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C.S.No.466 of 2009

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 18.12.2023

CORAM

THE HON'BLE MR. JUSTICE ABDUL QUDDHOSE

C.S.No.466 of 2009

M/s. Chemfab Alkalies Ltd.,
Rep. by its General Manager (Finance),
having its registered office at,
Gnanananda Place,
Kalapet,
Puducherry - 605 014.

...Plaintiff

Vs.

1.State Bank of India,
LIBM Branch,
177/1, Poonamallee High Road,
Chennai - 600 010.

2. Banco Bilbao,
Vizcaya Argentaria SA,
DPTO Extranjero PTA,
Avda.Severo Ochoa 16,
Parque T.Andalucia,
29590 Malaga,
Spain.

3. Construcciones Mecanicas J.Serra, S.A.,
Having its registered office at
Montsney, 17, Pist Pere Molanta,
08799 Olderdola, Barcelona, Spain.

... Defendants



PRAYER: Complaint filed under Order IV Rule I of Madras High Court Original Side Rules and Order VII Rule 1 of C.P.C. for the following reliefs:

a) For a Declaration that the Defendants 2 & 3 are not entitled to claim payment of any sum under the letter of Credit bearing No.0702408IM0000782 dated 10-09-2008 issued by the 1st Defendant; and

b) For Consequential Permanent Injunction restraining the Defendants 2 & 3 from claiming payment of any sum under the letter of Credit bearing No.0702408IM0000782 dated 10-09-2008 issued by the 1st Defendant ; and

c) For Consequential Permanent Injunction restraining the 1st Defendant from making payment of any sum under the letter of Credit bearing No.0702408IM0000782 dated 10-09-2008 issued by the 1st Defendant;

d) for costs of the suit.

For Plaintiff : Mr.Srinath Sridevan
Senior Counsel
for Mr.Bhagavath Krishnan

For Defendants : Mr.M.L.Ganesh
for D1

D2 and D3 - No Appearance



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C.S.No.466 of 20...



JUDGMENT

This suit has been filed, seeking the following reliefs:

- a) For a Declaration that the Defendants 2 & 3 are not entitled to claim payment of any sum under the letter of Credit bearing No.0702408IM0000782 dated 10-09-2008 issued by the 1st Defendant; and
- b) For Consequential Permanent Injunction restraining the Defendants 2 & 3 from claiming payment of any sum under the letter of Credit bearing No.0702408IM0000782 dated 10-09-2008 issued by the 1st Defendant ; and
- c) For Consequential Permanent Injunction restraining the 1st Defendant from making payment of any sum under the letter of Credit bearing No.0702408IM0000782 dated 10-09-2008 issued by the 1st Defendant;
- d) for costs of the suit.

2. The plaintiff has entered into a sales contract with the third defendant on 28.08.2008 and as per the sales contract, the plaintiff agreed to purchase salt washery plant manufactured by the third defendant for a total sales consideration of Euro.3,70,000/-. As per the sales contract, the



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plaintiff paid 20% as advance to the third defendant by way of bank transfer and for the balance 80%, the plaintiff committed to open a letter of credit as per the terms and conditions of the sales contract dated 28.08.2008. In the sales contract dated 28.08.2008, the third defendant had to conduct certain performance test runs. The third defendant was also obligated to provide a performance bank guarantee in favour of the plaintiff.

3. As per the terms of the sales contract dated 28.08.2008, the plaintiff on 12.09.2008 approached the first defendant and sought for a letter of credit. The third defendant has also provided a draft performance bank guarantee obtained from the third defendant's banker on 08.09.2008.

4. The machineries agreed to be purchased by the plaintiff from the third defendant were shipped by the third defendant from Spain on 13.02.2009 for delivery to the plaintiff. According to the plaintiff, the third defendant ran performance test runs of the machineries which were erected in the plaintiff's factory which were the imported machineries sold by the third defendant to the plaintiff on 30.04.2009. According to the plaintiff, the test runs could not be completed because one of the main components was



not functioning properly. Therefore, according to the plaintiff, the third defendant failed to discharge its obligations under the sales contract dated 28.08.2008.

