**IN THE HIGH COURT OF JUDICATURE AT BOMBAY**
**ORDINARY ORIGINAL CIVIL JURISDICTION**

**COMMERCIAL SUIT NO.314 OF 2015**
**ALONG WITH**
**INTERIM APPLICATION (L) NO.6606 OF 2020**
**AND**
**INTERIM APPLICATION (L) NO.6619 OF 2020**



Reliance Industries Limited
And Another ... Plaintiffs
Versus
State Bank of India and three others ... Defendants

.....

Dr. Milind Sathe, Senior Advocate a/w Mr. Rishit Badiani, Ms. Reshma Ranadive and Mr. Ketan Dave i/b A.S. Dayal & Associates for the Plaintiffs/applicants.

Mr. Rupesh R. Lanjekar for Defendant No.1-SBI.

Mr. Ajay Monga, Mr. B. Bopalkrishnan, Mr. Parikshit Desai, Ms. Anisha Balse, Mr. Reuben Mascreen and Mr. Nilesh Ghadge i/b SNG & Partners for Defendant No.2-UBL.

Mr. Asghar Hussain, Authorized Representative of Defendant No.2 present.

.....

**CORAM : S.C. GUPTE, J.**

**DATE : 11 DECEMBER 2020**

**Oral Judgement :**

. This Interim Application (Interim Application (L) No.6606 of 2020) has been taken out in a commercial suit, praying for disposal of the suit in view of the developments that have occurred during the pendency of the suit, which are briefly noted below :

2 The suit has been filed by the Plaintiffs for a perpetual injunction against invocation of, or encashment under, Letters of Credit dated 25 July 2008 issued by Defendant No.2 in favour of Republic of Yemen and Yemeni Ministry of Oil and Minerals, and corresponding counter-guarantees issued by Defendant No.1 in favour of Defendant No.2 of the same date, for performance of two Production Sharing Agreements dated 20 November 2007, executed between (i) Plaintiff No. 2, (ii) Defendant Nos.3 and 4 and (iii) Republic of Yemem and its Ministry of Oil and Minerals. Plaintiff No.1, through Plaintiff No.2, which was a special purpose vehicle established by it, had offered to work for exploration and commercial discovery of oil under these two production sharing agreements in two particular blocks (referred to as Block Nos.34 and 37) at Yemen. The production sharing contracts required the operator, Plaintiff No.2, to provide irrevocable Stand-By Letters of Credit ("SBLCs") for guaranteeing performance under the production sharing agreements. Plaintiff No.1, accordingly, made arrangements with Defendant No.1 bank-State Bank of India ("SBI") for establishing irrevocable SBLCs on behalf of Plaintiff No.2 through Defendant No.2. SBI, in response arranged for opening of SBLCs by offering counter-guarantees to Defendant No.2 bank-United Bank Limited ("UBL"), which is a banking company based in Dubai and having a branch in Yemen. On

the strength of these counter-guarantees, UBL issued SBLCs in favour of Republic of Yemen and its Ministry for sums of U.S.$13,000,000 and US$ 14,000,000, respectively, for Blocks 34 and 37. It was the case of the Plaintiffs that Plaintiff No.2 was unable to conduct operations under the production sharing contracts due to force majeure events occurring in Yemen till about September 2012, and that under the relevant clauses of SBLCs (clause-5), the SBLCs, as a result, had stood suspended during the occurrence of these force majeure events. It was also its case that Article 22.4 of the production sharing agreements allowed the Plaintiffs to terminate their obligations thereunder upon 90 days' written notice, if such events continued in effect beyond six months. It was the case of the Plaintiffs that the force majeure events did continue beyond the stipulated period of six months and a notice of termination was issued by Plaintiff No.2, and as a result, the SBLCs were not invocable by their beneficiaries, namely, the Republic of Yemen and its Ministry of Oil and Minerals.

3 In these premises, the Plaintiffs approached this court with the present commercial suit. A learned Single Judge of thi15. IA 2645-20.pdfs court, by an order passed on a Notice of Motion taken out by the Plaintiffs in that behalf, granted an ad-interim injunction in terms of prayer clauses (a) and (b) of the Notice of Motion, thereby restraining the Defendants from invoking or encashing the suit SBLCs. The matter was thereupon carried by UBL before a Division Bench of

this court in appeal. The parties to the commercial suit, namely, the Plaintiffs and Defendant Nos.1 and 2, arrived at a co15. IA 2645-20.pdfmpromise and drew minutes of order at the hearing of the appeal. The appeal was disposed of by the Division Bench in terms of such minutes. Broadly, the minutes provided for the Plaintiff herein ('Reliance') to approach ICC International Court of Arbitration; no payment to be made under the SBLCs during the pendency of arbitral proceedings; and SBI and UBL not being liable to pay under the SBLCs and the counter-guarantees in the event of the arbitral tribunal holding the Plaintiffs to be not liable to perform the production sharing agreements due to force majeure conditions. The Division Bench, in its order disposing of the appeal, passed on 2 March 2016, observed as follows :

> "It is agreed in the Minutes of Order that the appellant and the State Bank of India-Respondent No.3 will not make payment under the Suit Stand by Letters of Credit (SBLC), during the pendency of the ICC Arbitration Proceedings initiated by Reliance Industries Limited. It is further agreed that in the event the Arbitral Tribunal holds that on account of force-majeure, Reliance is not liable, then Appellant and State Bank of India-Respondent No.3 will not be entitled to make payment under SBLC and Counter-guarantee. However, if the Arbitral Tribunal holds against Reliance and subject to permissible challenge thereto, then the appellant and the State Bank of India-Respondent No.3 shall make the payment under

the Suit SBLC and Counter guarantee."

