

(2008) 08 MAD CK 0002

In the Madras High Court

Case No : O.S.A. No's. 263 to 270 of 2005, 45 and 46 of 2006, 115 and 116 of 2006 and 161 to 163 of 2007

Octrix Holdings (S) Pte. Ltd., P.O.Box No. 338, Siglap Post Office, Singapore 914 507, 116, Lavender St, No. 04-03, Pek Cheran Building, Singapore 338 and **APPELLANT**

Vs

Vrikish Transworld Holdings Ltd. and Others **RESPONDENT**

Date of Decision : 22-08-2008

Acts Referred:

Citation : (2009) 2 LW 708

Hon'ble Judges : M. Venugopal, J;M. Chockalingam, J

Bench : Division Bench

Advocate : B. Kumar, for Mr. K. Chandrasekaran in OSA Nos. 263 to 270 of 2005 and R-3 in OSA Nos. 45 and 46 of 2006, Mr. R. Krishnaswami, for Mr. Srinath Sridevan in OSA Nos. 45 and 46 of 2006, Mr. T.V. Ramanujan, for Mr. R. Umasuthan in OSA Nos. 161 to 163 of 2007 and R-2 in OSA Nos. 45 and 46 of 2006, Mr. N.V. Srinivasan for N.V.S. Associates in OSA Nos. 115 and 116 of 2006 and R-3 in OSA Nos. 263 to 267 of 2005, for the Appellant; S. Venkateswaran for R-2 in OSA Nos. 263 and 264 of 2005 and OSA Nos. 115 and 116 of 2006, Mr. P.S. Raman for Mr. Sathish Parasaran for R-1 in OSA Nos. 263 to 270/2005 and OSA Nos. 45 and 46 of 2006, Mr. R. Krishnamoorthy for Mr. K.J. Chandran for R-4 in OSA Nos. 268 to 270 of 2005, for the Respondent

Final Decision : Dismissed

Judgement

M. Chockalingam, J.—This judgment shall govern all the above fifteen appeals. They challenge an order of the learned Single Judge made in

O.A. Nos. 355 and 356 of 2005 in C.S. No. 307 of 2005, O.A. Nos. 409 and 410 of 2005 and Application No. 2461 of 2005 in C.S. No. 341

of 2005 and O.A. Nos. 481 and 482 of 2005 and Application Nos. 2459 and 2460 of 2005 in C.S. No. 417 of 2005. The first respondent in

OSA No. 263 of 2005 as plaintiff filed a suit in C.S. No. 307 of 2005 seeking for a

permanent injunction restraining the third defendant from in any manner invoking and/or realising payment under the LC No. 3308M/05 dated 7.1.2005 issued by the 1st defendant and also for a permanent injunction restraining the defendants 1 and 2 from making payment under the LC No. 3308M/05 dated 7.1.2005 to the third defendant or anyone claiming under or through them. While doing so, the plaintiff filed O.A. Nos. 355 and 356 of 2005 for interim injunction with the following allegations:

(a) The applicant/plaintiff is an importer of melting scrap. They have been dealing with the third defendant, and his representative met the applicant and represented that they would be in a position to supply light melting scrap. The applicant and the third defendant entered into a sales contract on 6.1.2005 whereby the third defendant agreed to sell light melting scrap consisting of pressed bundles for an agreed quantity of about 500 metric tonnes. The total value of the sale contract was USD 93,500. The contract further provided that there would be a pre-shipment inspection certification and the payment terms were agreed to be through a letter of credit (LC) at sight or Usance LC. The documentation would include commercial invoice, packaging list, certificate of origin issued by the Chamber of Commerce, full set of clean on board bills of lading and pre-shipment inspection certificate. Pursuant to the contract, the plaintiff opened an LC on 7.1.2005, through the first defendant which was the applicant's banker at Chennai for shipment of 250 M.T., out of the original contracted 500 M.T. The LC was amended by an amendment dated 19.1.2005. In that amendment, the LC was converted from CIF to CNF shipment. Thereafter, the LC was further amended and an amended LC was issued on 10.3.2005. The shipment of a quantity of 265.860 M.T. Light melting scrap of pressed bundles had been shipped through containers. A commercial invoice was also issued. The packing list was issued by the third defendant. A certificate dated 25.2.2005, was issued by the third defendant stating that the goods were free of impurities and they would be exactly as per the contract. On the same day, another certificate was issued by the third defendant to the effect that the goods are actually metallic scrap. A certificate of origin was also issued. The third defendant also provided a pre-shipment inspection certificate. The documents

were sent to the applicant's bank namely the first defendant herein by courier. The first defendant verified the same in terms of the LC and relying upon the certification provided in respect of the quality and quantity of the cargo, the payment under the invoice was accepted, and it was communicated to the second defendant through the first defendant. The applicant issued a letter dated 9.3.2005 to the first defendant agreeing to make the payment under the invoice after considering the documents and specifically setting out that the payment was due on 23.5.2005.

(b) The applicant was shocked to see that when the containers were weighed, it showed that they were almost empty even though the seals were intact. The applicant received information from the other importers who were also importing steel scrap from the third defendant, that there appeared to be a large scale fraud played whereby the containers were either empty or were containing old used tyres or mud. The applicant immediately contacted the third defendant who immediately sent a letter dated 22.3.2005 accepting that they had also received information from certain importers in India that the containers shipped by them were empty. The third defendant claimed that the matter was being investigated. In fact the South India Importers Association which is the Apex Body for importers also issued a communication dated 24.3.2005 to all its members that a large scale fraud was being committed by the third respondent by shipping containers having sand or used tyres instead of steel scrap.

(c) A joint inspection was carried out at the Container Freight Station, where the containers were kept. On inspection, it was found that the seals which were made in the bill of lading were correct and intact. The inspection was done by the applicant, the carrier, the 3rd defendant's representative, Customs House Clearing Agent and the Customs Officials and the Associate office of the agency which carried out the pre-inspection certification namely Alex Stewart. To the shock of the applicant, on opening the containers, they found that it contained used tyres instead of scrap. Thus, a large scale fraud has been played and even the documents are fraudulent in nature. In such circumstances, no payment under the LC can be claimed or released. The third defendant cannot claim any payment under the LC. There is every likelihood that in continuation of its established fraud, the third defendant or its assignees would

take payment under the LC. The due date for payment under the LC is 23.5.2005. However, there is every likelihood that the LC could be negotiated and moneys collected before that in Singapore causing irreparable and irretrievable hardship and prejudice to the applicant, the first respondent and the second respondent. No hardship or prejudice would be caused for the grant of interim orders since the third defendant has accepted that the containers were not in accordance with the contract and in the joint inspection carried out in the presence of its representative, it has been proved that the containers contained used tyres. Balance of convenience is in favour of the applicant/plaintiff.