5. On 04.05.2009, the first defendant bank handed over a performance bank guarantee issued by the 2nd defendant on behalf of the 3rd defendant as per the sales contract dated 28.08.2008. According to the plaintiff, since the bank guarantee issued by the 2nd defendant was not in the approved format, the plaintiff by its letter dated 09.05.2009 sent to the first defendant bank and requested them not to disburse the sums as per the letter of credit. However, according to the plaintiff, the first defendant bank by its reply dated 12.05.2009 rejected the stand taken by the plaintiff and informed the plaintiff that payment will be made to the 3rd defendant as per the letter of credit. On 15.05.2009, the plaintiff replied to the first defendant bank, reiterating that the first defendant bank should not disburse the sums to the third defendant as the performance bank guarantee is not in accordance with the approved format as prescribed in the letter of credit.



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C.S.No.466 of 20...



6. According to the plaintiff, they once again reminded the first defendant bank by their communication dated 22.05.2009 requesting them once again not to make the payment to the third defendant under the letter of credit. However, according to the plaintiff, the first defendant bank by its reply dated 27.05.2009 once again reiterated that the moneys will have to be disbursed to the third defendant in accordance with the letter of credit. Since the first defendant bank has not agreed to the plaintiff's request, the plaintiff was constrained to file the present suit, seeking for the reliefs as sought for in the plaint, which have been referred to supra.

7. The first defendant has filed its written statement, reiterating that they are bound by the terms and conditions of the letter of credit and they have also stated that the plaintiff has approved the format of the bank guarantee and only based on the said format, the bank guarantee has been issued by the second defendant bank on behalf of the third defendant. Therefore, according to them, they are obligated to disburse the sums due and payable to the 3rd defendant under the letter of credit. They have reiterated the contentions which they have communicated to the plaintiff prior to the filing of the suit by the plaintiff. The second defendant who is



the corresponding bank and the banker of the third defendant as well as the third defendant who is the seller, have remained unrepresented in this suit and they were also set *ex-parte* by this Court.

8. Based on the pleadings of the plaintiff and the first defendant, the following issues were framed by this Court on 07.04.2015:

"1. Whether the Bank Guarantee issued by the 2nd Defendant is in the format stipulated between the parties?"

2. Whether the Bank Guarantee issued by the 2nd Defendant is discrepant on when compared to the format approved in Complaint Doc. No.4?"

3. Whether the Bank Guarantee issued by the 1st Defendant is payable and whether conditions for payment have been complied with?"

4. Whether the 3rd Defendant has accepted the results of the Performance Trial Run by signing the Minutes thereof?"



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C.S.No.466 of 20...



5. *Whether the 3rd Defendant can be permitted to invoke the Letter of Credit without even conducting a performance test as agreed?*

6. *Whether this Hon'ble Court has territorial jurisdiction to try the case against the defendant No.2 and 3?*

7. *Whether the relief of declaration against defendants 2 and 3 can be granted, when both are incorporated under foreign law and both are carrying on business in foreign country?*

8. *Whether the Plaintiff is entitled to reliefs as payed for?"*

9. Before the learned Additional Master - I, the plaintiff's authorized representative Mr.G.Somasundaram, who is the Company Secretary of the plaintiff, was examined as a witness (PW1) on behalf of the plaintiff. He has also filed a proof affidavit reiterating the contents of the plaint. Through PW1, the following documents were marked as exhibits:



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C.S.No.466 of 20...

