

**1 SCOB [2015] HCD 78****HIGH COURT DIVISION**

(Special Original Jurisdiction)

WRIT PETITION NO. 5210 of 2013

**Delta Spinners Limited**

..... Petitioner

-Versus-

**Bangladesh Bank and others.**

..... Respondents

WRIT PETITION NO. 9305 of 2013

**Roseburg Industries Limited.**

..... Petitioner

-Versus-

**Bangladesh Bank and others.**

..... Respondents

Mr. Shamsuddin Babul, Advocate with  
Mr. Kanailal Shaha, Advocate...For the petitioner in  
Writ Petition No. 5210 of 2013.

Mr. Md. Abdul Haque, Advocate

...For the respondent  
no.3 in Writ Petition No. 5210 of  
2013.

Mr. Fida M. Kamal, Advocate with

Mr. Miah Mohammed Kausar Alam, Advocate

...For the petitioner in  
Writ Petition No. 9305 of 2013.

Mr. Md. Taherul Islam, Advocate

...For the respondent  
no.3 in Writ Petition No. 9305 of  
2013.

Mrs. Hosneara Begum, Advocate

...For the respondent no.  
4 in Writ Petition No. 9305 of  
2013.Heard on: 09.03.2014, 05.05.2014, 18.05.2014 and  
08.06.2014 and Judgment on: 15.06.2014**Present:****Mr. Justice Sheikh Hassan Arif****And****Mr. Justice Mohammad Ullah**

A depositor, when deposits his money in the bank, is entitled to expect that his banker, under any circumstances, will not dishonour his cheque when he has sufficient fund in the account or will not stop him from withdrawing money from his account or transferring the same to another account, unless the banker is directed by a competent court, or in some cases by the regulatory authority like Bangladesh Bank, to stop such payment or transaction. Even if some bills or LCs are the subject matter of any investigation by any agency, we do not find any provision in the relevant laws under which a bank can stop payment or re-imbursalment on such LCs. ... (Para 19)

A bank under the law and banking practice, in particular in accordance with the relevant provisions of UCP-600, is bound to make payment or re-imbursalment in respect of the accepted bills once they are accepted by the issuing banks, and in view of the said provisions of the UCP-600, namely Article-16, once such acceptance is given, the matter is closed and the concerned banks are precluded from raising any issue thereafter. ... (Para 22)

Even if the banks have in the meantime filed any criminal case against the petitioner for commission of such fraud, the payment in respect of the said bills cannot be stopped unless and until the banks obtain an order from a competent Court for stoppage of re-imbursalment. ... (Para 23)

**Judgment****SHEIKH HASSAN ARIF, J:**

1. Since the questions of law and facts involved in the aforesaid two writ petitions are almost same, they have been taken up together for hearing, and are now being disposed of by this single judgment.

2. **In Writ Petition No. 5210 of 2013**, Rule Nisi was issued calling upon the respondent Nos. 1, 2 and 3 to show cause as to why the inaction of the respondent No. 3 in payment of the outstanding export bills of the petitioner amounting to Tk. US\$ 10,89,000.00 along with the interest as per the terms of the Letters of Credit (L/C) for non-payment on the date of maturity overdue interest of the Proforma-respondent Nos. 4 against the L/C being Nos. 037011041230, 037011041235, 037011041236, 037011041237, 037011041238, 037011041239, 037011041949, 037011041950 and 037011041951, Annexure-B series, if the same do not fall under the cause of fraud of the petitioner by any investigation, specially conducted by Anti-corruption Commission, should not be declared to be without any lawful authority and is of no legal effect, and as to why the respondent Nos. 1, 2 and 3 should not be directed to take necessary steps for payment of the said outstanding export bills of the petitioner amounting to US\$ 10,89,000.00 along with the interest of the respondent No.4 bank at 16% per annum for delay period and other overdue charges.

3. **In Writ Petition No. 9305 of 2013**, Rule Nisi was also issued in similar terms, namely that the respondent Nos. 1-5 were asked to show cause as to why inaction of the respondent Nos. 2-5 in making payment against the accepted bills of the petitioner under the Letters of Credit (L/Cs) (Annexures- D and E series) should not be declared to be without lawful authority and is of no legal effect and as to why the respondent No. 1 should not be directed to take necessary actions under Section 45 of the Bank Companies Act, 1991 for making payment against the said accepted bills along with overdue interests if the same do not fall under the cause of fraud of the petitioner by any investigation specially conducted by the Anti corruption Commission.