2. The petitions were resisted by the third defendant by filing a counter stating that the suit was not maintainable. No part of cause of action has arisen within the jurisdiction of this Court. The plaintiff has not even attempted to settle the alleged dispute. Only if the settlement failed, he could approach the Court and that too at Singapore. It is false to state that the entire LC transactions has been tainted by established fraud. The third defendant is entitled to draw the payment on the LC furnishing the document, as the LC opened is an irrevocable and an independent one. Alex Stewart is a third party Inspection and Survey Agency appointed mutually to inspect the cargo and certify as per the mandatory stipulation of Government of India. It is pertinent to note that the Government of India, Ministry of Finance - Office of the Deputy Commissioner of Customs, has issued notice wherein procedure was prescribed for import of metal scrap. As per the requirement of the public notice and as per the conditions in the LC, Alex Stewart has issued a certificate of pre-shipment certificate on 1.3.2005, in which it is clearly stated that light metal scrap in the form of pressed bundles is the description of metallic scrap that is on voyage; that the quantity is 265.860 tonnes and the country of origin is Phillippine. The bill of lading is dated 21.2.2005. The risk insurance has to be borne by the buyer viz. the plaintiff. Once the freight has been paid and the goods has been loaded at Manila, the title in the goods has passed on to the plaintiff as a buyer and the contract specifically provides that all risk insurance should be obtained by the buyer and not by the seller. This defendant is not aware as to what was the weighment of the containers on arrival at Chennai. In fact, as admitted by the plaintiff in his mail,

dated 22.3.2005, this defendant is a genuine supplier and is innocent. It is denied that this defendant has played fraud on the plaintiff with the connivance of various other parties. The LC stipulated the conditions very clearly and when all the conditions of the LC have admittedly been fulfilled by the defendant, this defendant is entitled to receive the proceeds of the LC. The bank has sent the acceptance advice that payment will be effected on a certain due date which effectively means that the bank has scrutinized all the documents and has found them to be in order and then only, they have sent the acceptance message to the negotiating bank in Singapore. Once documents are presented and have been taken delivery of, nothing remains on the part of the seller to be performed.

Neither the negotiating bank nor the issuing bank can be restrained by an order or decree of injunction. This defendant has spent a huge money to get the scrap from a merchant in Manila and he has paid to his seller at Manila, and if an order of restraint is passed, this defendant will be deprived of his money for no fault of him. Hence the OA has got to be dismissed.

3. The first respondent in OSA No. 265 of 2005 as plaintiff filed a suit in C.S. No. 341 of 2005 seeking a permanent injunction restraining the third defendant from in any manner invoking and/or realising under the FLC/MDM/040435 dated 20.11.2004 issued by the first defendant and also a permanent injunction restraining the defendants 1 and 2 from making payment under that LC to the 3rd defendant. While doing so, the plaintiff filed two applications in O.A. Nos. 409 and 410 of 2005 for interim injunction with the allegation that the applicant and the third defendant entered into a contract dated 16.11.2004, for supply of light melting scrap; that the applicant opened an FLC on 20.11.2004 through the first defendant; and that the containers contained condemned tyres instead of scrap. The plaintiff has also stated similar allegations as to the large scale fraud as found in C.S. No. 307 of 2005.

4. The said applications were resisted by the third defendant by filing a counter containing similar averments as found in the counter filed in C.S. No. 307 of 2005.

5. The first respondent in OSA No. 45 of 2006 as plaintiff filed a suit in C.S. No. 417 of 2005 for a permanent injunction restraining the third defendant from in any manner invoking and/or realising under the letter of credit

bearing No. 041 3-FLC243-04 dated 18.10.2004 issued by the first defendant and for a permanent injunction restraining the defendants 1 and 2 from making payment under the said LC to the third defendant.

While doing so, the plaintiff filed two applications in O.A. Nos. 481 and 482 of 2005 for interim injunction with the allegations that the applicant

and the third defendant entered into series of sales contract dated 29.11.2004 and 6.1.2005 for supply of light melting scrap; that pursuant to the

contract, the FLC facilitator of the plaintiff, the fourth defendant herein, opened an FLC on 19.10.2004, through the first defendant; and that the

containers contained condemned tyres instead of scrap. The plaintiff has further averred similar allegations as to the large scale fraud as found in

C.S. No. 307 of 2005.

6. The said applications were resisted by the third defendant by filing a counter containing similar averments as found in the counter filed in C.S.

No. 307 of 2005.

7. Originally, interim injunction was granted in O.A. Nos. 409/2005 in CS No. 341/2005 and 481 and 482 of 2005 in CS No. 417/2005. To

vacate the interim injunction originally granted, the third defendant in C.S. Nos. 341 and 417 of 2005 filed Application Nos. 2459 and 2461/2005

while the first defendant in C.S. No. 417/2005 filed Application No. 2460 of 2005.

8. As could be seen from the materials available, all these appeals have arisen from a common order of the learned Single Judge of this Court

made in O.A. Nos. 355 and 356 of 2005 in C.S. No. 307 of 2005 filed by the plaintiff seeking an order of interim injunction pendente lite

restraining the third defendant from in any manner invoking or realising payment under LC No. 3308M/05 dated 7.1.2005 and also another interim

injunction restraining the defendants 1 and 2 from making payment under the said LC to the third defendant. The plaintiff in C.S. No. 341 of 2005

filed O.A. Nos. 409 and 410 of 2005, the former one seeking for interim injunction restraining the third defendant from invoking or realising

payment under FLC/MDM/040435 dated 20.11.2004 issued by the first defendant, and the latter one seeking for interim injunction restraining the

defendants 1 and 2 from making payment under that FLC. In the said suit, the third defendant filed Application No. 2461/2005 seeking to vacate

the temporary injunction originally granted in O.A. No. 409 of 2005. The plaintiff

in C.S. No. 417/2005 filed O.A. Nos. 481/2005 seeking interim injunction restraining the third defendant from in any manner invoking or realising under 0413-FLC243-04 dated 18.10.2004 issued by the first defendant. Equally the plaintiff in that suit filed O.A. No. 482 of 2005 seeking interim injunction restraining the defendants 1 and 2 from making payment under that LC to the third defendant. The third respondent in O.A. No. 481/2005 filed Application No. 2459 of 2005 to vacate the order of interim injunction originally granted in C.S. No. 417/2005. Also the third respondent in O.A. No. 481/2005 filed Application No. 2461 of 2005 to vacate the order of interim injunction originally granted in C.S. No. 341/2005. Similarly, the first respondent in O.A. No. 482/2005 filed Application No. 2460 of 2005 to vacate the order of interim injunction originally granted in C.S. No. 417/2005. All those applications were taken up for enquiry by the learned Single Judge and a common order was passed which is the subject matter of challenge before this Court.

9. The point that arises for consideration in these appeals is whether the interim injunction granted by the learned Single Judge is liable to be vacated for the reasons stated by the appellants?