<i>Exhibit No.</i>	<i>Nature of Documents</i>	<i>Dated</i>
<i>P1</i>	<i>Board Resolution</i>	<i>30.07.2015</i>
<i>P2</i>	<i>Proposal</i>	<i>22.07.2008</i>
<i>P3</i>	<i>Agreement entered into between plaintiff and 3rd defendant</i>	<i>28.08.2008</i>
<i>P4</i>	<i>True copy of the letter of credit</i>	<i>12.09.2008</i>
<i>P5</i>	<i>True copy of the approved format of the performance bank guarantee</i>	<i>08.09.2008</i>
<i>P6</i>	<i>Minutes of performance trial run</i>	<i>30.04.2009</i>
<i>P7</i>	<i>Consolidated performance trial run minutes</i>	<i>09.05.2009</i>
<i>P8</i>	<i>True copy of the performance bank guarantee issued by the 2nd defendant</i>	<i>23.04.2009</i>
<i>P9</i>	<i>True copy of the plaintiff's letter to the 1st defendant</i>	<i>09.05.2009</i>
<i>P10</i>	<i>1st defendant's reply to the plaintiff</i>	<i>12.05.2009</i>
<i>P11</i>	<i>True copy of the plaintiff's letter to the 1st defendant</i>	<i>15.05.2009</i>
<i>P12</i>	<i>True copy of the plaintiff's letter to the 1st defendant</i>	<i>22.05.2009</i>
<i>P13</i>	<i>True copy of the 1st defendant's letter to the plaintiff</i>	<i>27.05.2009</i>

10. On the side of the first defendant, the first defendant's Chief Manager, Mr.M.Ramesh Kumar, was examined as a witness (DW1). A proof affidavit was also filed by Mr.M.Ramesh Kumar on behalf of the first defendant, reiterating the contents of the written statement filed by the first defendant. However, no documents were filed on the side of the first defendant. The first defendant witness(DW1) was also cross examined by the plaintiff counsel.



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11. Heard, Mr.Srinath Sridevan, learned Senior Counsel for Mr.Bhagavath Krishnan for the plaintiff and Mr.M.L.Ganesh, learned counsel for defendant No.1.

12. The learned Senior counsel for the plaintiff drew the attention of this Court to the letter of credit issued by the first defendant bank on the instructions of the plaintiff and would submit that the format of the performance bank guarantee submitted by the second defendant bank on behalf of the third defendant is not in accordance with the format as stipulated in the letter of credit. According to him, since there is a discrepancy, the first defendant cannot pay the sums of money to the third defendant as per the letter of credit. He would further submit that even if there is a minor discrepancy, the letter of credit cannot be enforced by the third defendant. He would also submit that since the first defendant bank refused the request of the plaintiff, the plaintiff was constrained to file the suit. He also relies upon the following authorities in support of the plaintiff's contentions for the proposition that bank must examine all documents with reasonable care to ascertain that they appear on their face to be in accordance with the terms and conditions of the credit:



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C.S.No.466 of 20...

- a) *Lamborn Vs. Lake Shore Bank & Trust Co.***
(1921) 196 Appl. Div. 504, 507:188;
- b) *English Scottish and Australian Bank Ltd.***
***Vs. The Bank of South Africa* (1922) 13 LI REP 21,**
24;
- c) *Laudisi Vs. American Exch. Nat'l Bank***
(1924) 239NY 234:146 NE 347, 348;
- d) *Bank Melli Iran Vs. Barclays Bank***
***(Dominion Colonial & Overseas)* (1951) 2LI L Rep**
367;
- e) *Equitable Trust Company of New York Vs.***
***Dawson Partners Ltd.* (1927) 27 LI L Rep 49;**
- f) *Gian Singh & Co. Ltd., Vs. Banque De***
***L'indochine*, (1974) 2 Lloyd's Rep.1;**
- g) *United Commercial Bank Vs. Bank of India***
***& Others* (1981) 2 SCC 766, Para 40, 45;**
- h) *Federal Bank Ltd., Vs. V.M.Jog Engineering***
***Ltd. & Others*, (2001) 1 SCC 663, para 37.**



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C.S.No.466 of 20...



13. The learned Senior counsel for the plaintiff would further submit that the documents which appear on their face to be inconsistent with one another will be considered as not appearing on their face to be in accordance with the terms and conditions of the credit. After relying on the terms and conditions of the letter of credit, the learned senior counsel appearing for the plaintiff would reiterate that the plaintiff is entitled for the reliefs sought for in the plaint in view of the fact that on the face of it, the bank guarantee format produced by the second defendant is not in accordance with the bank guarantee format prescribed in the letter of credit.