#### **BACKGROUND FACTS:**

4. Short facts, relevant for the Rules, are given below:-

**In Writ Petition No. 5210 of 2013**, the petitioner, a Limited Company, is engaged in the business of manufacturing and supplying of yarn being registered with the Board of Investment and BTMA. In the course of its business, the petitioner received nine back to back L/Cs ("BB L/Cs"), being LC Nos. 037011041230, 037011041235, 037011041236, 037011041237, 037011041238, 037011041239, 037011041949, 037011041950 and 037011041951, issued by Sonali Bank (respondent No. 3) for supply of yarn to purchasers. The expiry dates of the said LCs were 20.08.2011 and 25.09.2011, stipulating that the negotiating bank, namely the Agrani Bank Limited, Amin Court Branch, Dhaka (respondent No. 4), would get the payment against the said L/Cs after twenty days on maturity and that the payment would only be due upon fulfillment of conditions in the said LCs and letter of acceptance of the said L/Cs issued by the L/C issuing bank. Upon receipt of the said L/Cs, after endorsement by the negotiating bank, the petitioner manufactured the said goods and supplied the same upon fulfilling the terms and conditions mentioned in the said L.Cs and, accordingly, submitted the delivery documents, such as delivery chalangos, Mushak-11 forms etc., before the negotiating bank. Thereupon, since the negotiating bank found no discrepancy in the said documents and found the same non-compliance with the terms of the said L/Cs, it issued forwarding letters to the L.C issuing bank indicating that the said supply of yarns were made by the petitioner as against the said L/Cs. Upon receipt of the said supply by the purchasers, the negotiating bank made the payments against the said bills to the petitioner and, accordingly, forwarded the said bills to the L/C issuing bank through official channel for re-imbursalment. However, even after expiry of the maturity dates as stipulated in the said L/Cs, the L/C issuing Bank (Sonali Bank) having not paid or re-imbursed the said L/C amounts, the negotiating bank issued several letters addressing the Sonali Bank for taking necessary steps to re-emburse the said amounts upon honouring the said bills, but got no positive response. This being so, the negotiating bank started taking steps for realizing the said amounts from the petitioner and issued letter dated 02.05.2013 stating that since the L/C issuing bank-Sonali Bank did not honour the said bills, petitioner was liable to pay the same. It is further stated that since the negotiating bank has taken steps for realizing the said amounts from the petitioner for no fault of the petitioner, but for the default of the L/C issuing bank in honouring the said LC's in accordance with law, the petitioner is at high risk of being treated as defaulter-borrower and classified in the CIB report published by the Bangladesh Bank, thereby, depriving it from getting any credit facilities from any bank or financial institutions. Consequently, since the business of the petitioner is facing serious impacts by such attempts by the negotiating bank because of the default of the L/C issuing Bank, the petitioner moved this Court and obtained the aforesaid Rule. By way of the supplementary affidavit, it is further stated by the petitioner that even the Board of Directors of the L/C issuing bank-Sonali Bank in its 362<sup>nd</sup> meeting resolved to honour 94 (ninety four) inland bills including those of the petitioners, and since the concerned bills of the petitioner are admittedly not the subject matter of any enquiry or investigation by the Anti Corruption Commission in respect of any financial scam, the inactions of the Sonali Bank, and the inaction of the Bangladesh Bank in taking appropriate actions against Sonali Bank as regulating authority, are mala fide and arbitrary.

5. In **Writ Petition No. 9305 of 2013**, it is stated that the petitioner, being engaged in the business of dyeing yarn, bleaching, washing etc., received 16 (sixteen) BB L/Cs from Bangladesh Krishi Bank (respondent No. 4) and 18 BB L.Cs from Sonali Bank (respondent No. 3) to supply different garment accessories to various purchaser companies. The description of the said LCs are as follows;