10. Advancing the arguments on behalf of the appellant in OSA Nos. 45 and 46 of 2006, the learned Senior Counsel Mr.R.Krishnaswami would

submit that as could be seen, the averments in the plaint would clearly indicate that the case of the plaintiff rested on the issue of fraud alleged to

have been played on the plaintiff in the matter of supply of goods; that it may or may not be true; that whether a fraud was played upon the plaintiff

in the matter of supply of goods could be decided only after the evidence in that regard was adduced, and that too only in a suit filed by the plaintiff

against the third defendant seller; that the letter of credit did not concern itself with the goods supplied, but only the documents enumerated therein;

that Article 3 of the Uniform Customs and Practice for Documentary Credits (hereinafter referred to as UCPDC) (codified as ICC No. 500)

would make it clear that the credit by their nature are separate transactions from the sales or other contracts on which they may be based, and

banks were in no way concerned with or bound by such contracts even if any reference whatsoever to such contracts was included in the credit,

and consequently, the undertaking of a bank to pay, accept and pay drafts or

negotiate or to fulfill any other obligations under the credit was not subject to claims or defence by the applicant resulting from his relationship with the issuing bank or the beneficiary, and a beneficiary can in no case avail himself of the contractual relationship existing between the banks or between himself and the issuing bank; that in view of the clear and unambiguous wording of the UCPDC, the banks were in no way connected with the performance or non-performance of the obligations under the contract between the plaintiff and the third defendant; and that it has got to be worked out between them inter se. The learned Senior Counsel in support of his contention relied on a decision of the Supreme Court reported in *Fargo Freight Ltd. Vs. The Commodities Exchange Corporation and Others*,

11. Added further the learned Senior Counsel that the banks were concerned only to see whether the documents enumerated in the LC were duly presented; and that the duty of the bank was only to examine the documents presented in pursuance of the letter of credit in accordance with the standards set out in Article 13 of the UCPDC. The learned Senior Counsel in support of his contention relied on a decision of the Apex Court reported in 2001(1) SCC 663= 2001-1-L.W. 332 (*Federal Bank v. V.MJOG*).

12. The learned Senior Counsel would further submit that it should not be forgotten that the injunctions granted by the Courts against letters of credit, would shake the confidence of the international banks in the integrity of the Indian Banking Industry; that under the, circumstances, the Courts are ordinarily reluctant to grant interim injunction to restrain invocation of the bank guarantee; that the first defendant has not till date notified even a single discrepancy with respect to the documents in accordance with Article 14 of the UCPDC; that while so, there was no question of Canara Bank being restrained from making payment to the appellant with whom the letter of credit constituted an independent contract; that even assuming that the third defendant has supplied sand and used tyres instead of the iron scrap and it would constitute a fraud on the plaintiff, it would not be a ground for injuncting them from making payment under the letter of credit; that once the first defendant has accepted the documents, the appellant herein made payment to the beneficiary; that thereupon, the appellant stood in the position of a holder in due course and is entitled to

payment without reference to the disputes between the plaintiff and the beneficiary; that the learned Single Judge has not taken into consideration

the balance of convenience and equities between the plaintiff and the third defendant; and that on the other hand, in deciding whether to grant

injunction against the payment under the LC or not, the only issue to be decided was whether the documents have been presented and examined in

accordance with the UCPDC or not; but, it was not taken into consideration or decided by the learned Single Judge.

13. Added further the learned Senior Counsel that the learned Single Judge has found that the inspection certificate was not correct; but, the letter

of credit specified that the certifying agency must give a certificate of inspection in respect of the goods; that in the instant case, the certificate has

been duly produced which appears on the face of it, to be valid; that the Canara Bank has not objected to the same; that under the circumstances,

the certificates issued by Alex Stewart were not germane for deciding the question as to the grant of injunction; that it is not correct to state that

fraud has been brought to the notice of the bankers; that the appellant bank was not bound to take cognizance of any inter se dispute between the

plaintiff and the third defendant; that in any event, no proof of notice was given to the appellant bank, and thus, there was no scope for assuming

any constructive or implied notice in such matters; that no notice of fraud by the third defendant has ever been given to the appellant prior to its

payment to the third defendant; that there was no evidence before the Court of notice being given to the appellant prior to its making payment to

the third defendant; that under the circumstances, the appellant has in fact made the payment on the basis of the acceptance of the documents and

hence, the injunction should have been refused; that it is not correct to hold that the appellant had no interest in getting the injunction vacated; and

that the appellant has been repeatedly corresponding with the first defendant who had assured the appellant that they would safeguard their

interest.

14. The learned Senior Counsel would further submit that it is pertinent to point out that no proper notice was served upon the appellant as to the

Court proceedings and hence he did not take proper steps within the time prescribed; that the construction made by the trial Court of the usance

period of the letter of credit was not correct; that the letter was payable at sight; that therefore, the issues of usance were not germane to the

enquiry on hand, and under the circumstances, the order of the learned Single Judge granting injunction has got to be set aside.

15. The learned Counsel appearing for the appellant in OSA Nos. 115 and 116 of 2006 Mr. N. V. Srinivasan would submit that UCPDC issued by

the International Chamber of Commerce, is the universally applicable set of rules governing the use of the documentary letters of credit in

international trade and commerce which govern all international trade transactions; that if applied, the injunction originally granted by the learned

Single Judge should have been vacated; that Article 17 of UCPDC 500 would make it clear that the bank assumes no liability or responsibility for

the form, sufficiency, accuracy, genuineness, falsification or legal effect of any document or for the general or any document or particular conditions

stipulated or assume any liability or responsibility for the description, quantity, weight, quality condition, packing, delivery, value or existence of the

goods represented by any document which would clearly indicate that the appellant is not responsible or has anything to do in the performance or

breach in performance of the contract between the buyer and the seller who are the plaintiff and the third defendant respectively; that in the

international trade operations, bankers are concerned only with the documents and not with the goods, services or other performance; that the

bank guarantee or LC is an independent and distinct contract between the bank and the beneficiary; that it is not qualified by the underlying

transactions; that the primary contract between the person at whose instance the bank guarantee or letter of credit is issued; that when the

documents were found to be in conformity with the terms of the LC, then the bank which issued the LC was bound to honour its commitment

irrespective of the dispute between the seller and the buyer; that an irrevocable LC constitute a definite undertaking of the issuing bank as soon as

the stipulated documents were presented by the negotiating bank to the issuing bank and comply with the terms and conditions of the LC; that

while the issuing bank by confirmed the negotiating bank that the documents are free from discrepancy, the negotiating bank should not have been

injunctioned as per UCPDC 500; that the first respondent herein has clearly admitted that the documents as required under the contract between the

first respondent and the third respondent, were sent to the second respondent being the banker of the first respondent; that on receipt of such documents, the second respondent verified the documents in terms of the foreign LC and relying upon the certification provided in respect of the quality and quantity of the cargo, the payment under the invoice was accepted; that such acceptance was duly communicated through the 2nd defendant to the appellant, and thus, it would be quite clear that there was no discrepancy; and that in such circumstances, the appellant was justified in honouring by making payment.

16. It is further contended by the learned Counsel that the liability of the second respondent namely the issuing bank of the LC to make payment on the due date to the appellant i.e., the negotiating bank, in the context of the situation where the terms and conditions of the LC were duly complied with by the third respondent, has got to be recognized; that if not the rights of the appellant being the negotiating bank to get due payment from the 2nd respondent is safeguarded, it would cause irreparable loss and also prejudice by making the injunction absolute against the appellant and the 2nd respondent; that the learned Single Judge has prejudged the issue of the alleged fraud in favour of the first respondent/plaintiff which could be decided only by letting in evidence at the time of the trial; that the appellant was never put on notice by the first respondent as regards the fraud alleged to have been committed by the third respondent at any point of time; that the bank presenting the draft for payment was the holder in due course; that its claim against the LC issuing bank would not be fettered even though the primary transaction was alleged to have been tainted by fraud, and hence, the injunction granted by the learned Single Judge, has got to be vacated.