14. However, on the other hand, the learned counsel for the first defendant would reiterate the contentions of the first defendant as contained in the written statement filed by the first defendant. He would submit that only with the approval of the plaintiff, the first defendant was in the process of permitting the third defendant to obtain payment as per the letter of credit. According to him, there is no discrepancy as pointed out by the learned senior counsel for the plaintiff in the bank guarantee format. Therefore, the first defendant is obligated to permit the defendant Nos.2 and 3 to receive payments as per the letter of credit. He would also submit that



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only in view of the interim injunction granted by this Court, the first defendant has not remitted the payments to the 3rd defendant as per the letter of credit.

15. As seen from the respective contentions, the crux of the plaintiff's case is that the third defendant is not entitled to receive payments as per the letter of credit because the third defendant has not furnished the performance bank guarantee as per the approved format disclosed in the letter of credit.

16. The relevant part of the approved format of the performance bank guarantee (Ex.P5) as per the letter of credit issued at the behest of the plaintiff to the first defendant is as under:

"08.09.08

***The State Bank of India
LIBM Branch
Chennai.***

Sir :



C.S.No.466 of 20...

Giving below the format of the Performance Bank Guarantee to be furnished by M/s.CONSTRUCCIONES MECANICAS J SERRA SA, Spain.

Thanking you,

Yours truly

For CHEMFAB ALKALIS LIMITED

AUTHORISED SIGNATORIES.

PERFORMANCE BANK GUARANTEE

Dear sirs,

We, (Name of the Bank), with registered office at, hereby establish in your favour the following performance bond guarantee :

BENEFICIARY : CHEMFAB ALKALIS LIMITED,

India

OUR REFERENCE

SELLER CONSTRUCCIONES MECANICAS J SERRA SA

PO BOX montseny, 17 Poligone Ind Sant Pere Molanta

08799 Ofedola (Vilafrance del Penedes) Barcelona

Spain



C.S.No.466 of 2009

AMOUNT : 74,000 Euros (Seventy four thousand Euros)

VALIDITY : UPTO 31.08.2009.

COVERING : The good performance by CMJ SERRA SA of its liabilities in relation to the

Contract of the Supply of Equipments for the Salt Upgrading /Washing Plant 20 tph dated 28.08.2008.

We, (Name of the Bank), hereby irrevocably undertake to pay to you any amount up to 74,000.00 Euros (seventy four thousand Euros) on receipt of your first written demand, certifying that CONSTRUCCIONES MECHANICAS J. SERRA SA has not fulfilled their contractual obligations in reference said project.

Claims as aforesaid must bear your confirmation of , supplier company and your bankers that the signatures appearing thereon are valid and binding CHEMFAB ALKALIS LIMITED.

This guarantee will be only executable by beneficiary if he is in possession of this present original document of guarantee.

This guarantee will remain in force maximum until 31.08.2009. Your claims, if any, must reach us in good order on or before that date, otherwise, this guarantee will be automatically null and void whether returned to us or not.

Yours faithfully,

(Name of the Bank) with Seal"



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17. As seen from the above, as per the approved format of the performance bank guarantee, the first defendant should confirm that the signature of the plaintiff's authorized signatory and the person making the claim is valid and binding.

18. The learned senior counsel for the plaintiff during the course of his submissions had submitted that the intention behind the particular wording in the performance bank guarantee approved format is that the conditions to be complied by the plaintiff for triggering the payment under the performance bank guarantee was that the plaintiff should make a claim bearing the confirmation of the plaintiff that the third defendant had defaulted contractual obligations and the first defendant must confirm that the signatures appearing on the claim are valid and binding. The said contention of the learned senior counsel for the plaintiff is likely to be true, considering the nature of the sales contract and has to be accepted by this Court, since no contra evidence has also been placed on record by the defendants.



