



2023:DHC:9301-DB



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

% *Date of Decision: 22.12.2023*

+ **FAO(COMM) 177/2023 and CM No. 46090/2023**

M/S ASHOK AGGARWAL AND SONS Appellant
Through: Mr Ashish Dholakia, Senior
Advocate with Mr Dheeraj Gupta
and Mr Arpit Kumar Singh,
Advocates.

versus

AMROSE SINGAPORE PTE. LTD.

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

CORAM:

**HON'BLE MR. JUSTICE VIBHU BAKHRU
HON'BLE MR. JUSTICE AMIT MAHAJAN**

ORDER

1. The present appeal has been filed by the appellant impugning an interim order passed by the learned Commercial Court on 26.07.2023 (hereafter ‘**the impugned order**’) in C.S. (COMM) 380/2020 captioned *M/s. Ashok Aggarwal and Sons v. Amrose Singapore Pte. Ltd.* By the impugned order, the application of the appellant under Order XXXIX, Rules 1 and 2 of the Code of Civil Procedure, 1908 (hereafter ‘**the CPC**’), was rejected by the learned Commercial Court.

2. The aforementioned suit was filed by the appellant, *inter alia*, seeking permanent and mandatory injunction. The appellant seeks a decree



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of declaration that a transaction entered into by the appellant with respondent no 1. (**Amrose Singapore Pte. Ltd.** – hereafter ‘**ASPL**’) was vitiated by fraud and thereby, the appellant is not liable to make payment against a Commercial Invoice dated 09.03.2020 for an amount of USD 85,821.71/- (hereafter ‘**the Commercial Invoice**’) and/or under the Letter of Credit bearing no. IMLC01412000085 dated 06.03.2020 for an amount of USD 135,000/- (hereafter ‘**the LC**’).

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

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

FACTUAL BACKGROUND

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



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goods were to be supplied against an irrevocable Letter of Credit. Accordingly, the appellant had approached the Corporation Bank with a request to open the Letter of Credit for an amount of USD 135,000/- favouring ASPL. The appellant claims that the payment was required to be released against supply of the goods in question (New Zealand Radiata Pine Logs). At the appellant's insistence, the Corporation Bank issued the LC.

6. The appellant states that, on 09.03.2020, the Indian Bank forwarded the following documents (hereafter collectively referred '**shipment documents**') to Corporation Bank-

- a. Bill of Lading dated 09.03.2020 bearing no. AP/NZ/IND-14
- b. Commercial Invoice dated 09.03.2020 for an amount of USD 85,821/-
- c. Packing list dated 09.03.2020
- d. Insurance dated 09.03.2020
- e. Certificate of Origin dated 09.03.2020
- f. Beneficiary's Certificate dated 09.03.2020

7. The Bill of Lading dated 09.03.2020 indicated the Port of Loading – Tauranga and Marsden Point, New Zealand. The goods had been loaded on a vessel named Vessel – MV Asia Pearl 1 V5. The freight was pre-paid. The place and date of issue of lading was Singapore and it was issued by ASPL as agents for and on behalf of Asia Pearl 1 V5 Captain Lirong.



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8. The Indian Bank has averred in the written statement that the shipment documents were received by the Corporation Bank on 16.03.2020.

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

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

11. The appellant claims that by E-Mail dated 17.04.2020 it conveyed to the Corporation Bank the information communicated to it by Mr. Praveen Bejoy regarding the diversion of the vessel to China and clarified that the documents sent under the LC were not to be accepted by the Corporation Bank. It states that it communicated this information to the Corporation Bank again by E-Mail dated 20.04.2020.

12. The Corporation Bank by SWIFT message dated 22.04.2020 informed the Indian Bank, while conveying that the documents received



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from them were discrepant, that the shipping documents received would not be accepted as the appellant has refused to accept the documents. It is stated by the appellant that the Corporation Bank informed the appellant that it had closed the LC on 04.05.2020.

13. The Indian Bank once again sought the acceptance of the shipping documents by Corporation Bank and sent a letter dated 12.08.2020 enclosing the shipping documents, seeking such acceptance.

14. The appellant alleges that fraud was played by ASPL upon sixteen similarly placed buyers of timber, including the appellant. It received information from other buyers regarding the alleged fraud played upon them. Another buyer, M/s Aggarwal Timbers Pvt. Ltd. (appellant in FAO (COMM) 176/2023) had approached TPT Forests (ASPL is an agent of TPT Forests) and TPT had clarified that the vessel had completed loading on 22.03.2020 and had started the journey on the same day. TPT Forests had sent an E-Mail to M/s Aggarwal Timbers Pvt. Ltd. clarifying that the decision to divert the vessel was due to reasons arising out of *force majeure*. It had informed M/s Aggarwal Timbers Pvt. Ltd. that it had no knowledge of the Bill of Lading issued to it and that the same was not valid.

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



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informed the buyer that the Bill of Lading issued to them was null and void.

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

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

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



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THE IMPUGNED ORDER

19. The learned Commercial Court referred to the Uniform Customs and Practice for Documentary Credits of the International Chamber of Commerce that came into force on 01.07.2007 (hereafter 'UCP-600'). It observed that the Corporation Bank did not point out any discrepancy in the compliance of its nomination within five banking days as stipulated in Article 14 and Article 15 of the UCP-600.

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

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

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



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

24. The Ld. Commercial Court relied upon the decision of the Supreme Court in ***U.P. State Sugar Corpn. v. Sumac International Ltd.: (1997) 1 SCC 568*** and clarified that 'exceptional circumstances', which allow for an injunction to be granted, refer to those circumstances that render it impossible for the parties to be reimbursed if such injunction is not granted.

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

CONCLUSION

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

27. This Court finds no infirmity with the impugned order rejecting the appellant's prayer for interim relief. Corporation Bank cannot be interdicted from making payments against the LC issued by it. There is no



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material to establish that the Indian Bank was either involved in the alleged fraud or was aware of the same at the material time. Indisputably, the Corporation Bank had not objected to the LC on the same being presented, within the stipulated period of five days as provided under UCP-600; therefore, Corporation Bank is bound to honour the same.

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

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

VIBHU BAKHRU, J

AMIT MAHAJAN, J

DECEMBER 22, 2023
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