17. Advancing the case on behalf of the appellant in O.S.A. Nos. 161 to 163 of 2007, the learned Senior Counsel Mr. T.V. Ramanujam would submit that there was no privity of contract between the appellant and the first respondent; that the first respondent has no locus standi to sustain the suit against the appellant; that since the plaintiff had no cause of action against the appellant, the order passed in O.A. Nos. 481 and 482/2005 and Application No. 2460/2005 was liable to be set aside; that as per the sales contract entered into between the first respondent and the third

respondent, the first respondent has agreed to resolve the disputes if any arising between them in Singapore, and hence, the suit itself was not

maintainable before this Court and consequently, the injunction orders passed were ultra vires and against the principles of equity and natural

justice and liable to be set aside; that as per the MOU arrived at between the first respondent and the fourth respondent STCL, the first

respondent has agreed to resolve the dispute with regard to the supply or non supply if any, by way of referring the matter to arbitration; that the

venue of the arbitration in this regard is New Delhi; that under the circumstances, this Court has no jurisdiction to entertain the suit; and that when

the suit itself is not maintainable, no order of injunction could be granted.

18. Added further the learned Counsel that it is pertinent to point out that the letter of credit is a trade instrument which settles the trade between

the two parties who are located in two different countries; that in order to bring uniformity in matters pertaining to the letters of credit, the

International Chamber of Commerce (ICC) at Paris for the letters of credit, the Rules under UCPDC have got to be applied; that as per Article 9

of the said Rules, the issuing banker should honour the LC on due date upon the beneficiary complying with the LC terms and conditions; that the

third respondent has discharged the LC terms and conditions, and consequently the appellant was under paramount duty and obligation to honour

the LC on the due date; that as per the UCPDC Rules, the LC issuing bank should only deal with the documents and documents alone; that if the

beneficiary furnishes documents confirming the compliance of the LC conditions, the LC issuing bank has no other alternative except to make

payment to the beneficiary on the due date; that by way of opening the irrevocable letters of credit, the appellant bank has guaranteed the due

payment of the invoice amount for the supplies effected to the third respondent herein upon complying with the conditions contained in the LC; that

if the LC opening bank committed default in honouring the LC on due date consequent to the compliance of the terms and conditions of the LC by

the supplier, the same would not only affect the image of the LC opening bank namely the appellant, but also cause an indelible stigma in the minds

of the trading community on the nation as a whole; that the very quintessence of LC is that immaterial of the fact whether the buyer made the

payment to the seller or not, upon the seller's compliance of the terms and conditions of the LC the issuing banker should honour the LC on due

date; and that having opened the irrevocable letters of credit through the fourth respondent, the first respondent herein had no locus standi

whatsoever to stop honouring of the LC.

19.The learned Senior Counsel would further add that Article 3 A and 3B read with 4 of the UCPDC Rules makes it clear that the banks deal only

with the documents but not goods and also the undertaking of the bank to pay, accept or to incur liability under the letter of credit was not subject

to the claims, defences raised by the plaintiff; that Article 9A of the UCPDC Rules makes it mandatory on the part of the LC issuing bank to

honour its commitments upon the beneficiary complying the terms and conditions as stated in the LC; that in the transaction relating to the

international trade, the currency and the trade practices involved in the respective countries are different; that the seller who is the exporter is not

sure of the credit worthiness of the buyer; that in fact, by way of issuing the irrevocable letter of credit, the issuing bank confirms to the supplier that

the consideration for the goods supplied would be paid on due date upon the seller fulfilling the terms and conditions specified in the LC

irrespective of the fact whether the buyer made payment to the supplier or not; that the third respondent has supplied the goods to the first

respondent only on the irrevocable letters of credit issued; that the third respondent had fully complied with the conditions stipulated in the LC and

then the appellant has no option except to honour the same; that the issuing banker pays the consideration to the seller independent of the buyer;

that the buyer cannot withhold the payments under any pretence; that if the buyer wishes to complain about the goods, he must do so separately

from the documentary letter of credit; that in view of Article 9 of the UCPDC Rules, the issuing bank is under paramount duty to honour the LC

amount upon the beneficiary complying with the terms and conditions of LC; and that the nonpayment of the LC amount by the appellant to the

third respondent would not only affect the reputation and image of the appellant, but also would spoil the reputation of the country as a whole in the

international market.

20.Added further the learned Senior Counsel that the FLC transactions were

based on documents, and hence supply or non-supply of the stocks by the third respondent has nothing to do with the honouring of the LC; that it is pertinent to point out that under the terms of the contract of sale entered into between the plaintiff and the third defendant, the plaintiff had alternative remedy, and hence interim injunction should not have been granted; that the plaintiff has miserably failed to establish a prima facie case and the balance of convenience in their favour; that the plaintiff has also suppressed certain facts and information and it has approached the Court with unclean hands; that whether there was any fraud committed by the first respondent and whether the quality of the stocks supplied were below or substandard were all triable issues between the plaintiff and the third defendant; that the appellant was also not put on notice with regard to the alleged fraud prior to the confirmation of the payment on the due date to the negotiating banker; that the alleged fraud was not brought to the notice of the appellant either before acceptance of the documents or before confirmation of the payment on due date to the negotiating banker and hence it would be quite clear that the plaintiff has not made out a prima facie case for an interim injunction.

21.It is further submitted by the learned Senior Counsel that it is not correct to state that the compensation received by the fourth respondent from the inspecting agency was independent of the sale transaction between the plaintiff and the third defendant; that the fraud was brought to the notice of the appellant only on 23.3.2005 and 5.4.2005; but, the appellant has confirmed the payment under the LC to the negotiating bank well before the said notice of fraud, and hence it was not a fit case where injunction could be granted, and the order of the learned Single Judge has got to be set aside.

22.The learned Senior Counsel Mr.B.Kumar, appearing for the appellants in OSA Nos. 263 to 270 of 2005 would submit that the order of the learned Single cannot be sustained; that it is pertinent to note that the sine qua non for grant of injunction in case of encashment of LC is fraud of egregious nature and that it should be of the beneficiary; that in this regard, the decision of the Supreme Court in Federal Bank's case (2001(1) SCC 663) has got direct application; that the photographs, the bill of lading, the pre-inspection certificates, the weight of the containers as

disclosed at the time of shipment and the purchase made by the seller in Philippines would reveal that the fraud if at all it had happened, is not by the beneficiary but by somebody else; that the sale contract clearly provides that "all risk insurance" would be taken by the buyer; that if he has not chosen to insure the goods, he has to face the consequences; that in the instant case, the ultimate sufferer is the seller namely the appellant as it has discounted the bills and had the LC cleared by the negotiating bank on the acceptance made by the issuing bank; that in such circumstances, the issuance of injunction would ultimately only prejudice the interest of the seller namely the appellant; that the letter issued by Alex Stewart clearly states that the contents are true disclosures; that the alleged disclaimer by Alex Stewart is never mentioned in the plaint nor in the affidavits but has been obtained well after the counter has been filed and vacate stay sought for; that it is pertinent to point out that the said Alex Stewart has attested the signature of the person who would issue pre-shipment certificate at Manila; that the signatures and formats are all same in all the certificates; that STCL cannot be allowed to disown such of those certificates; that the issuance of five cheques by the appellant would not amount to acceptance of his liability; that it is to be seen that the STCL by accepting the cheques has waived all the claims against the appellant; that there is no privity of contract between the appellant and Jai Bhavani and hence the plaint by Jai Bhavani is not at all maintainable.