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19. However, as seen from the performance bank guarantee issued by the second defendant, the terms of the performance bank guarantee disclosed in the letter of credit have been altered. The relevant part of the bank guarantee (Ex.P8) is extracted hereunder:

"COVERING : The good performance by CONSTRUCCIONES MECANICAS J. SERRA, S.A., of its liabilities in relation to the SALT WASHING / UP GRADING PLANT 20 TPH -480 TPD WITH SPARES

INCOTERMS : C AND F

BENEFICIARY'S PROPOSAL No.088217 Dt.22.7.2008.

APPLICANT'S CONTRACT DT. 28.8.2008.

"We BANCO BILBAO VIZCAYA ARGENTARIA S.A., hereby irrevocably undertake to pay to CHEMFAB ALKALIS LIMITED any amount up to EUR 185.000, 00(euro one hundred eighty five thousand only) on receipt of your first written demand, certifying that CONSTRUCCIONES MECANICAS J.SERRA S.A., has not fulfilled their contractual obligations in reference said project and specifying in which way they have so failed.

Claims as aforesaid must bear your confirmation, the guarantor company and your bankers that the signatures appearing thereon are valid and binding CHEMFAB ALKALIS LIMITED. This guarantee will be only executable by beneficiary if he is in possession of this present original document of guarantee."



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C.S.No.466 of 20...



20. As seen from the performance bank guarantee issued by the second defendant, the following discrepancies have been found, which is not in accordance with the format approved under the letter of credit:

a) The second defendant has included the words "and specifying in which way they have so failed" which were not in the approved format. This has made the claim to be submitted by the plaintiff more onerous by the second defendant. As seen from the terms of the letter of credit, it is evident that it was the intention of the parties to trigger a demand simplicitor on the bank guarantee without there being the need for any explanation or justification;

b) Secondly, in the second paragraph, the word "of" has been deleted. The plaintiff submits that the deliberate omission of the word "of" in the performance bank guarantee issued by the second defendant necessitates that both the first and third defendants should jointly confirm that the signature of the plaintiff in the claim should be valid and binding, in order for the plaintiff to be eligible to claim payment under the performance bank guarantee from the second defendant. According to the plaintiff, it is an impossible obligation. The contention of the plaintiff has to be accepted by this Court since it is highly probable that the third defendant will never



confirm the signature found in the documents.

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21. It is settled law that a party who is entitled to invoke the letter of credit must strictly adhere to the terms and conditions of the letter of credit without any modification. If he fails to fulfill any condition in the letter of credit, then the issuing bank should not make payments to the beneficiary under the letter of credit.

22. The Uniform Customs and Practices (UCP) relating to Documentary Credits (ICC 600) casts upon the bank, the duty to scrutinise the documents presented to it for collection in order to ensure that the same corresponds to the documents required under the letter of credit.

23. As seen from the deposition of the witnesses, it has been admitted by the first defendant's witness that the bank did not verify that the bank guarantee was issued as per the format disclosed in the letter of credit. The relevant extract of the cross examination of the first defendant's witness DW1 is reproduced hereunder:

"Q: So, according to you, you never determined



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C.S.No.466 of 2019

whether it was an approved format or not? Am I correct?

A: We have not determined.

Q: Am I correct in saying that you arrived at a conclusion set out in Paragraph 2 of Ex.P.10 without seeing the approved format?

A: Yes

Q: I put it to you that Paragraph 5 of conditions 47A of Ex.P4, letter of credit requires the issuance of the performance bank guarantee by the beneficiary in the format earlier approved. What do you say?

A: Yes

Q: I put it to you that the bank guarantee issued by the 2nd defendant was not as per the approved format. What do you say?

A: We do not look into whether it is an approved format or not.

Q: You have stated that you have not looked into any approved format. If so, on what basis did you determine that the performance bank guarantee given



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C.S.No.466 of 20...

by the 2nd defendant was a complying presentation as per Ex.P4, letter of credit?

A: LC states it is approved bank guarantee. We are having a bank guarantee, according to that it is not a discrepant document."

