

(2013) 10 DEL CK 0434

In the Delhi High Court

Case No : CS (OS) No. 545 of 2012

Millennium Wires (P) Ltd. and Another

APPELLANT

Vs

Allahabad Bank and Others

RESPONDENT

Date of Decision : 25-10-2013

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 39 Rule 1, Order 39 Rule 2, Order 39 Rule 4, Order 7 Rule 11, Order 7 Rule 11(a)

Citation : (2014) 3 AD 205 : (2013) 204 DLT 640

Hon'ble Judges : S. Muralidhar, J

Bench : Single Bench

Advocate : Maneesha Dhir, Ms. Jayashree Shukla Dasgupta, Mr. Abhirup Dasgupta and Mr. Ashu Kansal, for the Appellant; Shiv Shankar, Advocate for Defendant No. 1, Mr. Ajay Monga, Ateev K. Mathur and Mr. Devmani Bansal, Advocates for Defendant No. 4, for the Respondent

Final Decision : Disposed Off

Judgement

S. Muralidhar, J.

IA Nos. 4103 of 2012 (u/O XXXIX Rules 1 & 2 CPC), 2126 of 2013 (u/O VIII Rule 10 CPC), 2127 of 2013 (u/O XXXIX Rule 4 CPC) and 2128 of 2013 (u/O VII Rule 11 CPC)

1. The background to these applications is that Millennium Wires (P) Limited (Plaintiff No. 1) and State Trading Corporation of India Limited (Plaintiff No. 2) have filed the aforementioned CS (OS) No. 545 of 2012 against Allahabad Bank (Defendant No. 1), Synergic Industrial Material Services PTE Ltd. (Defendant No. 2), Synergic Industrial Material Services Malaysia (Defendant No. 3) and Malayan Banking BHD (Defendant No. 4) for permanent, mandatory and perpetual injunction restraining Defendant No. 1 from honouring the Letters of Credit ("LCs") opened by Plaintiff No. 2 at the request of Plaintiff No. 1 in favour of Defendant No. 2 for the import of "Continuous Cast Copper Wire Rod". The LCs was opened through Defendant No. 1 (Issuing Bank) and was payable to

Defendant Nos. 2 and 3 through Defendant No. 4 (Negotiating and Beneficiary Bank). At the outset it requires to be noticed that two reliefs sought in prayer (b) for an injunction restraining Defendant No. 2 from taking any benefit under the LCs and prayer (c) restraining Defendant No. 4 from making payments under the LCs had already been rendered infructuous by the time the suit was filed on 28th February 2012. On 2nd March 2012, while directing summons to issue in the suit, the Court passed the interim order in IA No. 4103 of 2013 under Order XXXIX Rules 1 and 2 of the CPC 1908 ("CPC") restraining Defendant No. 1 from honouring the LCs and also restraining Defendant No. 2 from taking any benefit and/or taking any action under the LCs.

2. It may also be noted that although the suit initially was filed against Defendant Nos. 5 to 12, they were deleted from the array of parties at the request of the Plaintiffs since no relief was sought against them.

3. Defendant No. 1 filed its written statement on 30th June 2012 and Defendant No. 4 filed its written statement on 7th February 2013. Defendant No. 4 also filed IA No. 2126 of 2013 under Order VIII Rule 10 CPC for condonation of delay in filing the written statement. IA No. 2128 of 2013 under Order VII Rule 11 CPC for rejection of plaint and IA No. 2127 of 2013 under Order XXXIX Rule 4 CPC for vacating the interim order dated 2nd March 2012, were also filed by Defendant No. 4.

4. The Court has heard the submissions of Ms. Maneesha Dhir, learned counsel for the Plaintiffs, Mr. Shiv Shankar, learned counsel for Defendant No. 1 and Mr. Ajay Monga, learned counsel for Defendant No. 4. None appears for Defendant Nos. 2 and 3 despite service.