23. Added further the learned Senior Counsel that the Apex Court has repeatedly held that fraud should be an established fraud; that the plaintiff has having not even pleaded an established fraud in the document of letter of credit is not entitled to injunction; that in the instant case, there is no established fraud and that too by the beneficiary namely the appellant; that the agreement produced by STCL having been entered by it with Alex Stewart is enough to demonstrate that the certificates are true certificates issued by Alex Stewart; that the action of STCL receiving the amount from Alex Stewart would absolve the appellant from all liability even though no liability could be fastened on the appellant; that the LC issuing bank has verified the documents and sent the acceptance to the negotiating bank; that the said negotiable instruments were sold by STCL to plaintiff on high seas sale basis which means that STCL has also checked and verified the documents to be in order; that UCPDC 500 has been specifically

made applicable between the parties in all the LCs opened by the other plaintiffs and STCL and hence the parties are bound by the provisions of the same.

24.It is further contended by the learned Senior Counsel that the Apex Court has clearly held that the issuing bank and negotiating bank should have been put on notice about the fraud if there had been documentary fraud before acceptance by the issuing bank and before the LC could be honoured and it has nothing to do with the period of time provided in usance LC; that this Court has absolutely no jurisdiction as the contract between the parties makes Singapore laws specifically applicable and for settlement of the disputes at Singapore, and hence the order of the learned Single Judge has got to be set aside.

25.In answer to the above, the learned Senior Counsel Mr.P.S.Raman appearing for the first respondent/plaintiff would submit that the letters of credit stipulates 120 days for honouring the payment by the bank; that at the time of joint inspection made at Chennai Port, it was found that the containers covered by the respective bills of lading contained either sand or used tyres; that in such circumstances, it amounted to a rank fraud played by the third defendant; that the same was duly intimated to the issuing bank immediately; that the case on hand would come under the exceptional circumstances; that it is pertinent to point out that the period for payment mentioned under the LC is 120 days; but, before the expiry of that period, the payments have been made; that it is quite evident that a large scale fraud has been played and even the documents are fraudulent in nature, and under the circumstances, the order of the learned Single Judge has got to be sustained.

26.The learned Senior Counsel Mr.R.Krishnamoorthy appearing for the fourth respondent in OSA Nos. 268 to 270 of 2005 would submit that the cheques issued by the third respondent to the fourth respondent by a communication dated 18.4.2005, for the value of the consignments covered by 54 containers, were subsequently dishonoured by the third respondent itself; and that the conduct of the third respondent has further aggravated the fraud alleged.

27.Arguing on behalf of the second respondent in OSA Nos. 263 and 264/2005 and 115 and 116/2006, the learned Counsel

Mr.S.Venkateswaran would submit that the third defendant exported the commodities in terms of LC and communicated the same to the plaintiff; that thereafter, the documents were sent to the plaintiff's banker; that on verification of the documents in terms of the LC by the bank, the payment was accepted, and it was duly communicated to the second respondent herein; that as per UCPDC 500, the bankers deal only in documents and as per Article 8 of the UCPDC they are in no way concerned with trade dispute if any; that it is pertinent to note that the LC opening bank had confirmed that the documents were found to be in order, and hence, the payment was honoured; that the Apex Court has held that when a prayer for injunction is made, the Courts shall not interfere unless prima facie fraud or irreparable loss is established; that a bank guarantee or LC is an independent and distinct contract between the bank and the beneficiary and is not qualified by the underlying transaction; that the machinery and commitments of banks are on a different level; that they must be allowed to be honoured free from interference by the Courts; that if the plaintiff is prima facie able to establish that the case comes within the two exceptions as held by the Supreme Court namely fraud and irretrievable damage, temporary injunction can be issued; that it has also been held that the contract of the bank guarantee or LC is independent of the main contract between the seller and the buyer; that in case of irrevocable bank guarantee or LC, the buyer cannot obtain injunction against the banker on the ground that there was a breach of contract by the seller; that the bank is to honour the demand for encashment if the seller prima facie complies with the terms of the bank guarantee or LC; that if there is no discrepancy, it is bound to honour the demand; that in the instant case, it has been done in accordance with law; and that if the plaintiff is really aggrieved, then he ought to contest the case only at Singapore and not before this Court.

28.The following would emerge as facts admitted:

In all these suits, the plaintiffs are the buyers. The third defendant Octrix Holdings (S) Pte. Ltd., is the supplier who agreed to supply larger quantity of light melting scrap consisting press bundles to the specifications of the plaintiffs. Pursuant to the negotiations between the plaintiffs and the third defendant, all of them entered into independent sales contract whereby the third

defendant agreed to sell the light melting scrap for an agreed quantity loaded in containers. The unit price for the sale was also agreed at USD 187 per M.T., CNF, Chennai, and the total value of the sale contract was also agreed. The first defendant in all the suits was the banker of the plaintiffs i.e., the issuing bank, while the second defendant bank was the negotiating foreign bank on behalf of the third defendant seller. It was agreed that there would be a pre-shipment inspection certification, and the payment terms were agreed to be through a LC at sight or Usance LC. It is not in controversy that the parties agreed as a term in the contract that the documentation would include 3 copies of the commercial invoice, 2 copies of the packaging list, certificate of origin issued by the Chamber of Commerce, full set of clean on board bills of lading and pre-shipment inspection certificate. The first defendant in all the suits namely the issuing bank, issued irrevocable letters of credit in favour of the third defendant seller to be negotiated through the second defendant. In respect of the containers, pre-shipment inspection certificates were issued by M/s.Alex Stewart International Corporation B.V. Certifying that the containers consist of consignments were inspected both before and during stuffing into the containers. The certificates were also as to the quality and quantity and also to the effect that the cargoes were safe for normal use. After the containers were unloaded in the Chennai Port, they were weighed. At that time, it was found that the consignments were far below than what was said to have been contained as per the packing list furnished by the third defendant. Entertaining suspicion, the containers were opened in the presence of the representatives of the plaintiff as well as the third defendant along with the insurance surveyors and the fourth defendant in C.S. No. 4.17 of 2005 namely Spices Trading Corporation Ltd. (STCL) through whom the transaction was facilitated. It was admitted that the consignments covered by different invoices contained either used tyres or sand. The fourth defendant STCL issued a communication on 8.4.2005 to the said Alex Stewart about the same. The said agency by a reply dated 15.4.2005 confirmed the same and would further add that 54 containers covered by the bills of lading dated 13.2.2005 to 27.5.2005 were not known to them; that the pre-shipment inspection certificates issued by them were also not known to them; that the certification issued was

of incorrect letterhead on a different address; and that apart from that, format of the letterhead was also found varied. The difference in the signatures of the authorized officials and the discrepancies in the pre-shipment certificate sent by the third defendant along with the bills of lading were also pointed out. Pursuant to the communication addressed by the STCL to Alex Stewart following the defects found at the time of the inspection and also questioning the issuance of pre-shipment inspection certificate, the Alex Stewart came forward to pay a particular sum as compensation pursuant to which an agreement was entered into on 11.6.2005 between STCL and Alex Stewart when it was stated that it was with a view to continue the patronage of the institution for utilising the services for inspection of future cargo of STCL.