24. In the case laws relied upon by the learned counsel for the plaintiff, it is made clear that even if there are minor discrepancies, unless and until the said discrepancies have been waived by the plaintiff, the question of disbursement of payments under the letter of credit will not arise. The ratio laid down in the respective decisions relied upon by the learned counsel for the plaintiff are detailed hereunder:

9.1 *The Plaintiff has relied on **Lamborn v. Lake Shore Bank & Trust Co. (1921) 196 Appl Div 504, 507:188**: The brief facts of which is that Bill of Lading stated Java white sugar' instead of Java white granulated sugar'. It was held that the party who is entitled to draw against a letter of credit must strictly observe the terms and conditions under which the credit is to become available, and if he does not, and the bank refuses to honour his draft, he has no cause of action. It would cause serious embarrassment to banks issuing such letters if such banks were required to pay upon bills of lading against which the letter of credit was issued which did not conform to the bill of lading as required to be drawn accompanying the draft which the bank had promised to pay.*



9.2 *In English Scottish and Australian Bank Ltd. vs. The Bank of South Africa (1922) 13 LIL REP 21, 24:* It was held that it is elementary to say that a person who ships in reliance on a letter of credit must do so in exact compliance with its terms. A bank is not bound or indeed entitled to honour drafts presented to it under a letter of credit unless those drafts with the accompanying documents are in strict accord with the credit as opened.

9.3 *In Laudisi v. American Exch. Nat'l Bank (1924) 239NY 234: 146 NE 347, 348:* It was held that the bank has the power and is subject to limitations which are given and imposed by (the customer's) authority. The bank is protected in its payment of draft only if it stays and does not transgress those limitations.

9.4 *Bank Melli Iran v. Barclays Bank (Dominion Colonial & Overseas) (1951) 2LI L Rep 367:* Held that the defendants are not entitled to debit the plaintiff with the amount paid against defective documents tendered and accepted by the defendants.

9.5 *Equitable Trust Company of New York vs. Dawson Partners Ltd, (1927) 27 LI L Rep 49:* It was held that it is both common ground and common sense that in such a transaction the accepting bank can only claim indemnity if the conditions on which it is authorised to accept are in the matter of accompanying documents strictly observed and that there is no room for documents which are almost the same, or which will do



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C.S.No.466 of 20...

as well. It was stated that the business could not proceed securely on any other lines.

9.6 **Gian Singh & Co. Ltd. v. Banque De L'indochine, [1974] 2 Lloyd's Rep.1:** Held that Literal requirement of the letter of credit should be complied and that there was no reason discernable upon mere reading of terms the terms of letter of credit for construing requirement otherwise than literally.

9.7 **United Commercial Bank v. Bank of India & Others (1981) 2 SCC 766, para 40,45:** Bank issuing or confirming a Letter of Credit is not concerned with the underlying contract between the buyer and seller. The duties of bank under letter of credit is created by the document itself. The Banker knows only the letter of credit which is the only authority to act, and the documents which are presented under it. The Banker is bound to pay only if these documents conform to the letter of credit and they are equally not bound to pay if the documents do not conform to the letter of credit. It is not for the Banker to state that the description meant identically the same thing.

9.8 **Federal Bank Ltd. v. V.M.Jog Engineering Ltd & Others, (2001) 1 SCC 663, para 37:** The Hon'ble Apex Court held that UCP applies to Letters of Credit and have held that the Banks have obligations to perform under the Letter of Credit only if documents are furnished as per the Letter of Credit.



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25. Letters of credit are a widely used payment mechanism particularly in international sales. The documents presented by the seller must strictly comply with the requirements contained in the letter of credit. If there is a single discrepancy between the documents presented and the documents required, seller's entitlement of payment is extinguished. Banks only deal with documents, not with goods, and have no obligation to investigate or determine if the underlying transaction has actually occurred. Instead, the bank's obligation is limited to determining whether the required documents, in proper form, have been presented. Admittedly, in the instant case, format of the performance bank guarantee issued by the second defendant bank on behalf of the third defendant is not in accordance with the format approved in the letter of credit. While that be so, the first defendant bank cannot release payments under the letter of credit.

