



2023:DHC:9306-DB



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

% *Date of Decision: 22.12.2023*

+ **FAO(COMM) 179/2023 and CM No. 46099/2023**

M/S JYOTI TIMBERS

..... 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 present appeal has been filed by the appellant impugning an interim order passed by the learned Commercial Court on 26.07.2023 (hereafter '**the impugned order**') whereby the application filed by the appellant under Order XXXIX, Rules 1 and 2 of the Code of Civil Procedure, 1908 (hereafter '**the CPC**') was rejected. The appellant had



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filed the application in C.S. (COMM) 258/2021 captioned *M/s. Jyoti Timbers 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 decree of declaration that a transaction entered into by the appellant with respondent no 1. (**Amrose Singapore Pte. Ltd.** – hereafter ‘**ASPL**’) was vitiated by fraud and thereby the appellant is not liable to make payment against a Commercial Invoice dated 10.03.2020 for an amount of USD 40,770.61/- (hereafter ‘**the Commercial Invoice**’) and/or under a Letter of Credit bearing no. 1521820012 dated 06.03.2020 for an amount of USD 81,000/- (hereafter ‘**the LC**’).

3. The appellant seeks permanent and mandatory injunction restraining respondent no.3 Bank (hereafter ‘**Syndicate Bank**’) from making payment to ASPL or respondent no. 2 (hereafter ‘**Indian Bank**’) against the Commercial Invoice and/or the LC. It also seeks permanent and mandatory injunction restraining ASPL and Indian Bank from making any demand to Syndicate Bank for payment under the Commercial Invoice and/or the LC.

4. The interim relief sought by the appellant was rejected by the learned Commercial Court. By the impugned order the application filed by Syndicate Bank under Order VII Rule 11 was also rejected with the observation that partial relief as sought by the applicant could not be granted in terms of the judgement of the Supreme Court in **Madhav Prasad Aggarwal & Anr. v. Axis Bank & Anr.: (2019) 7 SCC 158.**



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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 Syndicate Bank with a request to open the Letter of Credit for an amount of USD 81,000/- 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, Syndicate Bank issued the LC.

6. The appellant states that, on 19.03.2020, the Indian Bank forwarded the following shipment documents (hereafter collectively referred '**shipment documents**') to Syndicate Bank-

- a. Bill of Lading dated 09.03.2020 bearing no. AP/NZ/IND-21
- b. Commercial Invoice dated 10.03.2020 for an amount of USD 85,821/-
- c. Packing list dated 10.03.2020
- d. Insurance dated 09.03.2020
- e. Certificate of Origin dated 10.03.2020
- f. Beneficiary's Certificate dated 10.03.2020

7. The Bill of Lading dated 09.03.2020 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



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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. Indian Bank has averred in the written statement that the shipment documents were received by Syndicate Bank on 13.03.2020.

9. The COVID-19 outbreak was declared a Pandemic by the World Health Organisation on 11.03.2020. Thereafter, on 24.03.2020 a Nationwide Lockdown was issued in India under the provisions of the National Disaster Management Act, 2005.

10. The appellant states that Mr. Praveen Bejoy (A Representative of ASPL) informed the appellant by an E-Mail dated 01.04.2020 that due to the uncertainty created by the lockdown in India, the vessel carrying the timber was diverted from Kandla Port, India to China. It requested the appellant to not accept any documents which had reached or may reach the Syndicate Bank. It was informed that the shipping documents would be replaced with fresh versions once the shipment is sent to the appellant by the next vessel carrying timber.

11. The appellant states it informed Syndicate Bank by E-Mail dated 17.04.2020 that the vessel in question (Asia Pearl 1 V5) has been diverted to China. It states it requested Syndicate Bank to send a SWIFT message to ASPL and Indian Bank to recall the shipping documents. The appellant again requested Syndicate Bank on 23.04.2020 to initiate the recall of the shipping documents.



