

জেলা- ঢাকা

বাংলাদেশ সুপ্রীম কোর্ট
হাইকোর্ট বিভাগ
(সিভিল রিভিশনাল অধিক্ষেত্র)

সিভিল অর্ডার নং- ২৮৩৬/২০২১

বেঙ্গল হারিকেন ডাইং এন্ড প্রিন্টিং (প্রাঃ) লিমিটেড

ইহার পক্ষে ম্যানেজিং ডাইরেক্টর মোঃ গোলাম সরোয়ার

----- বাদী-দরখাস্তকারী।

-বনাম-

আল-আরাফা ইসলামী ব্যাংক ও অন্যান্য

----- বিবাদী-প্রতিবাদীগণ।

এ্যাডভোকেট ইমতিয়াজ মইনুল ইসলাম

----- বাদী-দরখাস্তকারী পক্ষে।

তারিখঃ ১৩.১২.২০২১

এটি দেওয়ানী কার্যবিধির ধারা ১১৫(১) এর বিধান মোতাবেক দাখিলকৃত একটি দরখাস্ত।

বিজ্ঞ জেলা জজ, ঢাকা কর্তৃক সামারী মোকদ্দমা নং- ০৫/২০২০-এ প্রদত্ত বিগত ইংরেজী ২৫.১০.২০২১ তারিখের ০৮ নং আদেশে সংক্ষুদ্ধ হয়ে বাদী-দরখাস্তকারী দেওয়ানী কার্যবিধির ধারা ১১৫(১) মোতাবেক অত্র সিভিল রিভিশন দরখাস্ত দায়ের করেন।

অত্র সিভিল রিভিশন দরখাস্ত এবং এর সাথে সংযুক্ত সকল সংযুক্তি পর্যালোচনা করা হলো। বাদী-দরখাস্তকারীপক্ষের বিজ্ঞ এ্যাডভোকেট ইমতিয়াজ মইনুল ইসলাম এর যুক্তিতর্ক শ্রবণ করা হল।

গুরুত্বপূর্ণ বিষয়ে বাদী দরখাস্তকারী কর্তৃক দাখিলকৃত সামারী স্যুট নং- ০৫/২০২০-এর আরিজ নিম্নে অবিকল অনুলিখন হলোঃ-

**IN THE COURT OF LEARNED DISTRICT
JUDGE, DHAKA**

SUMMARY SUIT NO. 05 OF 2020

*Bengal Hurricane Dyeing and Printing (Pvt.) Ltd represented by
its Managing Director, Toltoli (Near Monipur Bazar) B.K. Bari,
Post-Office: Mirzapur, Gazipur.*

.....Plaintiff

-VERSUS-

1. *Al-Arafah Islami Bank represented by its Head of Branch, Motijheel Corporate Branch, 125 Motijheel C/A, Dhaka-1000.*
2. *Winsome Fashion Wear LTD represented by its Managing Director, Kakil, Satais Mudafa, Vadam R/D, Tongi, Gazipur.*
3. *ZXY International, Cha 89/1, Progoti Shoroni, North Badda, Bir Uttam Rafiqul Islam Avenue, Dhaka-1212.*
..... Defendants
4. *Southeast Bank Limited represented by its Head of Branch, Corporate Branch, 52-53, Dilkusha C/A, Dhaka.*
..... Proforma Defendant

SUMMARY SUIT UNDER ORDER XXXVII RULE 2 OF THE CODE OF CIVIL PROCEDURE, 1908 FOR PAYMENT OF LETTER OF CREDIT NO. 1075180400455 DATED 02.07.2018 FOR THE AMOUNT OF USD 52813/- WITH INTEREST.

SUIT VALUED AT USD 52813/ EQUIVALENT TO BDT 44,89,105/- (TAKA FORTY FOUR LAC EIGHTY NINE THOUSAND ONE HUNDRED AND FIVE) ONLY AS PER CONVERSION RATE OF USD TO BDT OF THE CENTRAL BANK OF BANGLADESH WITH INTEREST.