26. A categorical assertion has been made in the plaint that despite the machineries supplied by the third defendant being not as per the capacity and quality as agreed upon under the sales contract, the defendant No.3 is attempting to obtain payments under the letter of credit issued by the first defendant bank which amounts to fraud. In paragraph No.12 of the



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plaint, the plaintiff has categorically stated that the act of the third defendant in attempting to invoke the letter of credit without even conducting a performance test, by submitting a cunningly altered performance bank guarantee, amounts to fraud.

27. The plaintiff has also not agreed for the alteration of the performance bank guarantee format, as seen from the oral and documentary evidence available on record though the first defendant contends that only with the consent of the plaintiff, the first defendant has permitted the minor alteration of the bank guarantee format. As seen from the documents which have been marked as exhibits, the plaintiff immediately after coming to know about the alteration of the format of the bank guarantee by the defendant Nos.2 and 3 communicated to the first defendant that they should not release payments to the third defendant on account of the discrepancy in the performance bank guarantee format. The exhibits viz., Ex.P9 (plaintiff's letter to the first defendant) dated 09.05.2009, Ex.P10 (first defendant's reply to the plaintiff) dated 12.05.2009, Ex.P11 (the plaintiff's letter to the first defendant) dated 15.05.2009, Ex.P12 (The plaintiff's letter to the first defendant) dated 22.05.2009 and the first defendant's letter to the



plaintiff marked as Ex.P13 dated 27.05.2009, make it clear that the plaintiff was vigilant in informing the first defendant immediately about the discrepancy in the format of the performance bank guarantee as the same is different from the format approved, which is disclosed in the letter of credit.

28. A buyer who sells the goods based on a letter of credit must do so in exact compliance with its terms. It is also elementary to say that a bank is not bound or indeed entitled to honour drafts presented to it under a letter of credit unless those drafts with the accompanying documents are strictly in conformity with the terms and conditions of the letter of credit.

29. A letter of credit constitutes the sole contract with the banker and the bank issuing the letter of credit has no concern with any question that may arise between the seller and the purchaser of the goods. Therefore, it is clear that the first defendant bank will have to strictly adhere to the terms and conditions of the letter of credit including the format of the performance bank guarantee approved in the letter of credit. Unless and until the said format has been adhered to by the defendant Nos.2 and 3, the first defendant



is not obligated to disburse the amounts under the letter of credit to the third defendant.

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30. For the foregoing reasons, the contentions of the first defendant as pleaded in their written statement is rejected by this Court. It is also to be noted that the plaintiff is having the benefit of the interim injunction granted by this Court as early as on 04.06.2009 in O.A.Nos.568 and 569 of 2009 by which the respondent Nos.2 and 3 have been restrained from claiming the payments of any sum under the letter of credit, dated 12.09.2008 and the first respondent / first defendant has also been restrained from making payment of any sum under the letter of credit issued by the first defendant pending disposal of the suit.

31. The defendant Nos.2 and 3 have also been set *ex-parte* by this Court and no contra evidence is also available to disprove the contentions of the plaintiff. Despite the grant of interim order in the year 2009 itself, the defendants till date have not filed any application to vacate the same and they have also remained *ex-parte*.



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C.S.No.466 of 20...



32. For the foregoing reasons, the issues framed by this Court are answered in the following manner:

Q1. Whether the Bank Guarantee issued by the 2nd Defendant is in the format stipulated between the parties?

Ans: The bank guarantee issued by the 2nd defendant is not in the format stipulated in the letter of credit issued by the first defendant.

Q2. Whether the Bank Guarantee issued by the 2nd Defendant is discrepant on when compared to the format approved in Plaintiff Doc. No.4?

Ans: There is discrepancy in the bank guarantee issued by the 2nd defendant when compared to the format approved as per plaintiff document No.4.

Q3. Whether the Bank Guarantee issued by the 1st Defendant is payable and whether conditions for payment have been complied with?

Ans: In view of the discrepancies found in the bank guarantee issued by the 2nd defendant, the bank guarantee issued by the 1st defendant is not payable since the conditions for payment as per the letter of credit have not been complied with.



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Q4. Whether the 3rd Defendant has accepted the results of the Performance Trial Run by signing the Minutes thereof?