5. The case of the Plaintiffs is that for the past 7-8 years, Plaintiff No. 1 has been importing Continuous Cast Copper Rods from Defendant Nos. 2 and 3 which are group companies based in Singapore and Malaysia respectively. With a view to importing 400 metric tons ("MTs") of the said product, in lots of 50-75 MTs per shipment, Plaintiff No. 1 entered into an "Associateship Agreement" ("AA") with Plaintiff No. 2 on 2nd December 2011. The AA envisaged import of the goods from Defendant Nos. 2 and 3 for Plaintiff No. 1 through Plaintiff No. 2 on various terms and conditions. Clause 16 of the AA required Plaintiff No. 1 to indemnify Plaintiff No. 2 (STC) for any loss, damage or cost which Plaintiff No. 2 (STC) may incur with regard to the import. Under Clause 17, in the event that Defendant Nos. 2 and 3 did not perform their obligations or the contract was cancelled for any reason by them, Plaintiff No. 2 was entitled to receive from Plaintiff No. 1 all costs incurred by it along with the trading margin. It is stated that Plaintiff No. 1 placed several orders for supply of the goods on Defendant No. 2 through Plaintiff No. 2. For the said purpose, LCs were opened by Plaintiff No. 2 through Defendant No. 1 (Issuing Bank) payable to Defendant Nos. 2 and 3 through their Banker, Defendant No. 4, which is the Negotiating/Beneficiary Bank. According to the Plaintiffs, as per the general and common practice, oral orders were placed by Plaintiff No. 1 on Defendant Nos. 2 and 3 and thereafter, Defendant Nos. 2

and 3 sent sales contract/proforma invoices to Plaintiff No. 2. It is further stated that in the present case, the proforma invoices were to be issued by Defendant No. 2 in favour of Plaintiff No. 2, specifically mentioning the name of Plaintiff No. 1 as "A/c-Millennium Wires Pvt. Ltd." It is stated that on the acceptance of the said proforma invoice, final invoice was to be issued by Defendant Nos. 2 and 3, as the case may be, which on acceptance by Plaintiff No. 1 was to be sent back to Defendant Nos. 2 or 3, and this would constitute the contract between Plaintiffs and Defendant Nos. 2 and 3. At that stage, LCs were to be opened by Plaintiff No. 2 through Defendant No. 1 (Issuing Bank) payable to Defendant Nos. 2 and 3, as the case may be, through Defendant No. 4 (Negotiating and Beneficiary Bank).

6. It is stated that the goods were to be dispatched from Port Klang Malaysia and the final destination of the goods was the International Container Depot at Ludhiana. It is stated that in the normal course when the goods were dispatched from Port Klang Malaysia, the following documents were to be sent by Defendant No. 2 or 3 to the Issuing Bank (Defendant No. 1) with a copy to Plaintiff No. 2 (STC):

- (a) Bill of Lading;
- (b) Letter of Credit (L/C);
- (c) Beneficiary certificate;
- (d) Beneficiary's letter of undertaking;
- (e) Facsimile letter;
- (f) Inspection report;
- (g) Test certificate;
- (h) Advice of import bills received;
- (i) Invoice;
- (j) Packing list;
- (k) Marine cargo insurance policy;
- (l) Certificate of Malaysian origin; and
- (m) Shipping Agent's certificate.

7. It is stated that advance copy of the aforementioned documents were sent through courier to Plaintiff No. 2, which in turn sought acceptance of the said documents from Plaintiff No. 1. According to the Plaintiffs, the courier receipt of dispatch of the above documents is one of the negotiable documents presented under the LCs to Defendant No. 4 (Negotiating Bank) and sent to Defendant No. 1 (Issuing Bank) [which confirms the same to Defendant No. 4 Bank]. According to the Plaintiffs, Defendant No. 2 or 3, as the case may be, can negotiate the LCs

with Defendant No. 4 for release of the payment. In turn, Defendant No. 4 is entitled to claim the same from Defendant No. 1.

8. The Plaintiffs state that within five-six days from the date of dispatch of goods by Defendant No. 2 or 3, they are entitled to approach Defendant No. 4 (Bank) for negotiations for release of payments under the LCs opened by Plaintiff No. 2 through its Banker, even while the goods may be received by Plaintiff No. 1 much later. As soon as payments on the basis of the LCs is received by Defendant No. 2 or 3, the amount paid is due from Plaintiff No. 2 to Defendant No. 1, which is 90 days from the issuance of the bill of lading, depending upon the usance period mentioned in the LCs.