SHEWETH:

1. *That the plaintiff is a limited company duly incorporated under the Companies Act, 1994 and having all requisite business licenses and memberships from all reputed organizations got engaged in the garment manufacturing business with formidable reputation for significant period (hereinafter referred to as the "Plaintiff"); business*
2. *That the defendant no. 1 is Al-Arafah Bank who is the Letter of Credit (LC) opening Bank and who has now returned the commercial documents and denied payment under the said LC. The defendant no. 2, Winsome Fashion Wear Limited, the applicant of the LC in question. The defendant no. 3 is an internationally reputed buying house who, as agent of the defendant no. 2, negotiated the business transaction between the plaintiff and the defendant no. 2. The proforma defendant no. 4 is the LC beneficiary Bank of the plaintiff. No relief has been claimed against the proforma defendant no. 4 being the bank of the*

plaintiff and it has been impleaded as the proforma defendant only for efficacious disposal of the instant suit;

3. *That, the plaintiff received a business offer from the defendant no. 2 Winsome for dyeing and finishing of 19,271 kg knit fabrics (100% Cotton Dyed Deep Shade). This offer was received through the defendant no. 3. The plaintiff therefore issued Proforma Invoice (PI) for the amount of USD 57,813/-in favour of the defendant no. 2 so that the defendant no. 2 can open LC in favour of the plaintiff;*

The photocopy of the Proforma Invoice is annexed by way of firisti and marked as ANNEXURE-A.

4. *That, accordingly the defendant no. 2 as applicant opened LC no. 1075180400455 dated. 02.07.2018 for the amount of USD 57,813/ making the plaintiff beneficiary of the said LC. The defendant no. 1 was the LC opening bank and the proforma defendant no. 4 was the bank of the beneficiary;*

The photocopy of the LC no. 1075180400455 dated 02.07.2018 for the amount of USD 57,813/- is annexed by way of firisti and marked as ANNEXURE-B.

5. *That, the plaintiff continued with the work after receiving LC and finished the work. The finished goods were transported to the factory of the defendant no. 2 on 04.10.2018 where the defendant no. 2 duly received the goods without any complain, signed the delivery challan and also endorsed and gave acceptance to the commercial documents by signing in the back of the "Bill of Exchange";*

The photocopies of the commercial documents duly accepted by defendant no. 2 is annexed by way of firisti and marked as ANNEXURE-C.

6. *That, thereafter, the plaintiff handed over the commercial documents to its bank the proforma defendant no. 4 for negotiation. The proforma defendant no. 4 forwarded the commercial documents to the defendant no. 1 on 07.10.2018;*

The photocopy of the forwarding letter of the proforma defendant no. 4 dated 07.10.2018 is

annexed by way of firisti and respectively as ANNEXURE-D.

7. *That, with sheer disappointment and utter dismay, it was observed that on the next day, the defendant no. 1 bank has returned a swift message and gave discrepancies upon the LC under Clause 16 C. (iii) (b) of the Uniform Customary Practice for Documentary Credits 600 (UCP 600) whereas, the applicant itself clearly waived all discrepancies and gave acceptance on 04.10.2018;*

The photocopy of the swift message of the defendant no. 1 dated 08.10.2018 giving discrepancies is annexed by way of firisti and marked in a series as ANNEXURE- E.

8. *That, thereafter, negotiation went on between parties for a long time and it was clearly admitted by the defendant no. 2 that it will instruct the defendant no. 1 bank about the waiver of discrepancies and acceptance of the applicant but in reality never did the needful. The defendant no. 1 bank failed to execute its duties under national and international laws and did not pursue or force the defendant no. 2 to give formal acceptance even though clearly the defendant no. 2 gave acceptance long ago. Email communication evidences applicant unconditionally promised to convey formal acceptance to the bank but never did. Finally, the defendants cunningly obtained a discount of USD 5000/- from the plaintiff in the pretext discounted that if revised documents is submitted then the with that the amount acceptance will be given;*

The photocopies of the said email communications is annexed by way of firisti and marked as ANNEXURE-F.

9. *That, on 20.12.2018, revised commercial documents seeking payment of USD 52,813/- was submitted only for the sake of closing the deal but still the defendant no. 1 bank did not do the needful and did not release payment or pursue/force the defendant no 2 for formal acceptance;*

The photocopy of the revised document dated 20.12.2018 is annexed by way of firisti and marked as ANNEXURE- G.

10. *That, thereafter, the proforma defendant no.4 bank on many occasions sent reminders including on 26.022019 but the defendant no. 1 bank did not release LC payment;*

The photocopies of the reminder swift messages is annexed by way of firisti and marked as ANNEXURE- H.