29. As far as C.S. No. 307 of 2005 was concerned, a letter of credit was opened on 7.1.2005 and amended letters of credit dated 19.1.2005 and 10.3.2005 were issued, while in the case of C.S. No. 341 of 2005, the LC was dated 20.11.2004, and in the case of C.S. No. 417 of 2005, the LC was dated 18.10.2004. A communication was addressed by South India Importers Association to its members that the third defendant had committed fraud by loading sand, used tyres and rubbish instead of steel scrap. Under the stated circumstances, the plaintiffs have filed the respective suits for permanent injunction. While doing so, they have sought for interim orders with the averments in the affidavits in support of the applications that the interim orders have got to be granted restraining the defendants 1 and 2 from honouring and the third defendant from invoking or realising the amounts covered under the letters of credit.

30. As could be seen from the averments in the complaints and also in the affidavits in support of the applications seeking for interim injunction pendente lite by the plaintiffs, it would be quite clear that they have sought for the reliefs of permanent injunction that the first defendant, the banker of the plaintiff and the second defendant, the negotiating bank, should be restrained from making payment under the letters of credit, and the third defendant should be restrained from invoking the same specifically alleging that a fraud has been played on the document and in particular, the pre-shipment inspection report. The pre-shipment inspection certificates in respect of all the containers were issued by a common agency Alex Stewart

International Corporation B.V. A perusal of the the said certificates would clearly indicate that the consignments were stuffed with the steel scrap as per the quantity and quality agreed and also free from any harmful subject. When those containers were unloaded at Chennai Port and weighed, entertaining suspicion, they were opened in the presence of the representatives of the buyer and the seller along with the insurance surveyors. The joint inspection report issued on inspection as found in page 161 of the booklet would clearly indicate that 10 out of total 54 containers covered under the bill of lading from 13.2.2005 to 27.5.2005, contained used tyres and sand. Only on inspection, the plaintiffs came to know that a fraud has been committed by stuffing the containers with used tyres and sand by the third defendant. The contention put forth by the appellants' side that a proper inspection was made by the inspection agency namely M/s.Alex Stewart; that they have given a certificate that the containers contained only scrap; that something would have happened subsequent to the shipment and hence, no fraud could be attributed has got to be discountenanced. Now, at this juncture, the contention put forth by the plaintiffs' side that pre-shipment inspection certificate itself was fraudulent has got to be accepted since the seal that was found on the containers and the bill of lading was found to be one and the same. This fact was also certified by the surveyor at the time of inspection when they were opened at Chennai Port. Hence it would be quite clear that the stuffing of the used tyres and sand in the containers should have taken place before the time of shipment in the foreign country. Such a pre-shipment inspection report could not have come into existence without the connivance of the third defendant seller and also the certifying agency namely Alex Stewart. At this juncture, it is pertinent to point out that when this fact came to the knowledge of the fourth defendant who acted on behalf of the plaintiffs buyers, the fourth defendant STCL issued a communication to the said Alex Stewart. The Alex Stewart came forward to state that they had nothing to do with the bills of lading issued by the third defendant, by a communication dated 18.4.2005 to the fourth defendant. Though the third defendant came forward to state that there was no fault on their side, M/s.Alex Stewart came forward to give the whole value of the materials by way of cheques. It is pertinent to point out that all the cheques when placed for encashment were dishonoured. The learned Senior Counsel for the

first respondent brought to the notice of the Court that the Director General of Foreign Trade has issued a circular on 21.11.2005 informing the trade industry that the certificate issued by eight agencies including that of M/s. Alex Stewart International Corporation would not be accepted and investigation was on regarding the certificate issued. All the above would clearly indicate that it was a conscious act of the third defendant in stuffing the containers with sand and used tyres instead of iron scrap. In order to satisfy the requirement of transportation, a fabricated pre-shipment inspection report was also procured and placed along with the bill of lading.

31. The main bone of contention by the plaintiffs who seek to sustain the order of injunction pendente lite is that both the issuing bank namely the first defendant and the negotiating bank namely the second defendant, were put on notice as to the act of fraud committed by the seller and hence the banks themselves should withhold the payment instead of allowing the seller who has committed fraud on documents, to encash the same. On the contrary, the main contention put forth by all the appellants are that firstly, as per the contract entered into between the third defendant seller and the plaintiff buyer, the agreed quantities of iron scrap were stuffed in containers; that necessary pre-shipment inspection certificates were issued on proper inspection, and since the goods were handed over for shipment and the bill of lading was received and produced, the title to the property has actually passed from the seller; that secondly, even if a fraud has been played on the plaintiffs by the third defendant as alleged, it could be only in the matter of goods supplied in which the banks either issuing or negotiating, has no concern, and thus banks are not obliged under the credit, since the credits as per the UCPDC are separate and independent transactions; that thirdly, when the documents enumerated in the letters of credit were presented, the only duty cast upon the banks is to examine the documents in accordance with the standards stipulated in UCPDC, and if found to be all right, then the appellant bank has no option than to honour and make payment to the beneficiary, and thus, the negotiating bank stood in the position of a holder in due course and entitled to payment without reference to the disputes between the buyer and the seller; that apart from all the above, as per the international practice and also as per the UCPDC Rules either in the case of bill of credit at sight

or Usance, when documents are presented and found to be correct, they were to be honoured; that pending the letters of credit, in some of the cases, payments have been made and in some of the cases, payments have not been made; that the alleged fraud is a matter between the buyer and the seller; that the contracts between the buyer and the seller and the contract between the banking companies are two different transactions and independent contracts and hence the plaintiffs buyers cannot have any recourse against the banking companies as has been done in the instant case.

32. Both the appellants and the respondents' side have relied on Uniform Customs and Practice on Documentary Credits (UCPDC). The following Articles therein, in the opinion of the Court, are relevant for the purpose of this case.

Article 3

Credits v. Contracts

(a) Credits, by their nature, are separate transactions from the sales or other contract(s) on which they may be based and banks are in no way concerned with or bound by such contracts), even if any reference whatsoever to such contract(s) is included in the credit. Consequently, the undertaking of a bank to pay, accept and pay Draft(s) or negotiate and/or to fulfil any other obligation under the credit, is not subject to claims or defences by the applicant resulting from his relationships with the Issuing Bank or the Beneficiary.

(b) A Beneficiary can in no case avail himself of the contractual relationship existing between the banks or between the applicant and the issuing bank.

Article 4

Documents v. Goods/Services/Performances

In credit operations all parties concerned deal with documents, and not with goods, services and/or other performance to which the documents may relate.

Article 9

Liability of issuing and confirming banks

(a) An irrevocable Credit constitutes a definite undertaking of the Issuing Bank,

provided that the stipulated documents are presented to the Nominated Bank or, to the Issuing Bank and that the terms and conditions of the Credit are complied with:

.....