4 In view of this order passed by the Division Bench of this court, the parties approached International Chamber of Commerce (ICC) International Court of Arbitration. By its award dated 30 October 2017, ICC Arbitration Tribunal *inter alia* declared that force majeure conditions referred to under the contract continued to exist for six months and as a result, the production sharing agreements entered into between Plaintiff No.2 and Defendant No.3, on the one hand, and Republic of Yemen and Yemeni Ministry of Oil and Minerals, on the other, in respect of Blocks 34 and 37 had been validly terminated. The Arbitral Tribunal declared that the latter were not, as a result, entitled to draw down on the SBLCs issued in their favour by UBL. The award was carried by the Respondents- Republic of Yemen and Yemeni Ministry of Oil and Minerals before the Court of Appeal in Paris. Before the Court of Appeal, they, however, withdrew their action, terming it as a final withdrawal, based on which, the proceedings were terminated by the Court of Appeal and jurisdiction was declined.

5 As a result of the award of the Arbitral Tribunal and disposal of the appeal by the Court of Appeal, there being a final declaration in the arbitration proceedings initiated by the Plaintiffs that UBL and SBI are bound not to make payment under the suit SBLCs, having regard to the appellate order dated 2 March 2016 read with disposal of the

arbitration proceedings in terms of the arbitral award and the order of the Court of Appeal, referred to above, the present commercial suit has practically worked itself out. There is nothing further for this court to do insofar as the commercial suit is concerned. The Commercial Suit, accordingly, deserves to be disposed of as infructuous. Learned Counsel for Defendant No.2-UBL, however, submits that his client is presently defending proceedings before a local court in Yemen initiated at the instance of Republic of Yemen and its Ministry for payment under the suit SBLCs. Learned Counsel submits that to protect itself from any liability under the SBLCs, his client has obtained counter-guarantees from Defendant No.1-SBI. Learned Counsel submits that whilst disposing of this suit in terms of the appellate order dated 2 March 2016, read with award of the ICC Arbitration Tribunal and the order of Court of Appeal at Paris, his client needs to be protected. Learned Counsel submits that in case the proceedings in Yemen result into an adverse order, so far his client is concerned, and as a result, the latter is required to pay under the SBLCs and invoke the counter-guarantees, the disposal of this suit in terms of the present order would in that case come in his way.

6 The proceedings before the court at Yemen and any liability arising as a result of any order passed therein are anyway foreign to the cause of action in the present suit. So far as the present cause of action is concerned, it has come to be effectively disposed of in terms of the appellate order read with the order of the ICC Arbitral Tribunal

and the order of the Court of Appeal at Paris. At the most, liberty could be reserved unto UBL to approach this court and seek directions, in case the court at Yemen were to pass any order adverse to it.

7 It is, accordingly, ordered as follows :

(i) The Commercial Suit is disposed of as infructuous, in view of the order passed by the Division Bench of this Court on 2 March 2016 in Appeal (L) No.919 of 2015 in Notice of Motion No.605 of 2015, read with the Award of International Chamber of Commerce (ICC) International Court of Arbitration dated 30 October 2017 in ICC Case No.21009/ZF/AYZ between Reliance Exploration & Production DMCC and Hood Energy Ltd. Republic of Yemen and Yemeni Ministry of Oil and Minerals, and order of Court of the Appeal at Paris dated 29 March 2018 in Appeal being Registry No.17/21956.

(i)(1) It is clarified that having regard to the appellate order dated 2 March 2016 read with disposal of the arbitration proceedings in terms of an arbitral award and order of the Court of the Appeal, Defendant Nos.1 and 2 are bound not to make payment under suit SBLCs.

(ii) Liberty to Defendant No.2-UBL to apply for suitable directions of this court, in case recovery proceedings initiated in Yemen by Republic of Yemen and Yemeni Ministry of Oil and Minerals result into a decree for payment of money against it. All rights and contentions of the parties in that behalf including the grounds urged, and defences raised in the present commercial suit, are kept open in that behalf, to be urged by the respective parties as and when such application is made.

(iii) Learned Counsel for Defendant No.2-UBL states that in case there is any order against his client from the Court at Yemen, arising out of the proceedings referred to above, his client would stay its hands for a period of three weeks after intimation in that behalf to the Plaintiffs herein to enable the Plaintiffs to take steps, if any, in that behalf. The statement is accepted.

(iv) No order as to costs.

7 In view of the order passed in Interim Application (L) No.6606

of 2020 as above, resulting into disposal of the present Commercial Suit, the other interim application, namely, Interim Application (L) No.6619 of 2020, does not survive and is disposed of.

**(S.C. GUPTE, J.)**