11. *That, the plaintiff kept pursuing and requesting for payment and tried to negotiate but finally on 10.09.2020, the defendant no. 1 bank and the defendant no. 2, in violation of all international and national laws, returned the commercial documents of the plaintiff and totally refused to make payment;*

The photocopy of the refusal letter dated 10.09.2020 is annexed by way of firisti and marked as ANNEXURE- I.

12. *That, it is most humbly submitted that it is ex facie evident that the defendant no. 2 accepted the goods and endorsed the bill of exchange and then many times promised to waive discrepancies and give formal acceptance but never did which makes it clear that the defendants have no defence and the payment of the LC must now be made;*

13. *That, it is most humbly submitted that the defendant no. 2 defrauded the plaintiff by promising to waive discrepancies and give formal acceptance. The defendant no. 1 bank 2 also acted negligent as it may have approached and convinced the defendant no. 2 to waive discrepancies as per Clause 16 (b) of the UCP 600;*

14. *That, the cause of action of the suit arose on 02.07.2018 when the said LC was opened in favour of the plaintiff; then on 04.10.2018 when the finished goods were delivered and duly accepted without any complain by the defendant no. 2; then 08.10.2018 when the defendant no. 1 gave discrepancies and withheld payment; then on 20.12.2018 when revised documents with discount were submitted but*

not honoured; then on 26.02.2019 when the proforma defendant no. 4 gave repeated reminders but the defendant no. 1 did not pay and lastly on 10.09.2020 when the defendant no. 1 completely denied to negotiate or pay and returned the documents to the plaintiff's bank. The cause of action is still subsisting;

15. *That, the cause of action of the suit arose within the territory of Jurisdiction of this Hon'ble Court and as such the court has complete jurisdiction to try this suit. The suit matter falls under the regime of Order 37 of the Code of Civil Procedure, 1908 and no relief has been claimed which does not fall under the purview of Order 37 of the CPC. The plaintiff has authorized its employee to file the instant suit on its behalf vide Letter of Authority dated 21.09.2020;*

The Original copy of the reminder swift messages is annexed by way of firisti and marked as ANNEXURE-J.

16. *That, the suit is for summary suit for payment of negotiable instruments under Order XXXVII Rule 2 of the Code of Civil Procedure, 1908 and necessary Court-Fee is duly paid (with required taxes and VAT) being TK. 57,500/ (Fifty Seven Thousand Five Hundred) Only by the Plaintiff along with this plaint. This Hon'ble Court has the territorial and pecuniary jurisdiction to adjudicate upon this instant dispute;*

WHEREFORE it is humbly prayed that the Your Honour would be pleased to:

- (a) *pass a decree for USD (\$) 52,813/- (US Dollar fifty two thousands eight hundred and thirteen) only equivalent to BDT 44,89,105/- (Taka forty four lacs eighty nine thousands one hundred and five) only as per conversion rate of USD to BDT of the Central Bank of Bangladesh;*
- (b) *interest from the date of maturity till the date of filling this instant suit at the rate of 18% per annum;*
- (c) *interest to be paid under section 34 of the Code of Civil Procedure, 1908 from the date of filling the suit till the date of decree;*

- (d) *pass such other or further order or orders as may be deemed fit and proper;*
- (e) *Pass a decree for cost of the suit;*
- (f) *Any other relief or relieves, which the Plaintiffs Bank is entitled in law and in equity.*

AND for such act or acts of kindness the Plaintiffs, as in duty bound, shall ever pray.

AFFIDAVIT

I, Mr. Abdullah Al Mamun, aged about 43 years, son of Late Mr. A.K.M Zillur Rahman & Mrs. Rafia Khatun, of 122/A, Tejgaon, I/A, Dhaka- 1208, N.I.D No.2616860289934, by faith Muslim, by Nationality Bangladeshi, by profession Service, do hereby solemnly affirm and say as follows:

- 1. That I am the Attorney and Tadbirkar on behalf of the plaintiff of the suit and also authorized person and as such, I, being fully aware and conversant with the facts and circumstances of the case. I am competent to swear this affidavit and depose to the same.*
- 2. That the statements made herein above are true to the best of my knowledge and belief and I signed this affidavit before Affidavits commissioner of the learned court on this the 23 day of 09 September, 2020 at 12.00 A.M.*

Sd:/Abdullah Al Mamun

.....