(b) A confirmation of an irrevocable Credit by another bank (the "Confirming Bank") upon the authorisation or request of the Issuing Bank

constitutes a definite undertaking of the Confirming Bank, in addition to that of the Issuing Bank, provided that the stipulated documents are

presented to the Confirming Bank or to any other Nominated Bank and that the terms and conditions of the Credit are complied with:

Article 13

Standard for examination of documents

(a) Banks must examine all documents stipulated in the Credit with responsible care, to ascertain whether or not they appear, on their face, to be in

compliance with the terms and conditions of the Credit. Compliance of the stipulated documents on their face with the terms and conditions of the

Credit, shall be determined by international standard banking practice as reflected in these Articles. Documents which appear on their face to be

inconsistent with one another will be considered as not appearing on their face to be in compliance with the terms and conditions of the Credit.

Documents not stipulated in the Credit will not be examined by banks. If they receive such documents, they shall return them to the presenter or

pass them on without responsibility.

(b) The Issuing Bank, the Confirming Bank, if any, or a Nominated Bank acting on their behalf, shall each have a reasonable time, not to exceed

seven banking days following the day of receipt of the documents, to examine the documents and determine whether to take up or refuse the

documents and to inform the party from which it received the documents accordingly.

(c) If a Credit contains conditions without stating the document(s) to be presented in compliance therewith, banks will deem such conditions as not

stated and will disregard them.

Article 15

Disclaimer on Effectiveness of Documents

Banks assume no liability or responsibility for the form, sufficiency, accuracy, genuineness, falsification or legal effect of any document(s), or for the general and/or particular conditions stipulated in the document(s) or superimposed thereon; nor do they assume any liability or responsibility for the description, quantity, weight, quality, condition, packing, delivery, value or existence of the goods represented by any document(s), or for the good faith or acts and/or omissions, solvency, performance or standing of the consignors, the carriers, the forwarders, the consignees or the insurers of the goods, or any other person whomsoever.

33. From the above Articles found in UCPDC, it would be quite clear that the credits and the contract between the seller and the buyer are separate transactions, and the banks are not concerned with or bound by the contracts between the parties. The obligation of a bank under the credit is an undertaking to pay, accept or negotiate and it is not subjected to claims or defence by the applicant. The beneficiary cannot also avail the contractual relationship either between him and the other party or he cannot be allowed to take advantage of the contractual relationship between the banks or between the applicant and the issuing bank. The credit operations always deal with documents and not with goods. An irrevocable credit constitutes a definite undertaking of the issuing bank. If the stipulated documents are presented to the nominated bank or to the issuing bank and the terms and conditions of the credit are complied with and if the credit provides for negotiation, it has to be paid without reference to the drawers. The banks should examine all the documents stipulated in the credit with responsible care to ascertain whether or not they appear on the face to be in compliance with the terms and conditions of the credit. The compliance of stipulated documents should be determined by international standard banking practice. But, they do not incur any liability or the responsibility for the form, sufficiency, accuracy, genuineness, falsification or legal effect of any documents or for the description of the quantity, weight, quality, the condition, packing, delivery, value or existence of the goods represented by any documents, etc.

34. The Supreme Court had an occasion to consider whether a temporary injunction under Order 39 Rule 1 of the CPC to restrain the invocation or encashment of the bank guarantee or letters of credit can be made in a case

reported in (2001) 1 SCC 663 {Federal Bank Ltd. v. V.M. Jog

Engineering Ltd and others) and has held as follows:

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 question of breach at that stage and refuse payment to the seller. Its obligation under the document having

nothing to do with any dispute as to breach of contract between the seller and the buyer. As to its knowledge of fraud or forgery, we shall

presently deal with it.

35. In the course of the said judgment, the Supreme Court has also referred to the decision made in *Sztejn V. J.Heney Schroder Banking Corpn.* (

(1941) 31 NYS 2D 631). The following passage of the said case has also been extracted in the judgment of the Supreme Court:

Where the seller's fraud has been called to the bank's attention before the drafts and documents have been presented for payment, the principle

of the independence of the bank's obligation under the letter of credit should not be extended to protect the unscrupulous seller. It is true that even

though the documents are forged or fraudulent, if the issuing bank has already paid the draft before receiving notice of the seller's fraud, it will be

protected if it exercised reasonable diligence before making such payment.

36. In paragraph 59 of the said judgment, Their Lordships have held "...the Issuing Bank to release money for collection if the buyer informed the

Issuing Bank in his plaint that the documents to be presented to it by the Collecting Bank were forged or fraudulent.

From the decision of the Supreme Court referred to above, a temporary injunction restraining the invocation of the letters of credit or encashment

of bank guarantee cannot be made except under two circumstances namely the fraud and irretrievable damage. If the principle laid down by the

Supreme Court in the above case wherein the judgment of Shientag, J., has been referred to, which is also followed in Courts in India and England,

is applied, this Court is of the considered opinion that the present case would fall under both the exceptions of fraud and irretrievable damage.

37. It is true that the letter of credit is an independent transaction from the main contract between the seller and the buyer as contended by the

appellants. It is also true that taking advantage, the buyer who is the plaintiff herein should not be allowed ordinarily to ask for and obtain injunction

against the banker in the case of irrevocable letter of credit as one in the instant case, that there was a breach of contract by the seller. Needless to

say that as per the Articles 3 and 4 of UCPDC Rules, the banker has to honour the demand for the encashment of the letter of credit if the third

defendant seller complies with the terms of the letter of credit i.e., if the seller produces the documents enumerated in the letter of credit. Now, the

contention put forth by the learned Counsel for the appellants that if the bank is satisfied on the face of the documents that they were in conformity

with the list of documents mentioned in the LC and if there was no discrepancy they were bound to honour the demand of the seller for

encashment. They have to exercise the reasonable care what they are expected to do as per the international standard banking practice. But, in the

instant case, the consistent case of the plaintiffs is that both the issuing and negotiating banks were put on notice as to the fraud that has been

played by the seller and the documents which were placed were fraudulently obtained. Further, it is a case where the plaintiffs have sought for the

relief that a fraud has been played by the third defendant by presenting false and fraudulent documents. It is not the case of the plaintiffs that there was any breach of contract on the part of the third defendant subsequently. According to the plaintiffs, they came to know about the fraud committed by the third defendant by presenting false documents only on the inspection made at Madras Port on 24.3.2005. The fourth defendant has immediately communicated to the certifying agency Alex Stewart. Immediately the plaintiffs informed the first defendant issuing bank to stop all payments under the LC. Within a short span of time, all the suits were filed before the Court stating the entire facts and they have also sought for interim injunction. It is pertinent to point out that the second defendant in the suits namely the appellant in OSA Nos. 45 and 46/2006 has neither appeared nor filed counter affidavit, but after the orders of injunction have been passed, they have preferred appeal as if they were aggrieved without raising any contention before the learned Single Judge.

38. The contentions put forth by the third defendant beneficiary that he is entitled to have the benefit of the documents and bill of credit and if there is any breach found or even for the alleged fraud, the plaintiff could not file a suit for injunction like this, and he must file a separate suit where the third defendant would have an opportunity to put forth his defence or even the agreement between them would make it clear that whenever any dispute arises between the parties, they have to go for arbitration, and the laws of Singapore would govern them. Attractive though the contentions may be, but this cannot be countenanced both factually and legally. Having entered into a contract with the plaintiff agreeing to sell a large quantity of iron scrap and placing the documents including pre-shipment inspection report pertaining to the quantity, quality, etc., and at the time of unloading a part of the consignment having been found to be sand and used tyres at the time of inspection done in the presence of the representatives of the third defendant also, he cannot now be permitted to say that he should be allowed to take the money of the buyer, and the remedy open to the buyer is to go for arbitration or before the Court of law at Singapore and wait for decades. At this juncture, it is pertinent to point out that once the fraud committed by him by placing false documents is alleged, the plaintiff is entitled to maintain a suit against the issuing

bank and negotiating bank from invoking the LC and making payment to him.

