
(2011) 05 SHI CK 0187
In the High Court Of Himachal Pradesh
Case No : CWP No. 3007 of 2009

Alliance Biotech

APPELLANT

Vs

State Bank of India and Others

RESPONDENT

Date of Decision : 12-05-2011

Acts Referred:

Constitution of India, 1950 — Article 12, 14, 16, 17, 226

Citation : (2011) 05 SHI CK 0187

Hon'ble Judges : Deepak Gupta, J

Bench : Single Bench

Judgement

Deepak Gupta, J.—The Petitioner M/s. Alliance Biotech is a duly registered partnership firm engaged in the manufacture of pharmaceutical products. Respondent No. 3-Rajat Pharmaceutical Chemicals Limited is a merchant exporter and exports various pharmaceutical products in the international market. An agreement was entered into between the Petitioner and Respondent No. 3 whereby Respondent No. 3 had exclusive right to market the products manufactured by the Petitioner. In terms of this agreement, the Petitioner was supplying goods to Respondent No. 3 and irrevocable letter of credit was issued at the instance of Respondent No. 3 by Respondent No. 2-Punjab National Bank in favour of the Petitioner for an amount not exceeding Rs. 82,30,000/-. This letter of credit was initially valid till 12.9.2008 which date admittedly was extended to 15.9.2008. Various other conditions shall be referred to in the later part of the judgment. Admittedly Respondent No. 1 which was the advising Bank informed the Petitioner on 24.6.2008 that all bills drawn in conformity with the terms of letter of credit shall be honoured.

2. According to the Petitioner-, it during the course of this agreement from time to time supplied pharmaceutical goods to Respondent No. 3 and received payment for the same. Goods worth Rs. 81,74,190/- were dispatched and the relevant documents were lodged with the advising bank, i.e., Respondent No. 1 (State Bank of India) on 13.9.2008. The communication, in question, is attached

as Annexure P/5 and a copy of the same was addressed to the Punjab National Bank-Respondent No. 2.

3. On the Petitioner lodging this claim, the Respondent No. 1-SBI negotiated the bills and credited to the account of the Petitioner after the deducting interest and negotiation commission an amount of Rs. 79,90,383/-. The Respondent No. 2-PNB vide letter dated 27.8.2008 (which the PNB alleges was issued on 27.9.2008 but wrongly shown to be 27.8.2008) sent to the State Bank of India expressed its inability to negotiate the documents in view of the discrepancies which it observed. Relevant portion of this letter reads as under:

We are in receipt of documents under our L/C No. 025608 while scrutinizing the documents, we observed the following discrepancies:

1. Photocopy of certificate of Analyses submitted of original.
2. MTR is not approved by IBA.
3. Delivery challan not accepted by opener.

In view of the above, we are unable to negotiate the documents. You are requested to take up the matter with the beneficiary to remove the discrepancies. Meanwhile we are holding the said documents at your risk and responsibility, and treating the documents on collection basis.

4. Respondent No. 3 who received the goods sent a letter on 11.10.2008 to the Punjab National Bank stating that the letter of credit be accepted even with all discrepancies. However, the Punjab National Bank on 15.10.2008 wrote a letter to the State Bank of India that it would only make payment if funds are available in the account of Respondent No. 3. The State Bank of India sent a communication on 21.10.2008 to the Petitioner that though it had discounted the documents on 18.9.2008 but since the Punjab National Bank had not accepted the documents, they were debiting the amount to the account of the Petitioner.

5. Thereafter, the Petitioner sent legal notices to the Respondents. It appears that certain negotiations also took place between the parties but finally no positive result was achieved and the Petitioner has now filed this writ petition claiming that the Respondents No. 1 and 2 may be directed to enforce and honour the letter of credit.