**6. LC issuing Bank- Bangladesh Krishi Bank (respondent No. 4)**

SI No	Acceptance Letter No. & date	L/C No. & Date	Bill No. & date	Amount
1	BKB/KBCB/F.Ex/LC-154/5167 dated- 20.10.11	050711990154 dated 19.10.11	2011/688 dated 20.10.11	US\$ 93,004.00
2	BKB/KBCB/F.Ex/LC-155/5168 dated- 20.10.11	050711990155 dated 19.10.11	2011/689 dated 20.10.11	US\$ 89,996.00
3	BKB/KBCB/F.Ex/LC-156/5546 dated- 27.10.11	050711990156 dated 25.10.11	2011/728 dated 27.10.11	US\$ 44,998.50
4	BKB/KBCB/F.Ex/LC-156/5545 dated- 27.10.11	050711990156 dated 25.10.11	2011/727 dated 27.10.11	US\$ 55,001.50
5	BKB/KBCB/F.Ex/LC-157/5544 dated- 27.10.11	050711990157 dated 25.10.11	2011/724 dated 27.10.11	US\$ 42,000.00
6	BKB/KBCB/F.Ex/LC-157/5543 dated- 27.10.11	050711990157 dated 25.10.11	2011/723 dated 27.10.11	US\$ 58,000.00
7	BKB/KBCB/F.Ex/LC-158/5547 dated- 27.10.11	050711990158 dated 25.10.11	2011/725 dated 27.10.11	US\$ 55,000.00
8	BKB/KBCB/F.Ex/LC-158/5548 dated- 27.10.11	050711990158 dated 25.10.11	2011/726 dated 27.10.11	US\$ 45,000.00
9	BKB/KBCB/F.Ex/LC-187/8058 dated- 21.12.11	050711990187 dated 19.12.11	2011/877 dated 21.12.11	US\$ 37,000.00
10	BKB/KBCB/F.Ex/LC-188/8059 dated- 21.12.11	050711990188 dated 19.12.11	2011/878 dated 21.12.11	US\$ 39,600.00
11	BKB/KBCB/F.Ex/LC-189/8060 dated- 21.12.11	050711990189 dated 19.12.11	2011/879 dated 21.12.11	US\$ 38,500.00
12	BKB/KBCB/F.Ex/LC-190/8061 dated- 21.12.11	050711990190 dated 19.12.11	2011/880 dated 21.12.11	US\$ 30,000.00
13	BKB/KBCB/F.Ex/LC-191/8062 dated- 21.12.11	050711990191 dated 19.12.11	2011/881 dated 21.12.11	US\$ 24,900.00
14	BKB/KBCB/F.Ex/LC-0001/8775 dated- 08.01.12	050712990001 dated 01.01.12	2014/14 dated 08.01.12	US\$ 53,500.00
15	BKB/KBCB/F.Ex/LC-0002/8776 dated- 08.01.12	050712990002 dated 01.01.12	2012/15 dated 08.01.12	US\$ 52,950.00
16	BKB/KBCB/F.Ex/LC-0003/8777 dated- 08.01.12	050712990003 dated 01.01.12	2012/16 dated 08.01.12	US\$ 53,550.00

**7. LC issuing Bank-Sonali Bank (respondent No. 3)**

Sl. No	Acceptance Letter No. & Date	L/C No. & Date	Our Bill No.	Amount
1.	SBL/SHERA/F.EX/2011/1938 dated 04.12.2011	037011043343 dated 29.11.2011	MTBL/DIL/IDBP/74345 /11	51,450.00
2.	SBL/SHERA/F.EX/2011/1939 dated 04.12.2011	037011043344 dated 29.11.2011	MTBL/DIL/IDBP/74354 /11	48,450.00
3.	SBL/SHERA/F.EX/2011/1940 04.12.2011	037011043345 dated 29.11.2011	MTBL/DIL/IDBP/74336 /11	50,100.00
4.	SBL/SHERA/F.EX/2011/1941 dated 04.12.2011	037011043346 dated 29.11.2011	MTBL/DIL/IDBP/74381 /11	50,400.00
5.	SBL/SHERA/F.EX/2011/1942 dated 04.12.2011	037011043347 dated 29.11.2011	MTBL/DIL/IDBP/74372 /11	49,600.00
6.	SBL/SHERA/F.EX/2011/1943 dated 04.12.2011	037011043348 dated 29.11.2011	MTBL/DIL/IDBP/74363 /11	50,000.00

Sl. No	Acceptance Letter No. & Date	L/C No. & Date	Our Bill No.	Amount
7.	SBL/SHERA/F.EX/2011/1919 dated 13.12.2011	037011043354 dated 02.12.2011	MTBL/DIL/IDBP/74701 /11	45,450.00
8.	SBL/SHERA/F.EX/2011/1918 dated 13.12.2011	037011043355 dated 02.12.2011	MTBL/DIL/IDBP/74729 /11	53,550.00
9.	SBL/SHERA/F.EX/2011/1917 dated 13.12.2011	037011043356 dated 02.12.2011	MTBL/DIL/IDBP/74710 /11	52,600.00
10.	SBL/SHERA/F.EX/2011/1916 dated 13.12.2011	037011043357 dated 02.12.2011	MTBL/DIL/IDBP/74738 /11	48,400.00
11.	SBL/SHERA/F.EX/2012/226/03 dated 03.01.2012	037011043745 dated 28.12.2011	MTBL/DIL/IDBP/75380 /12	49,850.00
12.	SBL/SHERA/F.EX/2012/226/04 dated 03.01.2012	037011043747 dated 28.12.2011	MTBL/DIL/IDBP/75362 /12	50,170.00
13.	SBL/SHERA/F.EX/2012/226/07 dated 03.01.2012	037011043750 dated 28.12.2011	MTBL/DIL/IDBP/75399 /12	49,600.00
14.	SBL/SHERA/F.EX/2012/226/06 dated 03.01.2012	037011043746 dated 28.12.2011	MTBL/DIL/IDBP/75371 /12	49,980.00
15.	SBL/SHERA/F.EX/2012/226/05 dated 03.01.2012	037011043748 dated 28.12.2011	MTBL/DIL/IDBP/75344 /12	50,100.00
16.	SBL/SHERA/F.EX/2012/50 dated 02.02.2012	037011044074 dated 29.12.11	MTBL/DIL/IDBP/76245 /12	100,500.00
17.	SBL/SHERA/F.EX/2012/09 dated 02/02/2012	037011044075 dated 29.12.2011	MTBL/DIL/IDBP/76236 /12	99,500.00
18.	SBL/SHERA/F.EX/2012/224/08 dated 03/01/2012	037011043749 dated 28.12.2011	BKB/KBCB/FEX/12/07/18551	50,300.00