39. The contention put forth by the learned Counsel for the banking institutions is that the transaction between the issuing bank and the negotiating

bank would constitute an agreement and independent of the major contract between the buyer and the seller and when the bill of credit is placed

along with the documents required, the issuing bank has to honour the same by making the payment, and in the instant case, the letters of credit

were placed before the issuing bank, and all the documents mentioned therein were in order and under the circumstances, the bank has no option

than to honour the same. Ordinarily, this contention has got to be accepted. But, in the case on hand, the letters of credit when looked into, would

clearly reveal that they became due after the lapse of 120 days from the date of negotiation. As rightly pointed out by the learned Senior Counsel

for the plaintiffs, in no one case, the period of 120 days was over when the fraud committed on documents by the third defendant was brought to

the notice of the banking institutions and even the suits were filed within a short span of time.

40. It is not in controversy that the letters of credit Usance were issued in all the cases. The letters of credit that were issued were not at sight

which requires the payment at sight i.e., on verifying the correctness of the documents placed. But, in the case of Usance LC, it would mean

prospective date agreed by the parties for honouring the payment. It is not in controversy that the bills of credit in question were Usance and the

originally agreed period was 120 days, which would mean the letter of credit became due after the expiry of 120 days. The learned Counsel

appearing for the banks attempted to interpret that the due date for payment would mean that a demand could be made by the other bank if not

paid within 120 days, and there was no impediment for the issuing bank to honour the same within 120 days. This contention cannot be accepted

for two reasons. Firstly, ""Usance"" itself denotes and signifies the time appointed for payment of the bills. Under the sale contracts in order to make

out a distinction in the term of payment, the clauses ""LC at sight"" and ""Usance LC"" are incorporated. It is not a case where all these LCs issued

were LCs at Sight. Admittedly, the LCs which were drawn, were Usance LCs. It has been clearly understood and agreed that the payment

becomes due on the expiry of the 120 days. In no one case when the fraud was found and at the time when both the issuing and the negotiating banks were put on notice, 120 days was over. Secondly, as far as the LCs issued in the instant case, are concerned, it is claimed that part of them have already been negotiated and part of them have not been negotiated. Insofar as the cases where the bills have been negotiated and payments even if at all made, the banks have not even cared that those LCs were Usance LCs, but have hastily honoured the LCs. In a given case like this, where the letters of credit were Usance LCs and it also stipulates a period of 120 days, the banker of the plaintiff upon whom he reposed confidence and trust was duty bound not to negotiate and honour the bills immediately detrimental to the interest of the plaintiff. That apart, the affidavit filed by the appellants in OSA 45 and 46 of 2006 namely the Bank of New York in paragraph 7 has given a table giving the details stating that it had already made payment to the third defendant in respect of the sums due under the letter of credit long before the injunction was granted. From the tabular column it would be quite clear that the LCs became due for payment only on 20.6.2005, 22.6.2005, 29.6.2005, 11.7.2005 and 14.7.2005 respectively; but, the payments were made on 23.2.2005, 28.2.2005, 8.3.2005, 15.3.2005 and 21.3.2005 respectively even before the due dates. It is a case where the parties have agreed that the terms of payment was under Usance as indicated in the LC, and thus, without caring for the same, both the banks have acted and thus, the banking institutions have committed themselves to run the risk by negotiating and making the payment.

41. The contention that there was no impediment for negotiating the bill immediately though it becomes due only on the expiry of 120 days, cannot be accepted. The parties have agreed as to the term of payment under Usance LCs. Under such circumstances, the banking institution without taking into consideration that it was Usance LC cannot negotiate the bill of credit or make payment and raise a defence that they were entitled to do so under the international standard banking practice or UCPDC Rules. In cases where the bills have not been negotiated and payments not made, they cannot seek permission to negotiate or for making payment in the circumstances attendant in view of the fact that though the documents

were presented, they were not encashed.

42. The learned Senior Counsel for the appellants raised another contention stating that the 4th defendant who was acting on behalf of the buyer

after the inspection of the consignment at Madras Port was made, has addressed a communication to Alex Stewart, pursuant to which an

agreement was made on 11.6.2005 between Alex Stewart and the fourth defendant STCL. The said agreement would clearly reveal that the

certifying agency Alex Stewart has agreed to pay certain amount to STCL in 4 monthly equal instalments. It was also mentioned therein that the

plaintiff should not derive any benefit in any manner on account of the said agreement, and the fourth defendant was to deal with the plaintiff

separately on merit in line with the terms and conditions of the import. Pointing to this agreement, the learned Counsel would submit that the fourth

defendant was a Government of India Undertaking; that there was no separate transaction between the fourth defendant and Alex Stewart; that as

per the agreement, certain sums were to be paid in four monthly equal instalments, and in such circumstances, the plaintiff could make a claim and

get that amount, but not done so. This contention cannot be accepted for more reasons than one. Firstly, insofar as the payment which was agreed

to be made under the said agreement dated 11.6.2005 referred to above, was paid only ""as a goodwill gesture to have the continuous patronage

by the STCL to M/s.Alex Stewart International Corporation B.V."" Secondly, it was specifically agreed that the plaintiff should not have any benefit

in any manner on account of the agreement. Thirdly, the plaintiff was neither a party to the agreement nor was put on notice about this agreement.

Needless to say the conduct of STCL as could be evident from the agreement, cannot be appreciated. But, at the same time, pointing to the

agreement entered into between the fourth defendant and Alex Stewart, the third defendant could not be allowed to make an unlawful gain on the

strength of the forged document or fraud committed. The banking companies cannot also take shelter under the said agreement.

43. As could be seen above, the third defendant against whom established fraud is shown to have been committed cannot be permitted to say that

he was entitled to take the money in view of the presentation of the forged document namely pre-shipment inspection report. As far as the banking

companies are concerned, both issuing and negotiating, they cannot take under the shelter on the principle of the independence of the banks

obligation under the letters of credit in question in view of the invoice issued by the third respondent that the parties have agreed to provide 120

days period from the date of negotiation for making the payment. Despite the same, they have acted with haste and apart from that, the said

principle of independence of their obligation could not be extended to protect the third defendant an unscrupulous seller and that too, when the

banking companies had notice of such fraud. A part from all the above, before granting interim injunction under Order 39 Rule 1 of C.P.C, the

Court has to look into a prima facie case and balance of convenience. The learned Single Judge has taken into consideration the said factors and

has made the interim order absolute and has also dismissed the applications for vacating the same which, in the considered opinion of this Court,

does not require any disturbance. In such circumstances, all these original side appeals deserve an order of dismissal. Accordingly, they are

dismissed confirming the order of the learned Single Judge and leaving the parties to bear their costs.