9. It is stated that Defendant Nos. 1 and 4 are bound by the Uniform Customs and Practice for Documentary Credits ("UCP 600" for short) which mandates release of payments by the Issuing Bank if the documents allegedly sent by the exporter are accepted by the importer. In order to secure the repayment of the above amount by Plaintiff No. 2 to Defendant No. 1, Plaintiff No. 1 along with each order provided an advance of 25% of the value of LC in cash and also furnished postdated cheques for 102.5% value of the consignment, in favour of Plaintiff No. 2 along with a legal undertaking. Plaintiff No. 2 opened the LCs only after receipt of the margin money, legal undertaking and all other necessary documentation. It is further stated that after dispatch of the consignment, the whereabouts of the goods can be verified. However, as the minimum time period for the consignment to reach is 45 days, the process of clearance and active tracking of the consignment only commences on the expiry of 45 days. It is stated that since Plaintiff No. 1 has already done business of approximately Rs. 200 crores with Defendant Nos. 2 and 3 in the past, it did not suspect any fraud or breach of trust on the part of Defendant Nos. 2 and 3. It is stated that the transactions in question were based on trust.

10. The following four LCs were opened by Plaintiff No. 2 for import of different lots of continuous cast copper wire rod from Defendant No. 2:

(i) L/C No. 0189111FLU000150 opened on 7th December 2011.

(ii) L/C No. 0189111FLU000151 opened on 7th December 2011.

(iii) L/C No. 0189111FLU000154 opened on 17th December 2011.

(iv) L/C No. 0189112FLU000159 opened on 2nd December 2012.

11. The LCs will be hereafter be referred to by the last three digits of their respective numbers. The documents placed on record reveal the following details in respect of each LC:

(i) LC No. 150, opened on 7th December 2011, was negotiated by Defendant No. 4 with Defendant No. 1 on 14th December 2011. Acceptance of the same was conveyed by Defendant No. 1 to Defendant No. 4 on 23rd December 2011. The relevant bill of lading for shipment of the goods was dated 8th December 2011.

In respect of the said LC the payment has been made by Defendant No. 4 to Defendant No. 2.

(ii) As regards LC No. 151, it was opened on 7th December 2011 and was negotiated by Defendant No. 4 with Defendant No. 1 on 12th December 2011. The relevant bill of lading is dated 9th December 2011. Defendant No. 1 by its letter dated 31st December 2011 conveyed to Defendant No. 4 that it would not be able to accept the LC. In respect of the said LC, the payment has already been made by Defendant No. 4 to Defendant No. 2.

(iii) As regards LC No. 154, it was opened on 17th December 2011 and was negotiated by Defendant No. 4 with Defendant No. 1 on 22nd December 2011; the relevant bill of lading is dated 31st December 2011; payment has already been made by Defendant No. 4 to Defendant No. 2 against the said LC.

(iv) LC No. 159 was opened on 2nd January 2012 and negotiated by Defendant No. 4 with Defendant No. 1 on 6th January 2012; acceptance of the LC was conveyed by Defendant No. 1 on 16th January 2012 and the bill of lading is dated 7th January 2012.

12. It is stated that when the documents were received from Defendant No. 1 with respect to LCs 150, 154 and 159, "the Plaintiffs came to know that Defendant No. 2 company had manufactured courier receipt to demonstrate export and had falsely declared that fax message have been sent and further fabricated other documents to prove exports." It is further stated that documents received against LC No. 151 were rejected by Plaintiffs and duly communicated to Defendant No. 1 on the basis of discrepancies. The documents pertaining to LC No. 150 alleged to have been sent by Defendant No. 2 to Plaintiff No. 2 on 8th December 2011 through courier and the documents pertaining to LC No. 154 alleged to have been sent by courier on 31st December 2011 were never received by Plaintiff No. 2 or by Plaintiff No. 1. However, manufactured courier receipts "pertaining to alleged dispatch were sent by Defendant No. 2 to Defendant No. 1 Bank." When Plaintiff No. 1 tried to trace the said couriers through internet it found that no such documents were in fact dispatched since the courier receipts themselves were fabricated. It is stated that DHL informed Plaintiff No. 2 that the shipment documents were in fact not handed over to DHL Express, Malaysia. Likewise, in respect of the documents pertaining to LC No. 159 the courier agency confirmed that the said documents did not exist. On 23rd January 2012 Plaintiff No. 1 informed Plaintiff No. 2 of the abovementioned fraud played by Defendant No. 2.