Deponent

The Deponent is known to me and identified by me.

SD:/Md. ASADUZZAMAN LITON

Barrister-at-Law

Advocate. Dhaka Judge Court & Supreme Court of Bangladesh

Contact: 01736-333555

.....

Advocate

গুরুত্বপূর্ণ বিধায় বিবাদী নং- ১ আল-আরাফা ইসলামী ব্যাংক লিমিটেড কর্তৃক দাখিলকৃত “An application under Order XXXVII Rule 3(1) and (2) of the Code of the Civil Procedure, 1908 on behalf of the Defendant No. 01 to grant leave to appear and to defend the suit” নিম্নে অবিকল অনুলিখন হলোঃ

IN THE COURT OF DISTRICT JUDGE, DHAKA

SUMMARY SUIT NO. 05 OF 2020

Bengal Hurricane Dyeing and Printing (Pvt.) Ltd.

---PLAINTIFF

-Versus

Al-Arafah Islami Bank Limited and Others

---DEFENDANTS

AND

IN THE MATTER OF:

An application under Order XXXVII Rule 3(1) and (2) of the Code of the Civil Procedure, 1908 on behalf of the Defendant No. 01 to grant leave to appear and to defend the suit.

AND

IN THE MATTER OF:

Al-Arafah Islami Bank Limited

Head of Branch

Motijheel Corporate Branch

125, Motijheel Commercial Area

Dhaka 1000.

Defendant No. 01- Applicant

The humble applicant above named most respectfully,

SHEWETH:

1. That the plaintiff as the beneficiary of the Letter of Credit No. 1075180400455 dated 02.07.2018 (L/C) filed the instant Summary Suit for the L/C payment of USD 52,813/- under Order XXXVII Rule 2 of the Code of Civil Procedure, 1908.

2. That the Defendant No. 01 is the L/C issuing Bank and has good grounds to defend the case on merit as the instant suit is barred under the relevant Articles i.e. 16(C)(iii)b) of the Uniform Customs and Practice for Documentary Credits, 2007 Revision, ICC Publication No. 600 ("UCP 600") and not maintainable in its present form before Clause this forum.

3. That this suit is a vexatious one instituted by the Plaintiff, only with mala fide intention to make illegal gain from the Defendant No. 1, hence the Defendant No. 01 has good defence on merit to defend the case.

4. That the suit has been filed by suppressing the real facts from the Hon'ble Court, hence the Defendant No. 01 has merit to defend

the case. That it is stated that the actual facts of the case are as follows:

a) That the Defendant No.1, at the instance of Defendant No.2 opened the Letter of Credit No. 1075180400455 dated 02.07.2018 for the amount of USD 57,813/in favour of the Plaintiff for supply of fabrics.

b) That subsequently, the plaintiff, beneficiary of the above L/C transported the consignment under the L/C and sent the documents along with the Bill No. BHDPL/18/0122 dated 04.07.2018 (the 'Bill') drawn on the Defendant No. 2 to the Defendant No.1.

c) That the Pro-Forma Defendant No. 04 i.e. the negotiating Southeast Bank Limited sent the documents along with the Bill COR/IDBC/0905-18 dated 07.10.2018 to the Defendant No. 1. for acceptance.

d) That as the above L/C was subject to Customs Practice for and Uniform Documentary Credit (UCP 600); being the issuing bank, the Defendant No.1 was under strict obligation to comply with the provisions of the UCP 600 and Bangladesh Bank's Guidelines. In the given situation, receiving the L/C documents for payment the Defendant No. 01 the after found following discrepancies:

i. LC Expired

ii. Late Presentation

iii. Incoterm with source not mentioned in the invoice as per credit

iv. Carrier is not identified in the Truck Receipt;

And as such the Defendant No. 01 in compliance with the Clause 16 C (iii) (b) of the UCPDC 600 communicated the discrepancies vide SWIFT message FIN 799 dated 08.10.2018 to the Pro-Forma Defendant No. 04 Negotiating Bank and thereof returned the documents and as such the Defendant No. 01 Bank is not under mandate to clear the payment.

e) That as per the terms of the L/C the Plaintiff as a beneficiary of the L/C was under an obligation to follow the terms and conditions therein. As per terms of F46A, Clause 9 of the L/C, Goods must be received by the L/C applicant/opener in presence of the Bank's representatives, delivery challan/note must be signed by the applicant/opener and countersigned by the bank representative stating that they have received the goods in good condition as per proforma invoice which must accompany the shipping documents. But as per the terms of F46A, Clause 9 of the L/C, neither the goods were received by the L/C applicant/opener in presence of the Bank's representatives, nor the delivery challan/note was signed by the applicant/opener and countersigned by the bank representative.