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12. Syndicate Bank by SWIFT message dated 24.04.2020 informed Indian Bank that due to discrepancies in the documents received from them, the shipping documents were not accepted. The Syndicate Bank cancelled the LC and informed Indian Bank regarding the same by the SWIFT message dated 24.04.2020. The appellant averred that the shipping documents were returned to Indian Bank and were received by it on 02.06.2020.

13. On 03.06.2020 Indian Bank by SWIFT message informed Syndicate Bank that they had not received any confirmation of due date for payment against the LC or any advice stating the refusal of shipping documents. The Syndicate Bank sent a SWIFT message to Indian Bank on 12.06.2020 clarifying that the shipping documents had been returned to Indian Bank and the reasons for the discrepancies had been communicated already. It was clarified by Indian Bank that since the vessel was diverted to China, the Bill of Lading has become non-existent.

14. On 06.07.2020 Indian Bank by SWIFT message informed Syndicate Bank that since they had not been informed on discrepancies in the documents within five banking days, as per the provisions 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**'), the documents were construed to be accepted by the Syndicate Bank.



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15. The appellant states that it addressed a legal notice to the vessel owner (Asia Maritime Pacific Limited). It further states that the agents on behalf of the owner of the vessel responded to the legal notice on 10.07.2020 and clarified that the Bill of Lading issued to them by ASPL was fraudulent. The appellant also states that it addressed a legal notice dated 10.08.2020 to all the Respondents to intimate them of the alleged fraud played by ASPL in connivance with Indian Bank.

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.



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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. 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. The appellant had filed the aforementioned civil suit apprehending that fraud was played upon it by ASPL. It seeks a permanent and mandatory injunction restraining ASPL or the Indian Bank through ASPL from making payment under the LC. The appellant's application seeking interim injunction to restrain ASPL and the Indian Bank from receiving the amount under the Commercial Invoice and/or the LC was rejected by the learned Commercial Court by the impugned order.

THE IMPUGNED ORDER

21. The learned Commercial Court referred to 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**'). It observed that Syndicate Bank did not point out any discrepancy in the compliance of its nomination within five banking days as stipulated in Article 14 and Article 15 of the UCP-600.



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22. It observed that when the LC was sent to Syndicate Bank by the Indian Bank for confirmation/acceptance/complying presentation, its acceptance was conveyed to the Indian Bank and since, no objections or discrepancies were pointed out within 5 days following the presentation, the documents were deemed to be accepted.

23. It further observed that once the documents were accepted, Syndicate Bank was bound to honour the LC. The LC was a separate contract between the banks which crystalized the liability on the Syndicate Bank to complete the payment under the LC on the date of its maturity.

24. The learned Commercial Court noted that the LC could not be interdicted as the Indian Bank was not made aware of the fraud at the material time. The appellant too had no knowledge or notice of the alleged fraud before negotiating the sale of timber or within five banking days following the presentation.

25. It came to the conclusion that ordinarily, no court should grant an injunction restraining the realisation of a Letter of Credit. It noted that an injunction can be granted in case a party seeking the injunction is successful in showing that a fraud of an egregious nature has been committed and such committal is in the knowledge of the beneficiary bank, or in a case wherein irretrievable harm or injustice was caused.

26. The learned Commercial Court relied upon the decision of the Supreme Court in *U.P. State Sugar Corpn. v. Sumac International Ltd.:* (1997) 1 SCC 568 and clarified that ‘exceptional circumstances’,



which allow for an injunction to be granted, refer to those circumstances that render it impossible for the parties to be reimbursed if such injunction is not granted.

27. The learned Commercial Court had rejected the application for interim injunction with these observations.

CONCLUSION

28. 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.

29. This Court finds no infirmity with the impugned order rejecting the appellant's prayer for interim relief. Syndicate Bank 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 Syndicate Bank had not objected to the LC being presented, within the stipulated period of five days as provided under UCP-600; therefore, Syndicate Bank is bound to honour the same.

30. The reasons stated in ***FAO (COMM) 176/2023 captioned M/s Aggarwal Timbers Pvt. Ltd. v. Amrose Singapore Pte. Ltd. & Ors.***



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(*supra*) are equally applicable in the present case and same may be read as part of the present order.

31. 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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