13. In para 37 of the plaint it is stated that a blatant fraud was committed by Defendant No. 2 since container numbers mentioned in each of the bills of lading were found to be fictitious. The inspection reports mentioned in the bills of lading were also found to be fictitious. The vessels on which the cargo was alleged to have been loaded were never available for loading cargo on board. The Plaintiff wrote to Defendant No. 2 on 27th January 2012 informing it about the LCs but

no reply was received. It was learnt by the Plaintiffs that the consignments in respect of certain orders placed with Defendant Nos. 2 and 3 by other copper importers also could not be traced.

14. There are numerous allegations of fraud against Defendant No. 2. However, as regards Defendant No. 4 the specific allegations are contained in para 17 wherein it is averred that "the Plaintiffs apprehend that Defendant No. 4 Bank (which is the Negotiating/Beneficiary Bank) is in active collusion with the Defendant Nos. 2 and 3".

15. In paras 16 and 17 of the written statement filed by Defendant No. 1, in response to the corresponding paras in the plaint, it is stated as under:

16. That in reply to para 16 of the plaint it is submitted that the answering Defendant No. 1 received the following sets of documents from Defendant No. 2:

(a) Clean Marine on Board Bill of Lading

(b) Commercial Invoice

(c) NN Bill of Lading

(d) Packing List

(e) Certificate of Origin

(f) Insurance certificate

(g) Beneficiary certificate

(h) Shipping Agent certificate

(i) Bill of exchange

(j) Facsimile letter

(k) SGS inspection report

(l) Courier receipt

17. That in reply to para 17 of the plaint it is submitted that after receiving from Plaintiff No. 2 acceptance of the sets of documents received from the Defendant No. 4, the answering Defendant No. 1 communicated the same to the Defendant No. 4 advising the due dates of payment in respect of the following three LCs:

(a) 0189111FLU000150

(b) 0189111FLS000154

(c) 0189112FLU000159

16. Further in para 19 it is stated as under:

19. That in reply to para 19 of the plaint it is submitted that consequent upon acceptance by the Plaintiff No. 2, the answering Defendant No. 1 having advised

acceptance of the documents drawn under three of the aforesaid four Letters of Credit, the answering Defendant No. 1 is under obligation to make payments on the due dates in terms of the provisions of the Uniform Customs and Practice for Documentary Credits (UCP-600). It is submitted that the Plaintiff No. 2 has to provide necessary funds to the Defendant No. 1 for making payments as aforesaid.

17. The stand taken as regards the four LCs is that despite Plaintiff No. 2 not having accepted the documents, the payment cannot be refused as, "there is no discrepancy in the documents" and "non-acceptance of documents by Plaintiff No. 2, in such circumstances, is of no consequence."

18. The stand taken by Defendant No. 4 in its written statement is that it has accepted the documents since they were in conformity with the terms of the LCs. The LCs were negotiated on 12th, 14th and 22nd December 2011 and 6th January 2012 respectively. The amounts were accordingly paid to Defendant No. 2. The stand is that any dispute between Plaintiff No. 2 and Defendant No. 2 should not come in the way of reimbursement which was to be made to Defendant No. 4 in accordance with UCP-600. It is stated that Defendant No. 4 did not receive any notice in accordance to Article 16 of UCP-600 from Defendant No. 1. It is further stated that as regards LC No. 151 again no notice under Article 16 of UCP-600 was received from Defendant No. 1. A message dated 31st January 2012 was received from Defendant No. 1 stating that they would not make payment under the aforementioned LC as the "Plaintiff No. 2 alleged the documents to have been fabricated and that the Letter of Credit was fraudulently negotiated." As regards LC No. 154, the stand is that no notice from Plaintiff No. 2 under Article 16 of UCP-600 was received by Defendant No. 4. It was only on 15th March 2012 it received copy of the order dated 2nd March 2012 from the lawyers of the Plaintiffs. In relation to LC No. 159 it is stated that Defendant No. 1 confirmed the receipt of the documents by a message dated 16th January 2012 and undertook to make the payment. However, later it reiterated that Plaintiff No. 2 had alleged that the documents were fabricated.