6. The stand of the Respondent No. 1-SBI is that it was always ready and willing and is still ready and willing to honour the letter of credit but since the principal bank, i.e., Punjab National Bank has expressed its inability to honour the letter of credit, there is no option with the State Bank of India but to go by the directions of the Punjab National Bank. In fact, the State Bank of India has clearly stated that the documents, in question, were lodged with it on 13.9.2008 before the expiry of the letter of credit and that the Punjab National Bank had ante dated its letter and showed that it was written on 27.8.2008. According to the State Bank of India, the letter was received by its branch in Baddi on 11.10.2008.

Thereafter, on 15.10.2008, the Punjab National bank withdrew from the commitment to the letter of credit and directed that the documents be sent as cancelled. According to State Bank of India, the Punjab National Bank is at fault and in case the PNB is directed to reimburse the State Bank of India, it will honour the letter of credit. The State Bank of India has in fact in its reply clearly stated that the objections of the Punjab National Bank were not proper, the rejection was after the prescribed period and new grounds were taken up.

7. The stand of Respondent No. 2 is that the letter of credit was presented to it after the expiry of date and, therefore, it is not responsible to pay the amount. Further according to PNB, many discrepancies were there in the documents sent by the Petitioner and various communications were issued in this regard. But the main ground remains that the letter of credit was presented after the expiry date and, therefore, the bank is not responsible.

8. As far as dating of the letter dated 27.8.2008 is concerned, according to PNB, by mistake, the date which was 27.9.2008 was shown as 27.8.2008. Another objection taken in the reply was that as per the letter of credit, goods have to be sent by air and this condition was also breached by the parties. Further according to the Punjab National Bank, the documents which were received by the State Bank of India on 13.9.2008 were received in its branch on 20.9.2008, i.e., after the date of expiry which was 15.9.2008 but inadvertently, the stamp put on these documents was of 20.8.2008.

9. The parties agree that they are governed by the Uniform, Customs and Practice (UCP) 600.

10. At the outset, I may deal with the preliminary objection raised by the Punjab National Bank that this is a contractual matter and this Court should not exercise its writ jurisdiction in such a case. Various judgments have been cited by both the parties in this regard.

11. In *Har Shankar and Others Vs. The Dy. Excise and Taxation Commr. and Others*, the Apex Court dealt with the issue as to whether a writ petition is an appropriate remedy for impeaching the validity of contractual obligations and held as follows:

21. xxx xxx xxx

Analysing the situation here, a concluded contract must be held to have come into existence between the parties. The Appellants have displayed ingenuity in their search for invalidating circumstances but a writ petition is not an appropriate remedy for impeaching contractual obligations.

22. xxx xxx xxx

The writ jurisdiction of High Courts under Article 226 of the Constitution is not intended to facilitate avoidance of obligations voluntarily incurred. That, however will not estop the Appellants from contending that the amended Rules are not

applicable as their licences were renewed before the amendments were made.

11. In *Divisional Forest Officer Vs. Bishwanath Tea Co. Ltd.*, the Apex Court held that normally in contractual matters, writ proceedings should not be entertained.

12. In *Gujarat State Financial Corporation Vs. Lotus Hotels Pvt. Ltd.*, this vexatious question again came up for consideration as to what is the scope of the writ jurisdiction in respect of contractual matters. The Apex Court after considering the earlier judgments held as follows:

12. Viewing the matter from a slightly different angle altogether, it would appear that the Appellant is acting in a very unreasonable manner. It is not in dispute that the Appellant is an instrumentality of the Government and would be "other authority, under Article 12 of the Constitution. If it be so, as held by this Court in *Ramana Dayaram Shetty Vs. International Airport Authority of India and Others*, at p. 1041: *Ramana Dayaram Shetty Vs. International Airport Authority of India and Others*, the rule inhibiting arbitrary action by the Government would equally apply where such corporation dealing with the public whether by way of giving jobs or entering into contracts or otherwise and it cannot act arbitrarily and its action must be in conformity with some principle which meets the test of reason and relevance.

