case, no such dispute has even been raised by Defendant No.3. The affidavit of Canara Bank is curious to say the least. The non-acceptance of a deposit prior to issuance of letter of credit shows serious negligence on the part of the bank. However, the Plaintiff is not concerned with the same. Letters of credit are assurances by a bank that the claims would be honoured. These are instruments which facilitate domestic and international trade. Letters of credit form the binding force in trade and eliminate the uncertainties that accompany business transactions. Courts have a duty to recognise such instruments.

18. Accordingly, the suit is liable to be decreed against Canara Bank. The suit is decreed for a sum of Rs.1,05,61,556/- along with 6% simple interest per annum. If the payment is not made within a period of 8 weeks, then the Plaintiff would be entitled to simple interest @8% on the decretal amount. Decree sheet be drawn.

PRATHIBA M. SINGH
JUDGE

MARCH 06, 2019
Rahul