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

% *Date of Decision: 22.12.2023*

\+ **FAO(COMM) 178/2023 and CM No. 46094/2023**

M/S AGARWALLA TEAK INTERNATIONAL PVT. LTD. ..... Appellant

Through: Mr Ashish Dholakia, Senior Advocate with Mr Dheeraj Gupta and Mr Arpit Kumar Singh, Advocates.

versus

AMROSE SINGAPORE PTE. LTD. AND ORS. ..... Respondents

Through: Mr Gautam Awasthi, Mr Ayush Choudhary, Mr Devansh Yadav and Mr Sahil Sharma, Advocates for Indian Bank.

CORAM:
HON'BLE MR. JUSTICE VIBHU BAKHRU
HON'BLE MR. JUSTICE AMIT MAHAJAN

ORDER

1. The appellant has filed the present appeal impugning an interim order dated 16.08.2023 of the learned Commercial Court (hereafter '**the impugned order**') whereby the application of the appellant under Order XXXIX, Rules 1 and 2 of the Code of Civil Procedure, 1908 (hereafter '**the CPC**') was rejected. The appellant had filed the application in CS (COMM) 387/2020 captioned ***M/s Agarwalla Teak International Pvt. Ltd. v. Amrose Singapore Pte. Ltd.***.

2. The aforementioned suit was filed by the appellant, *inter alia*, seeking permanent and mandatory injunction. The appellant seeks a declaration that the transaction entered into by the appellant with respondent no.1 (**Amrose Singapore Pte. Ltd. -** hereafter '**ASPL**') is vitiated by fraud and thereby it is not liable to make any payment against a Commercial Invoice dated 12.03.2020 for an amount of USD 52,205.09/- (hereafter '**the Commercial Invoice**') and/ or Letter of Credit bearing no. 49790N100005820 dated 11.03.2020 for an amount of USD 94,994/- (hereafter '**the LC**').

3. The appellant also seeks a decree of permanent and mandatory injunction restraining respondent no. 3 bank (hereafter '**Union Bank of India'**) from making payment to ASPL or respondent no. 2 bank (hereafter '**Indian Bank'**) and restraining ASPL and Indian Bank from raising any demand to Union Bank of India for payment under the Commercial Invoice and/or the LC.

4. By the impugned order, the learned Commercial Court had rejected the relief sought by the appellant for an interim injunction restraining Union Bank of India from making any payment to Indian Bank against the LC.

FACTUAL BACKGROUND

5. It is the appellant's case that it had entered into a transaction for purchasing New Zealand Radiata Pine logs (Timber) from ASPL. The said

goods were to be supplied against an irrevocable Letter of Credit. Accordingly, the appellant had approached the Union Bank of India with a request to open the Letter of Credit for an amount of USD 94,994/- favouring ASPL. The appellant claims that the payment was required to be released against supply of the goods in question (New Zealand Radiata Pine Logs). At the appellant's insistence, Union Bank of India issued the LC.

6. The appellant states that, on 12.03.2020 the Indian Bank forwarded the following shipment documents (hereafter collectively referred '**shipment documents**') to Union Bank of India:

a. Commercial Invoice dated 12.03.2020 for an amount of USD 52,205.09/-
b. Bill of Lading dated 12.03.2020 bearing no. AP/NZ/IND-23
c. Packing List dated 12.03.2020
d. Insurance dated 12.03.2020
e. Certificate of Origin dated 12.03.2020
f. Beneficiary's Certificate dated 12.03.2020

7. The Bill of Lading dated 12.03.2020 indicated the Port of Loading – Tauranga and Marsden Point, New Zealand. The goods had been loaded on a vessel named Vessel – MV Asia Pearl 1 V5. The freight was pre-paid. The place and date of issue of lading was Singapore and it was issued by ASPL as agents for and on behalf of Asia Pearl 1 V5 Captain Lirong.

8. The shipment documents were accepted by the Union Bank of India on 20.03.2020 and this acceptance was communicated by a SWIFT message to the Indian Bank.