13. Now if Appellant entered into a solemn contract in discharge and performance of its statutory duty and the Respondent acted upon it, the statutory corporation cannot be allowed to act arbitrarily so as to cause harm and injury, flowing from its unreasonable conduct, to the Respondent. In such a situation, the Court is not powerless from holding the Appellant to its promise and it can be enforced by a writ of mandamus directing it to perform, its statutory duty. A petition under Article 226 of the Constitution would certainly lie to direct performance of a statutory duty by "other authority" as envisaged by Article 12.

14. In *ABL International Ltd. and Another Vs. Export Credit Guarantee Corporation of India Ltd. and Others*, the Apex Court was dealing with a case relating to a letter of credit itself. After dealing with the entire law on the subject, the Apex Court observed as follows:

19. Therefore, it is clear from the above enunciation of law that merely because one of the parties to the litigation raises a dispute in regard to the facts of the case, the court entertaining such petition under Article 226 of the Constitution is not always bound to relegate the parties to a suit. In the above case of *Smt. Gunwant Kaur (supra)*, this Court even went to the extent of holding that in a writ petition, if facts required, even oral evidence can be taken. This clearly shows that in an appropriate case, the writ court has the jurisdiction to entertain a writ petition involving disputed questions of fact and there is no absolute bar for entertaining a writ petition even if the same arises out of a contractual obligation and or involves some disputed questions of fact.

23. It is clear from the above observations of this Court, once State or an instrumentality of State is a party to the contract, it has an obligation in law to act fairly, justly and reasonably which is the requirement of Article 14 of the Constitution of India. Therefore, if by the impugned repudiation of the claim of the Appellants the first Respondent as an instrumentality of the State has acted in contravention of the above said requirement of Article 14 then we have no hesitation that a writ court can issue suitable directions to set right the arbitrary actions of the first Respondent. In this context, we may note that though the first Respondent is a company registered under the Companies Act, it is wholly owned by the Government of India. The total subscribed share capital of this company is 2,50,000 shares out of which 2,49,998 shares are held by the President of India while one each share is held by the Joint Secretary, Ministry of Commerce and Industry and Officer on Special Duty, Ministry of Commerce and Industry respectively. The objects enumerated in the Memorandum of Association of the first Respondent at Para 10 read:

To undertake such functions as may be entrusted to it by Government from time to time, including grant of credits and guarantees in foreign currency for the purpose of facilitating the import of raw materials and semi-finished goods for manufacture or processing goods for export.

Para 11 of the said object reads thus:

To act as agent of the Government, or with the sanction of the Government on its own account, to give the guarantees, undertake such responsibilities and discharge such functions as are considered by the Government as necessary in national interest.

15. In *Indian Bank v. Godhara Nagrik Cooperative Credit Society Limited and Anr.* 2008 (12) SCC 541, the Apex Court held as follows:

The propositions of law which are undisputed are:

- (i) Writ petitions against the banks being "State" within the meaning of Article 12 of the Constitution of India were maintainable;
- (ii) Writ petitions involving serious disputed questions of fact, ordinarily should not be entertained although the High Court in some cases may enter into disputed questions of fact.

16. In *Karnataka State Forest Industries Corporation Vs. Indian Rocks*, the Apex Court held as follows:

Although ordinarily a superior court in exercise of its writ jurisdiction would not enforce the terms of a contract qua contract, it is trite that when an action of the State is arbitrary or discriminatory and, thus, violative of Article 14 of the Constitution of India, a writ petition would be maintainable.

17. The latest decision on this aspect cited before me is Zonal Manager, Central Bank of India Vs. Devi Ispat Ltd. and Others, wherein the Apex Court held as follows:

In the case on hand, the Respondent Company has demonstrated that based on the advise of the Appellant Bank, they shifted their accounts to another nationalized bank and through an arrangement with State Bank of India, a cheque of Rs. 15 crores was deposited by their Bank and in token of the same, by statement of accounts dated 14.5.2009 the Appellant Bank clearly mentioned that there is no due or nil balance from the Respondent Company. (emphasis supplied) In such circumstances, when the relief sought for does not relate to interpretation of any terms of contract, the Bank being a nationalized bank, a writ court can issue appropriate direction in certain circumstances as mentioned above. In such a factual matrix, the reliance placed on these two decisions is not helpful to the Appellant Bank.