8. The said LCs being endorsed by the respective negotiating banks, namely the Mutual Trust Bank Limited, National Bank Limited and Sonali Bank Limited (respondent Nos. 6, 7 and 8), the petitioner produced the said raw materials and, accordingly, supplied the same in compliance with the conditions mentioned in the said L/Cs. The petitioner, accordingly, submitted the delivery documents of the said goods before the respective negotiating banks, whereupon the negotiating banks forwarded the same to the L/C issuing Banks as no discrepancy therein was detected. Thereupon, the L/C issuing Banks, namely the Krishi Bank and Sonali Bank, accepted the said bills and issued acceptance letters. However, though long time, namely more than one year, has elapsed, the said bills are yet to be re-imbursed by the LC issuing banks, thereby, putting the petitioner at the risk of becoming defaulter-borrower and depriving it from obtaining any credit facilities from any bank or financial institutions in view of the provisions under Section 27 Ka Ka of the Bank Companies Act, 1991. It is further stated, by way of supplementary affidavit, that in respect of the said bills no investigation or enquiry is going on by the Anti-Corruption Commission and the bills accepted by the Sonali Bank are included in the said 94 (ninety four) bills as mentioned in the resolution of the Board of Directors of Sonali Bank in its 362<sup>nd</sup> meeting resolving that those bills should be honoured.

9. The above Rules are opposed by the L/C issuing Banks through learned Advocates, who filled affidavits-in-opposition, mainly contending that those bills are the subject matter of the un-precedented financial scam as perpetrated by the Hallmark group, and after investigation of the said scam, the Anti-Corruption Commission (ACC) has already submitted charge sheets against the people behind such scam including some high officials of the Sonali Bank. It is further contended that since the writ petitions are mainly for realization of money which is disputed, this Court, under writ jurisdiction, is not the proper forum for resolving such dispute. It is further stated through the Krishi Bank's affidavit in opposition in Writ Petition No. 9305 of 2013 that the ultimate foreign currency against those bills has never repatriated in the country as no exports in fact took place and that in view of the instructions given by the Bangladesh Bank in BRPD Circular Nos. 10 and 13 dated 11.07.2012

and 09.09.2012 respectively, the L/C issuing banks are entitled to withhold payments until investigation initiated by those L/C issuing banks in respect of the said bills are completed.

#### SUBMISSIONS:

10. Mr. Shamsuddin Babul, learned advocate appearing for the petitioner in Writ Petition No. 5210 of 2013, submits that this Court and the superior Courts of this sub-continent have time and again held that in documentary credits the bank deals with documents and not with the goods and as such the moment the documents are found to be without any discrepancy, any underlying disputes regarding actual supply or short supply or defective supply of the said goods cannot in any way impact upon the payment on the L/Cs. Referring to the relevant annexures in the writ petition, in particular letters of the concerned negotiating bank addressing the Sonali Bank that the bills have been accepted by the Sonali Bank as the same were found without any discrepancy, Mr. Babul submits that under the provisions of UCP-600, the L/C issuing Bank, under no circumstances, can stop re-imburement as against those bills unless it is directed to do so either by any competent Court or the regulatory authority like Bangladesh Bank. Since, according to him, there is no such restriction, the Sonali Bank, as the L/C issuing bank, has got no legal authority to stop the imbursement after acceptance of those bills and as such it is also the obligation of the Bangladesh Bank to take appropriate regulatory actions against the Sonali Bank to ensure re-imburement of the said L/C amounts.