19. Defendant No. 4 contends that in terms of UCP-600 once the LC stands paid by the negotiating bank, it is an irrevocable undertaking of the issuing bank to make the payment especially when it has accepted the documents and agreed to pay on the date of maturity. It is stated that there is no allegation of fraud against Defendant Nos. 1 or 4, the plaint is liable to be rejected.

20. In the application under Order VII Rule 11 CPC, i.e., IA No. 2128 of 2013, while reiterating the above submissions, Defendant No. 4 relies on the decision of the Supreme Court in United Commercial Bank Vs. Bank of India and Others, . It is added that the payments were made by Defendant No. 4 to Defendant No. 1 without any knowledge of fraud and therefore, Defendant No. 1 was obligated to honour its commitment under each of the LCs in terms of UCP-600. On the same ground, Defendant No. 4 also seeks vacation of the interim stay granted by the order dated 2nd March 2012.

21. At this juncture, it is necessary to notice the law in relation to LCs as well as UCP-600. In *United Commercial Bank v. Bank of India* the Supreme Court explained that "the opening of a confirmed letter of credit constitutes a bargain between the banker and the vendor of the goods which imposes on the banker an absolute obligation to pay....A letter of credit sometimes resembles and is analogous to a contract of guarantee." It was further explained in para 38 as under:

38. In the light of these principles, the rule is well established that a bank issuing or confirming a letter of credit is not concerned with the underlying contract between the buyer and seller. Duties of a bank under a letter of credit are created by the document itself, but in any case it has the power and is subject to the limitations which are given or imposed by it, in the absence of the appropriate provisions in the letter of credit.

22. As regards the grant of injunction the Supreme Court referred to the decision in *R.D. Harbottle (Mercantile) Limited v. National Westminster Bank Limited* (1977) 3 WLR 752 in which it was observed as under:

It is only in exceptional cases that the Courts will interfere with the machinery of irrevocable obligations assumed by banks. They are the life-blood of international commerce. Such obligations are regarded as collateral to the underlying rights and obligations between the merchants at either end of the banking chain. Except possibly in clear cases of fraud of which the banker have notice, the courts will leave the merchants to settle their disputes under the contracts by litigation or arbitration as available to them or stipulated in the contracts. The courts are not concerned with their difficulties to enforce such claims; these are risks which the merchants take. In this case, the Plaintiffs took the risk of the unconditional wording of the guarantees. The machinery and commitments of banks are on a different level. They must be allowed to be honoured, free from interference by the courts. Otherwise trust in international commerce could be irreparably damaged.

23. In *I.T.C. Limited Vs. Debts Recovery Appellate Tribunal and Others*, the Supreme Court pointed out that "mere allegations and counter allegations between the parties as to breach of contract, nonpayment of advances or non-supply of machinery did not amount to fraud." It was further explained in para 23 as under:

23. In the result we hold that an allegation of non-supply of goods by the sellers to the buyers did not by itself amount, in law, to a plea of "fraud" as understood in this branch of the law and hence by merely characterising alleged non-movement of goods as "fraud", the Bank cannot claim that there was a cause of action based on fraud or misrepresentation.

24. Further in para 27 it was observed as under:

27. As stated above, non-movement of goods by the seller could be due to a

variety of tenable or untenable reasons, the seller may be in breach of the contract but that by itself does not permit a Plaintiff to use the word "fraud" in the plaint and get over any objections that may be raised by way of filing an application under Order 7 Rule 11, CPC. As pointed out by Krishna Iyer, J. In *T. Arivandandam Vs. T.V. Satyapal and Another*, , the ritual of repeating a word or creation of an illusion in the plaint can certainly be unravelled and exposed by the Court while dealing with an application under Order 7 Rule 11(a). Inasmuch as the mere allegation of drawal of monies without movement of goods does not amount to a cause of action based on "fraud", the Bank cannot take shelter under the words "fraud" or "misrepresentation" used in the plaint.