18. The Apex Court also laid down the legal principles as to in which situations a writ petition would be maintainable and held as follows:

27. From the above discussion of ours, the following legal principles emerge as to the maintainability of a writ petition:

(a) In an appropriate case, a writ petition as against a State or an instrumentality of a State arising out of a contractual obligation is maintainable.

(b) Merely because some disputed questions of facts arise for consideration, same cannot be a ground to refuse to entertain a writ petition in all cases as a matter of rule.

(c) A writ petition involving a consequential relief of monetary claim is also maintainable.

28. However, while entertaining an objection as to the maintainability of a writ petition under Article 226 of the Constitution of India, the court should bear in mind the fact that the power to issue prerogative writs under Article 226 of the Constitution is plenary in nature and is not limited by any other provisions of the Constitution. The High Court having regard to the facts of the case, has a discretion to entertain or not to entertain a writ petition. The Court has imposed upon itself certain restrictions in the exercise of this power [See: Whirlpool Corporation Vs. Registrar of Trade Marks, Mumbai and Others, . And this plenary right of the High Court to issue a prerogative writ will not normally be exercised by the Court to the exclusion of other available remedies unless such action of the State or its instrumentality is arbitrary and unreasonable so as to violate the constitutional mandate of Article 14 or for other valid and legitimate reasons, for which the court thinks it necessary to exercise the said jurisdiction.

19. On the factual aspect of the matter, the Apex Court held as follows:

37. In our opinion, this limited area of dispute can be settled by looking into the

terms of the contract of insurance as well as the export contract, and the same does not require consideration of any oral evidence or any other documentary evidence other than what is already on record. The claim of the contesting parties will stand or fall on the terms of the contracts, interpretation of which, as stated above, does not require any external aid.

20. A perusal of the aforesaid decisions clearly indicates that the writ court is not powerless when an instrumentality of the State acts contrary to public good, public interest or acts in a manner which is patently unfair, unjust and unreasonable. If the action of the instrumentality of the State is discriminatory or violative of Article 14 of the Constitution of India, even in contractual matters, a writ petition would be maintainable. Normally the writ Court would be very chary of entertaining a writ petition in contractual matters but if the petition can be decided on the basis of documents without any evidence and relegating a party to file a civil suit would cause great harm and injury to it, this Court will not desist from even deciding the matters which emanate out of contract but where the action of the State is wholly unfair or arbitrary. It is in the light of the aforesaid law that I proceed to examine the other facts of the case.

21. As already observed above, the parties admit that they are governed by the Uniform, Customs and Practice (UCP) 600 in matters of letters of credit. These are international covenants which have been accepted by all the banks including Respondents No. 1 and 2 and virtually have the force of law. Relevant conditions of UCP 600 with which we are concerned read as follows:

UCP 600 - Article 6

Availability, Expiry Date and Place for Presentation

- a. A credit must state the bank with which it is available or whether it is available with any bank. A credit available with a nominated bank is also available with the issuing bank.
- b. A credit must state whether it is available by sight payment, deferred payment, acceptance or negotiation.
- c. A credit must not be issued available by a draft drawn on the Applicant.
- d. i. A credit must state an expiry date for presentation. An expiry date stated for honour or negotiation will be deemed to be an expiry date for presentation.
ii. The place of the bank with which the credit is available is the place for presentation. The place for presentation under a credit available with any bank is that of any bank. A place for presentation other than that of the issuing bank is in addition to the place of the issuing bank.
- e. Except as provided in sub-Article 29(a), a presentation by or on behalf of the beneficiary must be made on or before the expiry date.