11. Mr. Meah. Mohammd Kawsar Alam, learned Advocate appearing for the petitioner in Writ Petition No. 9305 of 2013, upon adopting the submissions of Mr. Babul, submits that in respect of both sets of LCs of the petitioner, the L/C issuing banks, namely Krishi Bank and Sonali Bank, issued specific acceptance letters as against the said bills and raised no issue of any discrepancy in respect of the documents submitted by the petitioner in support of actual delivery of the said goods. This being so, he continues, the L/C issuing banks have been acting without legal authority and in violation of the norms and practice of banking—in particular the provisions under UCP-600—the terms of which have been made specifically applicable in respect of the said LC's by mentioning the same in each L/C. Referring to different Articles of the said UCP-600, in particular Articles-7, 14, 15 and 16, Mr. Alam points out that in issuing the said BB L/Cs the L/C issuing banks accepted the terms and conditions of the UCP-600 and thereby made itself liable to pay once the documents submitted by the supplier are found to be without discrepancy. Since the same were accordingly accepted by the LC issuing banks having found the same without any discrepancy, it is now the legal obligation of the Bangladesh Bank to exercise its regulatory authority upon the L/C issuing banks in view of the provisions under Section 45 and other provisions of the Bank Companies Act, 1991 to ensure strict compliance of the said terms of the UCP-600 for the sake of protection of the reputation of the documentary credits in Bangladesh, he argues. Otherwise, according to him, the commercial world of Bangladesh will internationally suffer a serious blow and loose confidence reposed in it by the international business enterprises. Referring to the resolution of the 362<sup>nd</sup> Board meeting of the Sonali Bank (Annexure-K to the supplementary affidavit of the petitioner), ACC's two letters dated 07.04.2014 (Annexure-5 series to affidavit in opposition of respondent No. 3 dated 29.05.2014) and 01.10.2013 (Annexure-I to the supplementary affidavit of the petitioner dated 13.04.2014), Mr. Alam submits that whatever scam-issue was raised by the ACC or the concerned banks at the relevant time, the same have been resolved long ago as the ACC by those letters categorically mentioned that the ACC had nothing to do with the bills of the petitioner and the enquiry in respect of the said bills were already disposed of and that it was the concerned bank's internal matter as to whether it would re-emburse the said amount as against the said bills. Referring to various decisions of this Court, namely the cases of **Uttara Bank Limited vs. Macklin and Kilburn Ltd., 33 DLR (AD)-298, Standard bank Limited Vs Tripos Engineering, 2005 BLD (AD)-137, Samrat Apparels Vs. Hanvit Bank 57 DLR (AD), 194-196, Gooriyonly (BD) Vs Chartkar holding, 54 DLR (Ad) 2002-71 and Zyta Garments Ltd. Vs Union Bank, 55 DLR (AD0 (2003)-56**, Mr. Alam submits that this Court and the superior Courts of this sub-continent have repeatedly declared that the Letter of Credit is the blood flow of the commercial world and under no circumstances the same can be disturbed unless the documents are found discrepant or that the bills are the result of fraud.

12. Mr. Md. Abdul Haque, learned Advocate appearing for the Sonali Bank (respondent No. 3) in Writ Petition No. 5210 of 2013, submits that the country has suffered a huge blow because of the financial scam as perpetrated recently by the Hall Mark group, and this petitioner was also involved in the said scam. In support of his submission, he refers to a letter dated 10.03.2013 (Annexure-2 to the affidavit in opposition dated 21.11.2013) wherein the ACC sought entire documents and papers concerning the Hall Mark group as well as the bills of the petitioner. This being so, Mr. Haque submits that, since the ACC has in the meantime submitted charge sheets against the persons behind such financial scam and the matter is pending before the concerned Courts, the Sonali Bank is entitled to stop the re-imburement in respect of the said bills as the said bills are the product of fraud and fraudulent activities committed by the petitioner. Mr. Hoque further argues that since the

case of the petitioner is in fact for realization of money from the bank and the claim is a disputed claim, this Court should not direct the Sonali Bank to pay the said amount in respect of the said bills as the writ jurisdiction is not the proper forum for resolving such disputes. In support of his submissions, he refers to a decision of our Apex court in **Water Development Board vs. Shamsul Huq, 51 DLR (AD)-169.**

13. Opposing the Rule in Writ Petition No. 9305 of 2013, Ms. Hosneara Begum, learned advocate appearing for the Bangladesh Krishi Bank (respondent No. 4), submits that in respect of the said bills the ultimate export to a foreign country was not even done and no foreign exchange was repatriated by the ultimate exporters. This being so, she argues, it is clear that those bills are the product of fraud and as such the Krishi Bank as well as the other LC issuing banks of the said bills are entitled to stop re-imburement thereon though the same were accepted earlier. Referring to the guidelines of the Bangladesh Bank regarding acceptance of inland bills, Ms. Hosneara submits that the UCP-600 is not applicable in respect of inland bills, rather only the Bangladesh Bank guidelines are applicable, and in accordance with such guidelines, the LC issuing banks as well as the negotiating banks are entitled to conduct enquiry/investigation to determine whether actual supply of goods was made in respect of the said bills. Thus, since in the instant cases such investigation is still going on, this Court should not direct those LC issuing banks to reimburse any amount as against those bills. Further referring to Annexures-3 and 4 to the affidavit-in-opposition of respondent No. 4, which are two Circulars of Bangladesh Bank dated 11.07.2012 and 09.09.2012, Ms. Hosneara submits that the LC issuing banks as well as the negotiating banks are obliged to comply with the directions as contained in those circulars issued by the regulating authority and in the said circulars it has been clearly provided that unless the banks are satisfied about the real supply of the goods in respect of the inland bills, the same cannot be accepted.