9. On 11.03.2020 the COVID-19 outbreak was declared a Pandemic by the World Health Organisation. Thereafter, on 24.03.2020, the Government of India declared a Nationwide Lockdown in India under the provisions of the National Disaster Management Act, 2005. The appellant states that by E-mail dated 01.04.2020, Mr. Praveen Bejoy (Representative of ASPL) informed the appellant that due to the uncertainty created by the lockdown in India, the vessel carrying the timber was diverted to China. It was informed to the appellant by the said E-mail that the vessel owner was not sure if he would be able to berth the vessel at Kandla Port, India. He further requested the appellant to not accept any documents that reached or may reach Union Bank of India. He clarified that the shipping documents would be replaced with new shipment documents.

10. The appellant states that it replied by an E-mail dated 03.04.2020 and informed Mr. Praveen Bejoy that the shipment documents had been accepted before the E-Mail dated 01.04.2020 was sent by him. It further requested Mr. Praveen Bejoy to ask the Indian Bank to send an E-mail to Union Bank of India to facilitate the return of the accepted shipment documents.

11. It is averred by the appellant that by E-mail dated 17.04.2020 ASPL once again informed the appellant that the vessel carrying the shipment was diverted and requested the appellant to return the LC as the contract between the parties stood cancelled. The Union Bank of India sent a SWIFT message to the Indian Bank on 22.04.2020 and requested them to treat the acceptance of the shipment documents on 20.03.2020 as null and void.

12. The appellant claims that it addressed E-Mails on 07.05.2020 and 08.05.2020 to M/s Wilson Surveyors and Adjusters Pvt. Ltd. (which are the claim agents of Vero Marine, insurance company) informing them as to the diversion of the vessel (Asia Pearl 1 V5). The appellant also requested them to investigate the matter and trace the cargo. The appellant also stated that in case they fail to trace the cargo, they must process the insurance claim of the appellant.

13. The appellant also addressed an E-Mail to TPT Forests (ASPL is an agent of TPT Forests) dated 07.05.2020 addressing its concerns. It further requested them to clarify as to why the vessel in question was diverted from Kandla Port, India.

14. The appellant states that TPT Forests responded on 11.05.2020 and stated that the vessel (Asia Pearl 1 V5) had completed loading on 22.03.2020 and started the journey on the same day. On 12.05.2020, Mr. Praveen Bejoy addressed an E-mail to the appellant assuring that ASPL

has communicated to the Indian Bank that the shipment documents are to be recalled. The appellant states that once again it addressed an E-mail to TPT Forests on 13.05.2020 asking them for an explanation regarding the diverting of the vessel in question.

15. The appellant alleges that on 09.06.2020 it addressed an E-mail to TPT Forests stating that ASPL had still not asked Indian Bank to communicate with Union Bank of India for the recall of documents. The E-mail also stated that Indian Bank is insisting for payments despite Union Bank of India asking them to treat the acceptance of the shipping documents as null and void. Appellant states that TPT Forests responded to the said E-Mail of the appellant on 11.06.2020 stating that the matter could only be resolved by ASPL.

16. The appellant alleges that fraud was played by ASPL upon sixteen similarly placed buyers of timber, including the appellant. It received information from other buyers regarding the alleged fraud played upon them. Another buyer, M/s Aggarwal Timbers Pvt. Ltd. (appellant in FAO (COMM) 176/2023) had approached TPT Forests (ASPL is an agent of TPT Forests) and TPT had clarified that the vessel had completed loading on 22.03.2020 and had started the journey on the same day. TPT Forests had sent an E-Mail to M/s Aggarwal Timbers Pvt. Ltd. clarifying that the decision to divert the vessel was due to reasons arising out of *force majeure*. It had informed M/s Aggarwal Timbers Pvt. Ltd. that it had no

knowledge of the Bill of Lading issued to it and that the same was not valid.