UCP 600 - Article 7

Issuing Bank Undertaking

a. Provided that the stipulated documents are presented to the nominated bank or to the issuing bank and that they constitute a complying presentation, the issuing bank must honour if the credit is available by:

Xxx xxx xxx

b. An issuing bank is irrevocably bound to honour as of the time it issues the credit.

c. An issuing bank undertakes to reimburse a nominated bank that has honoured or negotiated a complying presentation and forwarded the documents to the issuing bank. Reimbursement for the amount of a complying presentation under a credit available by acceptance or deferred payment is due at maturity, whether or not the nominated bank prepaid or purchased before maturity. An issuing bank's undertaking to reimburse a nominated bank is independent of the issuing bank's undertaking to the beneficiary.

Xxx xxx xxxx

UCP 600 - Article 14

Xxx xxx xxx

b. A nominated bank acting on its nomination, a confirming bank, if any, and the issuing bank shall each have a maximum of five banking days following the day of presentation to determine if a presentation is complying. This period is not curtailed or otherwise affected by the occurrence on or after the date of presentation of any expiry date or last day for presentation.

Xxx xxx xxx xxx

UCP 600 - Article 16

Discrepant Documents, Waiver and Notice

a. When a nominated bank acting on its nomination, a confirming bank, if any, or the issuing bank determines that a presentation does not comply, it may refuse to honour or negotiate.

b. When an issuing bank determines that a presentation does not comply, it may in its sole judgment approach the Applicant for a waiver of the discrepancies. This does not, however, extend the period mentioned in sub-Article 14(b).

c. When a nominated bank acting on its nomination, a confirming bank, if any, or the issuing bank decides to refuse to honour or negotiate, it must give a single notice to that effect to the presenter.

The notice must state:

i. that the bank is refusing to honour or negotiate; and

- ii. each discrepancy in respect of which the bank refuses to honour or negotiate; and
- iii. a) that the bank is holding the documents pending further instructions from the presenter; or b) that the issuing bank is holding the documents until it receives a waiver from the Applicant and agrees to accept it, or receives further instructions from the presenter prior to agreeing to accept a waiver; or
- c) that the bank is returning the documents; or
- d) that the bank is acting in accordance with the instructions previously received from the presenter.
- d. The notice required in sub-Article 16(c) must be given by telecommunication or, if that is not possible, by other expeditious means no later than the close of the fifth banking day following the day of presentation.
- e. A nominated bank acting on its nomination, a confirming bank, if any, or the issuing bank may, after providing notice required by sub-Article 16(c) (iii) (a) or (b), return the documents to the presenter at any time.
- f. If an issuing bank or a confirming bank fails to act in accordance with the provisions of this article, it shall be precluded from claiming that the documents do not constitute a complying presentation.
- g. When an issuing bank refuses to honour or a confirming bank refuses to honour or negotiate and has given notice to that effect in accordance with this article, it shall then be entitled to claim a refund with interest, of any reimbursement made.

UCP 600 - Article 17

Original Documents and Copies

- a. At least one original of each document stipulated in the credit must be presented.
- b. A bank shall treat as an original any document bearing an apparently original signature, mark, stamp, or label of the issuer of the document, unless the document itself indicates that it is not an original.
- c. Unless a document indicates otherwise, a bank will also accept a document as original if it:
 - i. appears to be written, typed, perforated or stamped by the document issuer's hand; or
 - ii. appears to be on the document issuer's original stationery; or
 - iii. states that it is original, unless the statement appears not to apply to the document presented.

d. If a credit requires presentation of copies of documents, presentation of either originals or copies is permitted.

e. If a credit requires presentation of multiple documents by using terms such as "in duplicate". "in two fold" or "in two copies", this will be satisfied by the presentation of at least one original and the remaining number in copies, except when the document itself indicates otherwise.

22. A careful perusal of UCP 600 referred to above shows that there is a bank known as Issuing Bank which issues the letter of credit. There is another bank known as nominated bank with which also credit is available. In this case, Punjab National Bank was the issuing bank and State Bank of India was the nominated bank.