#### **ANALYSIS AND FINDINGS:**

14. It appears from the concerned LCs, namely Annexure-B series to the Writ Petition No. 5210 of 2013 and Annexure-L series to the supplementary affidavit of the petitioner dated 18.05.2014 in Writ Petition 9305 of 2013, that each and every BB LCs stipulates therein, in clear terms, the following words:

*“.....this documentary credit is subject to uniform customs and practice for documentary credit 2007 (Revision) International Chamber of Commerce Publication No. 600.....”*

15. This means, the UCP-600 was made an integral part of the said LCs. Apart from that, we do not see anything in the said LCs that the same would be governed by any separate instruction to be issued by the Bangladesh Bank or already issued by the Bangladesh Bank. This being so, we are unable to accept the submissions as put forward by Ms. Hosneara that UCP-600 will not apply in the concerned LCs, and the instructions as contained in BRPD circulars of Bangladesh Bank will only apply, though, as a statutory regulatory authority, Bangladesh Bank will always have regulatory control over all Banks in Bangladesh.

16. Letters of Credit or back to back Letters of Credit are called documentary credits. In such credits, the document prevails over everything else. In this regards, a copy of UCP-600, as placed before us by the learned Advocates deserves some scrutiny and examination by this Court. Under Article-7 of the said UCP-600, it has been provided that the issuing bank must honour the concerned LC, and by issuance of such LC, the issuing bank undertakes to re-emburse a nominated bank that has honoured or negotiated a complying presentation and forwarded the documents to the issuing bank. Article-14 then provides procedure for examination of the documents submitted before the negotiating bank in order to negotiate the said LC, wherein it has been provided that the negotiating bank and the LC issuing bank must examine a presentation to determine on the basis of the documents alone, whether or not the documents appear on their face to constitute a complying presentation. Article-15 provides that when a confirming bank or negotiating bank determines that a presentation is complying, it must forward the documents to the LC issuing bank. The same Article further provides that when an issuing bank determines that a presentation is complying, it must honour. However, Article-16 confers a right on the issuing bank as well as the negotiating bank not to accept or negotiate LCs once the documents are found not complying, meaning that any discrepancy is found therein. Article-16, however, further provides that if such discrepancy is detected, the purchaser or the applicant of LC may waive such discrepancy, and in that case, the LC issuing bank and the negotiating Bank may accept and negotiate the said LC upon such waiver by the said applicant. **Clause-f of Article-16** is very important in the facts and circumstances of the cases in hand and in the commercial world. The said **Clause-f of Article-16** is quoted below:

#### **Article-16:**

#### **Discrepant Documents, Waiver and Notice**

“a.....  
 b.....  
 c.....  
 d.....  
 e.....  
 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.....”

17. Thus, if any discrepancy in the presentation of documents is found, the negotiating bank as well as the LC issuing bank have the right to raise the issue of discrepancy and once such discrepancy is waived by the applicant of the LC, the banks may accept the said LCs. However, according to Clause-f of Article-16, if such discrepancy issue is not raised before, or for any reason the concerned banks fail to act in accordance with the provision of this Article in respect of raising the issue of discrepancy, it cannot subsequently claim that the documents submitted do not constitute complying presentation. It may be noted here that in accordance with the definition of ‘complying presentation’ as provided by Article- 2 of the said UCP-600, a complying presentation means a presentation in accordance with the terms and conditions of the credit, the applicable provisions of these rules and international standard banking practice.

18. Now, the question is, when, or under what circumstances, an LC issuing bank or a negotiating bank can stop payment or reimbursement as against LCs. In other words, if any investigating agency takes up an inquiry or investigation regarding a financial scam committed by a business group in which some LCs may be involved, whether the concerned bank, on its own volition, can stop payment or reimbursement on a documentary credit.