25. The law was reiterated in *Federal Bank Ltd. Vs. V.M. Jog Engineering Ltd. and Others*, . There the Supreme Court discussed the obligations under UCP-600 in some detail. Reference was made inter alia to Articles 10, 11, 15 to 17 of UCP-600. The law was explained in para 55 as under:

55. In several judgments of this Court, it has been held that courts ought not to grant injunction to restrain encashment of bank guarantees or letters of credit. Two exceptions have been mentioned-(i) fraud, and (ii) irretrievable damage. If the Plaintiff is prima facie able to establish that the case comes within these two exceptions, temporary injunction under Order 39 Rule 1 CPC can be issued. It has also been held that the contract of the bank guarantee or the letter of credit is independent of the main contract between the seller and the buyer. This is also clear from Articles 3 and 4 of UCP (1983 Revision). In case of an irrevocable bank guarantee or letter of credit the buyer cannot obtain injunction against the banker on the ground that there was a breach of the contract by the seller. The bank is to honour the demand for encashment if the seller prima facie complies with the terms of the bank guarantee or the letter of credit, namely, if the seller produces the documents enumerated in the bank guarantee or the letter of credit. If the bank is satisfied on the face of the documents that they are in conformity with the list of documents mentioned in the bank guarantee or the letter of credit and there is no discrepancy, it is bound to honour the demand of the seller for encashment. While doing so it must take reasonable care. It is not permissible for the bank to refuse payment on the ground that the buyer is claiming that there is a breach of contract. Nor can the bank try to decide this obligation under the document having nothing to do with any dispute as to fraud or forgery, we shall presently deal with it.

26. As to when it could be said that the negotiating bank had knowledge of fraud, the Supreme Court referred to several decisions which pointed out that it was not enough to allege fraud but a clear fraud "of which the bank had notice." A reference was made to *United Trading Corporation SA v. Allied Arab Bank* (1985) 2 Lloyd's Rep. 554 (CA) in which it was observed that "there must be proof of knowledge of fraud on the part of the bank at any time before payment."

27. The law has been further reiterated in *UBS AG Vs. State Bank of Patiala*, . In the said the fraud was detected after the LCs had been negotiated. In the

circumstances, it was held that "such fraud alleged to have been committed by the constituent of Respondent-Bank cannot be set up even as a plausible defence in the suit filed by the Appellant-Bank. Even if the constituent of Respondent-Bank had committed fraud in obtaining the Letter of Credit, the same would not be triable issue to decide whether the Appellant-Bank was entitled to reimbursement under the Letter of Credit before such fraud was brought to its notice."

28. In Himadri Chemicals Industries Ltd. Vs. Coal Tar Refining Company, it was pointed out that although the fraud of an "egregious nature" was an exception to the requirement that the obligations under the LC must be honoured, "the evidence must be clear both as to the fact of fraud and as to the bank's knowledge. It would certainly not normally be sufficient that this rests on the uncorroborated statement of the customer, for irreparable damage can be done to a bank's Credit in the relatively brief time which must elapse between the granting of such an injunction and an application by the bank to have it charged."

29. The law in regard to the LCs can therefore, be summarised as under:

(i) The Court should be slow in granting an order of injunction restraining the realization of a bank guarantee or a LC;

(ii) There are two exceptions to the above rule. The first is that it must be clearly shown that fraud of an egregious nature has been committed and to the notice of the bank. The second is that injustice of the kind which would make it impossible for the guarantor to reimburse himself, or would result in irretrievable harm or injustice to one of the parties concerned, should have resulted.

(iii) It is not enough to allege fraud but there must be clear evidence both as to the fact of fraud as well as to the bank's knowledge of such fraud.