17. The appellant alleges that another buyer M/s. Chaudhary Timbers Private Limited had approached the International Maritime Bureau (**IMB**), a specialised division of the International Chambers of Commerce, to confirm the validity of the Bill of Lading issued to them by ASPL. IMB informed the buyer that the Bill of Lading issued to them was null and void.

18. It is averred by the appellant that another buyer M/s. Utkal Lumbers Pvt.Ltd. was informed by Vero Marine (insurance company) that the insurance document provided to them by ASPL, were fraudulent and their claim for insurance, was not valid.

19. Agents on behalf of the owner of the vessel (Asia Maritime Pacific Limited) also responded to the legal notice sent by one of the buyers (M/s. Jyoti Timbers – appellant in FAO (COMM) 179/2023) and clarified that the Bill of Lading issued to them by ASPL was fraudulent. On 18.07.2020, Arnav Shipping Private Limited (an agent of the vessel owner in question) responded to the legal notices addressed to them by various buyers and clarified that the Bills of Lading issued to them by ASPL were null and void.

20. It is stated by the appellant that an application was filed by Indian Bank under Order VII Rule 11 and the same was rejected by the learned

Commercial Court by an order dated 12.10.2021. The appellant states that a petition under Article 227 of the Constitution of India impugning the said order has been filed by Indian Bank and the same is pending adjudication.

THE IMPUGNED ORDER

21. The learned Commercial Court noted that the shipping documents submitted by ASPL to Union Bank of India through Indian Bank were accepted by Union Bank of India and a SWIFT message communicating such acceptance was sent to the Indian Bank.

22. The learned Commercial Court referred to Article 14 and Article 15 of the Uniform Customs and Practice for Documentary Credits of the International Chamber of Commerce that came into force on 01.07.2007 (hereafter '**UCP-600**') and noted that the alleged fraud was not communicated to the Indian Bank within five days of the presentation of the shipping documents.

23. The learned Commercial Court observed that Letter of Credit was an independent contract and was not concerned with the underlying contract for sale and purchase of the goods. Since the Union Bank of India had not raised any objections regarding LC on presentation, it was bound to honour the same.

24. The learned Commercial Court took note of the submission of the appellant regarding the alleged fraud by ASPL and observed that the

Indian Bank had no knowledge or notice of the alleged fraud at the time of negotiation of the LC or within five banking days from the day of presentation (of the shipping documents). It was observed that although the acceptance was communicated in March 2020, the alleged fraud was discovered in May or June 2020.

25. The learned Commercial Court held that the obligation of the issuing bank (Union Bank of India) to pay under the LC did not depend on the underlying contract between the buyer (appellant) and the seller (ASPL). The Court further held that, *prima facie*, the appellant had failed to establish that Indian Bank had knowledge of the alleged fraud at the time of acceptance of the documents or within five days of the presentation of the shipping documents.

CONCLUSION

26. The present appeal was heard along with ***FAO (COMM) 176/2023 captioned M/s Aggarwal Timbers Pvt. Ltd. v. Amrose Singapore Pte. Ltd. & Ors.: 2023: DHC: 9271-DB*** as the controversy involved in this appeal as well as the relevant facts were similar in material aspects. The said appeal has been dismissed by a separate order delivered today.

27. This Court finds no infirmity with the impugned order rejecting the appellant's prayer for interim relief. Union Bank of India cannot be interdicted from making payments against the LC issued by it. There is no material to establish that the Indian Bank was either involved in the alleged

fraud or was aware of the same at the material time. Indisputably, the Union Bank of India had not objected to the LC on being presented, within the stipulated period of five days as provided under UCP-600; therefore, Union Bank of India is bound to honour the same.

28. The reasons stated in ***FAO (COMM) 176/2023 captioned M/s Aggarwal Timbers Pvt. Ltd. v. Amrose Singapore Pte. Ltd. & Ors.*** (*supra*) are equally applicable in the present case and same may be read as part of the present order.

29. In view of the above, the present appeal is dismissed. The pending application is also disposed of.

VIBHU BAKHRU, J

AMIT MAHAJAN, J

DECEMBER 22, 2023
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