19. The superior Courts of this sub-continent including our Apex court have repeatedly declared that the faith of the clients and depositors in the bank are the utmost important thing in the commercial world. A depositor, when deposits his money in the bank, is entitled to expect that his banker, under any circumstances, will not dishonour his cheque when he has sufficient fund in the account or will not stop him from withdrawing money from his account or transferring the same to another account, unless the banker is directed by a competent court, or in some cases by the regulatory authority like Bangladesh Bank, to stop such payment or transaction. Even if some bills or LCs are the subject matter of any investigation by any agency, we do not find any provision in the relevant laws under which a bank can stop payment or re-imburement on such LCs. In the present cases as well, we find that the Bangladesh Bank, by its letters dated 06.06.2013 and 22.10.2013 (see Annexure-5 series to the Affidavit in Reply dated 29.05.2014 of respondent No.3) firmly stated the said position of law by saying that even in respect of matters which are under investigation by the ACC it is up to the respective banks to honour or dishonour any bill or make any payment therein in accordance with the banking practice. This Court in a very recent unreported case, namely in Writ Petition No. 4081 of 2012, has re-iterated the said position wherein the operation of bank accounts of Jubilee Bank was stopped by its bankers on the basis of some allegations by some directors of the said bank. In the said case, we specifically directed the Bangladesh Bank to take actions against those banks when those banks were found practicing illegal activities in respect of the depositors money by stopping transactions on their accounts without any order either from the competent court or from the Bangladesh Bank to do so. In another unreported case, namely in Writ Petition Nos. 3958 and 3959 of 2013, a particular amount was transferred from the account of the account holder-petitioner to the government collection account on the ground that the auditors and C.A.G. office raised objection in respect of some payments made in the said account and the said objection was endorsed by the Parliamentary Standing Committee of the Finance Ministry. After discussing relevant provisions of law, this Court again held that no amount of any depositor can be transacted or withdrawn or transferred without consent of the said depositor. In deciding those cases, this Court reiterated the sanctity of the client and banker relationship in the banking business.

20. In the cases in hand, we are confronted with almost same scenario, though it may be looked at from different angles. In these cases, the allegation on the basis of which the admittedly accepted BB LCs were not honoured or reimbursed by the LC issuing banks was that those bills were related to the Hall Mark financial scam, the scam that recently jolted the commercial world of this country. To strengthen the said contention, the

learned advocates for the banks repeatedly referred to a letter of the ACC dated 18.03.2013 asking the concerned banks to supply copy of certain documents and bills for the purpose of enquiry in respect of the said financial scam. It appears that the concerned banks, accordingly, responded to the said requests of ACC and supplied those documents. However, in such process, the concerned banks, on their own volition, stopped re-imburement in respect of some admittedly accepted bills including the bills which are the subject matter of the instant writ petitions. Nowhere in the affidavit-in-oppositions or the submissions of the learned advocates of the banks, we find any legal reference or authority on the basis of which they unilaterally stopped re-imburements as against the said accepted bills, in particular when the Bangladesh Bank in its above mentioned letter dated 22.10.2013 specifically mentioned that even the bills under investigation could be honoured in accordance with the banking practice. Now, when the learned advocates for the petitioners refer to two letters of the ACC, namely the letter dated 07.04.2014 (Annexure-5 series to the affidavit-in-opposition of respondent No. 3 dated 29.05.2014) and letter dated 01.10.2013 (Annexure-I to the supplementary affidavit of the petitioner dated 13.04.2014), whereby the ACC itself communicated an information to the concerned banks that the bills in question were no more inquired into and that the concerned banks were at liberty to act in accordance with law and banking practice as regards the re-imburement against the said bills, the learned advocates for the banks find it difficult to support their standing.

21. Again, to strengthen the position of the banks, Ms. Hosnara has tried to rely on two circulars, namely **BRPD Circular No. 10 and 13 dated 11.07.2012 and 09.09.2012 respectively**, issued by the Bangladesh Bank, wherein the Bangladesh Bank emphasized on the need for being assured by the negotiating and LC issuing banks in respect of the actual supply of the goods concerned under the BB LCs or inland bills before giving acceptance thereon. However, we do not see any relevance of those circulars and guidelines of the Bangladesh Bank in respect of the issues raised in the instant writ petitions in particular when the admitted position is that the stage of acceptance of those bills has gone long ago. Therefore, the issue of giving acceptance on the bills is a closed issue now. If the concerned banks are of the opinion that in providing acceptance of the bills the officials of the banks did not strictly comply with the directions, instructions or guidelines issued by the Bangladesh Bank, it is their internal matter and they are at liberty to take appropriate legal actions against those officials. But, we do not find any cogent reason as to how any internal irregularity or illegality committed by any officials of the concerned banks at the relevant time of acceptance of the bills will have any bearing on the re-imburement of the said bills in particular when the ACC itself has in the meantime observed that it got nothing to do with the said bills.

22. We do not know whether the concerned LC issuing banks have stopped re-imburement on the plea of investigation of the alleged irregularity or illegality at the time of acceptance of the said bills long after such acceptances were given by them just to save the backs of those concerned officials, if any, who were allegedly responsible for violating the circulars or guidelines issued by the Bangladesh Banks. If that is so, this Court cannot allow such practice by any banking enterprise in this country. One cannot suffer the loss for the fault of others. A bank under the law and banking practice, in particular in accordance with the relevant provisions of UCP-600, is bound to make payment or re-imburement in respect of the accepted bills once they are accepted by the issuing banks, and in view of the said provisions of the UCP-600, namely Article-16, once such acceptance is given, the matter is closed and the concerned banks are precluded from raising any issue thereafter.