30. In the present case, as noted hereinbefore, the allegations against Defendant No. 4 are in paras 17 and 47 of the plaint. The allegation in para 17 is only that the Plaintiffs apprehend that Defendant No. 4 Bank "is in active collusion with Defendant Nos. 2 and 3." In para 47, the allegation is that Defendant No. 4 "has also wrongly negotiated with the Defendant No. 2 without correctly verifying the documents giving rise to suspicion, that it is hands in glove with Defendant No. 2".

31. As pointed out by the Supreme Court in T. Arivandandam Vs. T.V. Satyapal and Another, "the ritual of repeating a word or creation of an illusion in the plaint can certainly be unravelled and exposed by the Court while dealing with an application under Order 7 Rule 11(a)."

32. Barring the repetition of the above statements in paras 17 and 47 of the plaint, there is nothing on record to show that Defendant No. 4 was or is in active collusion with Defendant Nos. 2 and 3 in perpetuating a fraud as alleged by the Plaintiffs.

33. A careful examination of the LCs shows that Condition No. 9 of LC No. 154, stipulated: "shipment not to be effected before 31st December 2011." As far as LC No. 159 is concerned, again Condition No. 9 stipulated: "shipment not be effected before 7th January 2012." Consequently, Defendant No. 2 cannot be faulted for making payment against the LCs.

34. Turing to UCP-600, it defines a "complying presentation" as "a presentation that is in accordance with the terms and conditions of the credit, the applicable provisions of these rules and international standard banking practice." Article 8 requires the confirming bank to honour the LCs if the negotiating bank has negotiated "a complying presentation and forwarded the documents to the confirming bank." Articles 15, 16 and 17 of UCP-600 read as under:

15. Complying Presentation

- a. When an issuing bank determines that a presentation is complying, it must honour.
- b. When a confirming bank determines that a presentation is complying, it must honour or negotiate and forward the documents to the issuing bank.
- c. When a nominated bank determines that a presentation is complying and honours or negotiates, it must forward the documents to the confirming bank or issuing bank.

16. Discrepant documents, waiver and notice

- a. When 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 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.

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.

35. As explained by the Supreme Court in Federal Bank Ltd., once the negotiating bank takes such reasonable care, it will have to be reimbursed by the party giving such authority, in this case, Defendant No. 1. Further when the issuing bank does not respond within a reasonable time then, in terms of Article 16(e) of the UCP-600, it can later return the document.

36. In the present case, it is seen that as regards LC No. 159 Defendant No. 1 confirmed the acceptance of the documents. Therefore, Defendant No. 4 cannot be faulted for making payment against the said LCs to Defendant No. 2. It cannot be said that Defendant No. 4 had no prior permission to make payment to Defendant No. 2. As regards two of the LCs i.e., Nos. 151 and 154, there was no response from Defendant No. 1 within a period of five days after the said LCs were presented for payment by Defendant No. 4. As already pointed out, the refusal to honour the LCs came beyond the period of five days after negotiation. In terms of UCP-600, Defendant No. 1 refuses payment when the non-acceptance is communicated beyond the period of five days. As regards LC No. 150, Defendant No. 1 conveyed its acceptance of the documents on 23rd December 2011. In any event, since it was beyond the period of five days after negotiation.

37. Viewed from any angle, there is nothing on record to show that Defendant No. 4 had any knowledge of fraud alleged to have been claimed by Defendant No. 2 on the Plaintiffs before it made payment to it. As already pointed out, the mere repetition of the allegation that Defendant No. 4 is in collusion with Defendant Nos. 2 and 3 is not sufficient to give rise to a cause of action against Defendant No. 4 for the grant of injunction relief.

38. For the aforesaid reasons, the Court is satisfied that the plaint does not disclose any cause of action for the grant of reliefs as prayed for by the Plaintiffs and against Defendant Nos. 1 and 4. As regards Defendants 2 and 3, Plaintiffs have to pursue other remedies that are available to them in accordance with law since in any event the issues (b) and (c) have been rendered infructuous even prior to the filing of the suit. Accordingly, the plaint is rejected. Consequently, the interim order stands vacated. IA Nos. 2127 and 2128 of 2013 are allowed. IA No. 4103 of 2012 is dismissed. In view of the above, there is no requirement of passing any order as regards IA No. 2126 of 2013 under Order VIII Rule 10 CPC and it is disposed of as such.