Ans: Since the third defendant has not accepted the results of the performance trial run conducted by the plaintiff by signing the minutes thereof, the third defendant is not entitled to receive the balance payments as per the letter of credit from the first defendant bank;

Q5. Whether the 3rd Defendant can be permitted to invoke the Letter of Credit without even conducting a performance test as agreed?

Ans: The 3rd defendant cannot be permitted to invoke the letter of credit without conducting the performance test as agreed upon between the parties.

Q6. Whether this Hon'ble Court has territorial jurisdiction to try the case against the defendant No.2 and 3?



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C.S.No.466 of 20...



Ans: Yes, this Court is having the territorial jurisdiction to try the case against the defendant Nos.2 and 3, since part of cause of action arose within the jurisdiction of this Court.

Q7. Whether the relief of declaration against defendants 2 and 3 can be granted, when both are incorporated under foreign law and both are carrying on business in foreign country?

Ans: Since part of cause of action arose at Chennai within the jurisdiction of this Court, the relief of declaration against the defendant Nos.2 and 3 can be granted even though both are incorporated under foreign law and both are carrying on business in foreign Country.

33. In the result, the plaintiff is entitled for the reliefs as prayed for in the plaint. Accordingly, the suit is decreed in favour of the plaintiff, as prayed for and this Court issues the following directions:

a) A declaration is issued in favour of the plaintiff that the defendant Nos.2 and 3 are not entitled to payment of any sum under the letter of Credit bearing No.0702408IM0000782 dated 10-09-2008 issued by the first



defendant;

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b) A consequential permanent injunction is granted restraining the defendant Nos.2 and 3 from claiming payment of any sum under the letter of credit bearing No.0702408IM0000782 dated 10-09-2008 issued by the first defendant;

c) A consequential permanent injunction is granted in favour of the plaintiff restraining the first defendant from making payment of any sum under the letter of credit bearing No.0702408IM0000782 dated 10-09-2008 issued by the first defendant;

d) There shall be no order as to costs.

18.12.2023

Index : Yes/No
Speaking Order : Yes / No
Neutral Citation Case: Yes / No
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C.S.No.466 of 20...

List of Witness examined on the side of the Plaintiffs:-

Mr.G.Somasundaram (PW1)

List of the Exhibits marked on the side of the Plaintiffs:-

<i>Exhibit No.</i>	<i>Nature of Documents</i>	<i>Dated</i>
<i>P1</i>	<i>Board Resolution</i>	<i>30.07.2015</i>
<i>P2</i>	<i>Proposal</i>	<i>22.07.2008</i>
<i>P3</i>	<i>Agreement entered into between plaintiff and 3rd defendant</i>	<i>28.08.2008</i>
<i>P4</i>	<i>True copy of the letter of credit</i>	<i>12.09.2008</i>
<i>P5</i>	<i>True copy of the approved format of the performance bank guarantee</i>	<i>08.09.2008</i>
<i>P6</i>	<i>Minutes of performance trial run</i>	<i>30.04.2009</i>
<i>P7</i>	<i>Consolidated performance trial run minutes</i>	<i>09.05.2009</i>
<i>P8</i>	<i>True copy of the performance bank guarantee issued by the 2nd defendant</i>	<i>23.04.2009</i>
<i>P9</i>	<i>True copy of the plaintiff's letter to the 1st defendant</i>	<i>09.05.2009</i>
<i>P10</i>	<i>1st defendant's reply to the plaintiff</i>	<i>12.05.2009</i>
<i>P11</i>	<i>True copy of the plaintiff's letter to the 1st defendant</i>	<i>15.05.2009</i>
<i>P12</i>	<i>True copy of the plaintiff's letter to the 1st defendant</i>	<i>22.05.2009</i>
<i>P13</i>	<i>True copy of the 1st defendant's letter to the plaintiff</i>	<i>27.05.2009</i>

18.12.2023

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C.S.No.466 of 2009

ABDUL QUDDHOSE. J.,

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C.S.No.466 of 2009

18.12.2023