23. Now, the question of fraud as allegedly committed by the petitioners or that they played a role in the said fraud. Apart from making statements of allegation of fraud or playing a role in the alleged fraud, we have not found any solid steps as taken by the said banks either by asking any investigating agency to inquire in to such allegations or by filing any case before any competent Court against the petitioner. Even if the banks have in the meantime filed any criminal case against the petitioner for commission of such fraud, the payment in respect of the said bills cannot be stopped unless and until the banks obtain an order from a competent Court for stoppage of re-imburement. Commencing from the Uttara Banks case decided long ago by our Apex Court, this Court has always given high sanctity to the documentary credits as otherwise it would have had serious impact on the international trade. Though the bills in question are inland bills, it cannot be forgotten that they are parts of the international bills, namely that those back to back LCs have been issued under master LCs issued by a foreign purchasers to import some goods or garments from this country. Once this chain of transaction on documentary credits is interrupted without any legal reason, the entire fabric of international trade with



Bangladesh will fall apart and the confidence of the international market in the banking transaction of Bangladesh will suffer a huge disaster. This being so, this Court is of the view that the Bangladesh Bank has a vital role to play in respect of the said bills in view of the provisions of the Bank Companies Act, 1991, which gave it regulatory power. Under Section 45 of the Bank Companies Act, 1991, the Bangladesh Bank is empowered to give any directions upon any bank or financial institutions for public interest or for the development of banking practice and for the proper management of a concerned bank. However, in this case we are surprised to note that though notice demanding justices by the petitioners were served upon the Bangladesh Bank, it refrained from taking any actions against the concerned LC issuing banks.

24. Now, the issue as submitted by the learned Advocate Ms. Hosnara that the goods were ultimately not exported to the foreign country or that the ultimate foreign currency has never repatriated. Since we do not find anything on record in support of such allegation except a mere statement that the foreign currency has never repatriated in respect of those bills, we cannot but hold that even if they are true, those are events long after the acceptance of the concerned bills and as such law will take its own course in respect of those allegations. In so far as the acceptance of the bills is concerned, we do not see any legal authority under which the concerned LC issuing banks can re-open the entire issue merely on the pretext of some investigations and accordingly stop reimbursements on the said accepted bills. It is true that they can investigate their internal irregularities and illegalities at any time they wish, but for such internal investigation a client of the bank cannot suffer when the expectation of the client is that the documentary credit will follow its own law and it will not be impacted upon by any under-lying transactions either between the parties or between the banks or even by any underlying irregularity or illegality committed by the bank officials.

25. Again, as regards the submission that the claim of payment of money is a disputed claim, this Court is of the view that evidently the amount of LC is not disputed. What is disputed is the underlying contract regarding supply of the goods. Therefore, we come to the same conclusion that the said underlying dispute has no role to play in so far as the documentary credit is concerned. Though the LCs are inland LCs in a country, it has international impact and that is why when the banks which are issuing the internal back to back LCs, they are specifically mentioning UCP-600 therein. Since this inland/internal back to back LCs have international links as the same are connected directly to the confidence of the international players in the commercial world of Bangladesh, this Court should give high priority to such confidence. This Court is of the view that though initially it was the utmost responsibility of the LC issuing banks to reimburse the amounts as against the said accepted LCs once the same are accepted, it has now become the obligation of the Bangladesh Bank to take appropriate actions against concerned LC issuing banks for their illegal role in stopping re-imburement against those LCs. Besides, it appears from the Board resolution of the 362<sup>nd</sup> Board meeting of the Sonali Bank that out of total 116 such inland bills 94 bills were singled out as the same were found to be payable on the basis of its inspection reports. It is also admitted by the affidavit of respondent No. 3-Sonali Bank in Writ Petition No. 9305 of 2012 that the concerned bills in the instant writ petitions are included in the said 94 clean bills.

26. Regard being had to the above facts and circumstance of the cases and the relevant law and practice, we are of the view that the Rules have substance and as such the same should be made absolute.

27. In the result, the Rules are made absolute. The LC issuing banks as well as the Bangladesh Bank are directed to ensure re-imburement of the said bills of the petitioners by the LC issuing banks (Sonali Bank and Krishi Bank in the aforesaid cases) within a period of two months from receipt of the copy of this judgment. However, since the claims of interests by the petitioners need determination of facts upon adducing evidences, we are not inclined at this stage to direct the respondents to pay any interests. But the petitioners would be at liberty to realize interests, if applicable, through proper forum in accordance with law.

28. Communicate this order.