23. According to the UCP 600, the date of expiry must be given and all the documents must be presented before the date of expiry. There is no dispute that the expiry date was 15.9.2008. The place where the credit is available is the place for presentation unless specified otherwise. The UCP is very clear that the place where the credit is available with any bank is that of any bank. In the present case, credit was also available with the State Bank of India and, therefore, presentation before expiry date could be made to the State Bank of India. In the present case, the original letter of credit itself indicates that the credit was available for negotiation with any bank. Therefore, the objection of the Punjab National Bank that the SBI could not have negotiated the letter of credit is not sustainable.

24. The issuing bank is irrevocably bound to honour the letter of credit. Article 14 of the UCP 600 makes it clear that a nominating bank, confirming bank or the issuing bank shall each have a maximum of five banking days following the day of presentation to determine if the presentation complies with the terms and conditions. In the present case, the documents were undisputedly submitted to the nominated bank, i.e., State Bank of India on 13.9.2008.

25. On 18.9.2008, the State Bank of India sent a communication to the Punjab National Bank that it had negotiated the bill of exchange and claimed an amount of Rs. 81,74,190/-. The Punjab National Bank vide its letter purported to be written on 27.8.008 refused to honour the claim on the grounds already extracted above. At that stage, the only objections raised by the Punjab National Bank were that photocopy of certificate of analysis was submitted and not the originals. The second objection was that the motor transport operator is not approved by the Indian Banks Association and lastly that the delivery challan was not accepted by the opener. All these objections are not correct since it stands proved that the certificates of analysis have been submitted in original to the State Bank of India. The motor transport operator was approved by the Indian Banks Association and the opener of the letter of credit has waived all the objections vide its own letter.

26. It would be pertinent to mention that there is a grave doubt with regard to

the date of this letter. This letter is dated 27.8.2008. This date is obviously incorrect since this letter responds to a letter dated 18.9.2008. According to the State Bank of India, this letter was ante dated. According to the Punjab National Bank, the mistake in date is a bona fide mistake and in fact, the letter was sent on 27.9.2008. The Punjab National bank has not produced any evidence to show on which date this letter was actually sent. It was received by the State Bank of India on 11.9.2008. This assumes importance in view of the fact that in terms of Article 14 of UCP 500, each bank has a maximum of five banking days following the day of presentation to determine if the presentation is complying. According to the State Bank of India, it had sent its communication on 18.9.2008 and according to the PNB, they had received the letter dated 18.9.2008 on 20.9.2008 but by mistake stamp of 20.8.2008 was put on the letter. If five clear banking days are given, these would expire on 27.9.2008.

27. It is a well known saying that men may lie but documents do not. According to the UCP 600, when any bank decides to refuse to honour the credit, it must give a single notice to that effect to the presenter and the notice must spell out each of the discrepancies because of which the bank is refusing to negotiate the document. Clause (d) of Article 16 requires that such notice in terms of sub-Article 16(c) must be given by telecommunication or if that is not possible by other expeditious means no later than the close of the fifth banking day.

28. The presenter is a company. It has fax facilities available. The advising bank, i.e., the State Bank of India has fax facilities available and similarly, fax facilities were also available with the Punjab National bank. Why was, therefore, no attempt made to send this document by tele-communication? It is obvious that the Punjab National Bank has cooked up a story at a later stage. The stamp on the letter dated 18.9.2008 shows receipts of the same on 20.8.2008. It is one of those stamps in which the date, month and year can be changed by turning the knobs. Why would the month of August appear in a document received in September? The letter which is purported to have been sent on 27.8.2008 reached the State Bank of India on 11.9.2008. It was not sent by tele-communication or any other expeditious means. It is, therefore, obvious that this letter is a cover-up and an after-thought. I am constrained to observe that it appears that some officials of the Punjab National Bank have virtually forged and fabricated documents to deny the legitimate dues of the Petitioner and the State Bank of India.

29. As observed above, Article 16 of the UCP 600 clearly requires that in the case of refusal to honour the letter of credit, the bank refusing to honour the document must in a single notice give all the reasons why it is refusing to negotiate the document. The reasons given in the letter dated 27th August, 2008 (22nd September, 2008) have already been spelt out above. The Petitioner alongwith the petition annexed the letter of the Indian Banks Association approving the motor transport operator. The Petitioner also led evidence to show that the original analysis certificate had been submitted and the opener of the

L.C directed the bank to accept the delivery challan. Therefore, none of the objections initially raised are valid any longer.

30. Faced with this situation, the Punjab National Bank has now taken up new grounds. The first ground raised by it is that the letter of credit was submitted after the date of expiry which according to the PNB is 15.9.2008. The second objection is that the goods were required to be sent by air but were sent by road transport. According to it, it is for these reasons that the letter of credit was not honoured. The PNB has totally changed its stance. It cannot be permitted to do so in view of the clear-cut requirement of Article 16 referred to above which requires the Bank to give a single notice in which it must spell out all the discrepancies which it has found in the document.

31. Though I am of the clear-cut opinion that the Punjab National Bank cannot be permitted to raise these objections, at this stage, the main question is whether submission of the bill to the advising bank, i.e., the State Bank of India on or before 15.9.2008 is submission before the expiry date or not?

32. Clause 6 of the special instructions of the letter of credit provides that the credit is available for negotiation with any bank meaning thereby that credit was available both with the issuing bank and with the advising bank. The place of presentation as per Article 6 of the UCP 600 is the place where the credit is available. Where credit is available with any bank then the place of presentation is that of any bank. Since in the present case, credit was also available with the State Bank of India, Baddi presentation to this bank before 15.9.2008 was presentation within time.

33. As far as second objection regarding the goods to be delivered by air only is concerned, all that can be said is that this is a false argument raised by way of desperation only.

34. True it is that the letter of credit provided that it should be accompanied by the airport bills but the PNB in its letter dated 26.8.2008 had clarified that the date of expiry would be read as 15.9.2008 and the shipping was to be read as dispatch from Baddi to Mumbai for transportation to Mumbai meaning thereby that goods could have been transported by road. There is no airport at Baddi and the Petitioner could not have been asked to comply with a term which was humanly not possible. This also indicates that the bank has raised false and frivolous defences.

35. Keeping in view the aforesaid discussion, I am of the considered view that the Punjab National Bank has acted in a manner which is patently, arbitrary, unethical and unfair in rejecting the genuine claim of the Petitioner. It is in fact, guilty of trying to fabricate and forge documents with a view to deny the legitimate claims of the Petitioner. Not only the allegations of the Petitioner but even the reply filed by the State Bank of India show that the Punjab national Bank has acted in a highly unbecoming manner. This is a nationalized bank which is expected to act with a certain degree of honesty. The PNB has changed its

objections from time to time to suit its convenience. It has raised objections which on the face of it are either false or frivolous.

36. Therefore, I am of the considered view that this is a fit case where this Court in exercise of its writ jurisdiction should direct the Punjab National Bank to honour the letter of credit.

37. In view of the above discussion, the writ petition is allowed and the Punjab National Bank is directed to credit a sum of Rs. 81,74,190/- alongwith interest @ 12% per annum w.e.f. 15.9.2008 till the amount is paid to the State Bank of India, Baddi in the account of the State Bank of India, Baddi. Out of this amount, a sum of Rs. 79,90,383/- alongwith interest @ 12% per annum shall be paid to the Petitioner by the State Bank of India and the remaining amount shall be retained by the State Bank of India. In view of the highly unethical stand of the PNB and in view of the fact that it has taken totally false pleas and also in view of the fact that it appears to have ante dated certain documents, I feel it is a fit case where the Punjab National Bank should be burdened with exemplary costs. Accordingly the Punjab National bank is directed to pay costs of Rs. 1 lac to the Petitioner. The Punjab National Bank shall pay the entire amount alongwith costs, as indicated hereinabove, to the State Bank of India and the Petitioner on or before 15th June, 2011.

38. The petition is disposed of in the aforesaid terms.