Moreover, as per Bangladesh Bank's BRPD Circular No. 10, July 11, 2012, the Defendant No. 01 is required to inspect the goods

before accepting the documents. Without complying this requirement even if there is an understanding between the L/C applicant and beneficiary, the Defendant No. 01 Bank is not under any obligation to clear the payment.

f) From the above circumstances, it clearly transpires that the Plaintiff have done all these activities willfully, intentionally, deliberately with pre-plan and malafide intention to defraud huge amount of the Defendant No. 01, which is ultimately public money.

5. That it is submitted that after receiving the L/C documents for payment the Defendant No. 01 found the discrepancies such as: LC Expired, Late Presentation, Incoterm with source not mentioned in the invoice as per credit, Carrier is not identified in the Truck Receipt. That as per the clause F48 of the L/C, period of presentation was within 10 days after the date of shipment but within the validity of the credit. L/C expiry date was on 20.07.2018; whereas the shipment was on 04.07.2018 but the documents were presented after expiry of the L/C on 07.10.2018, which is not within 10 days. And as such the Defendant No. 01 in compliance of Clause 16 C (iii) (b) of the UCPDC 600 communicated the discrepancies vide SWIFT message FIN 799 dated 08.10.2018 to the Pro-Forma Defendant No. 04 beneficiary Bank and thereof returned the documents, as such the Defendant No. 01 Bank is not under any obligation to clear the payment and hence the Defendant No. 01 has good ground to defend the case on merit.

6. That it is submitted that, neither the goods were received by the L/C applicant/opener in presence of the Bank's representatives, nor the delivery challan/note was signed by the applicant/opener and countersigned by the bank representative which is a non-compliance of the terms of F46A, Clause 9 of the L/C. Moreover, as per Bangladesh Bank's BRPD Circular No. 10, July 11, 2012, the Defendant No. 01 is required to inspect the goods before accepting the documents or release payments. Without complying this requirement even if there is an understanding between the L/C applicant and beneficiary, the Defendant No. 01 Bank is not under mandate to clear the payment and hence the Defendant No. 01 has good grounds to defend the case on merit.

7. That in the facts and circumstances explained above, the Defendant No. 1 submit that the suit has been filed by the Plaintiff out of spite and conjecture and with malafide intention by way of misinterpretation of facts and basing on misconception of law & L/C transaction for making illegal gain and since there is no cause of action to file the suit, whereas the Defendant No.01 has good grounds to defend on merit. Moreover, summons was not served upon the Defendant No. 01, Defendant came to know about this case from the Pro-forma Respondent No. 04 and came before your Honour with this application to appear and defend the case. Therefore the Defendant No.01 prays before this Honourable Court to allow this application and grant leave to appear and defend the suit.

WHEREFORE, it is, most humbly prayed that Your Honour would graciously be pleased to allow this application and grant leave to appear and defend the suit and/or pass such other or further order or orders, Your Honour may deem fit and proper.

And for this act of kindness, the Defendant No. 01-Applicant as in duty bound shall ever pray

Affidavit

I, Md. Oli Azad, S/O Md. Nurul Alam, Principal Officer of Al-Arafah Islami Bank Limited, Motijheel Corporate Branch, 125 Motijheel Commercial Area, Dhaka 1000, NID No. 3273499313, aged about 33 years, by religion Muslim, by occupation private service, by nationality Bangladeshi do hereby solemnly affirm and says as follows:

- 1. That I am the authorized person of the Defendant No. 01 and tadbirkar of this suit and I am fully conversant with the facts and circumstances of this suit and is competent to swear this affidavit.*
- 2. That the statements made in the application are true to the best of my knowledge based on the documents kept in the office of this applicant. Knowing the fact I put on my signature before the affidavit commissioner of the learned court 05.10.2021 at about 10.30 a.m. on*

SD:/-MD. OLI AZAD

Principal Officer

*Al-Arafah Islami Bank Ltd. Motijheel
Corporate Branch, Dhaka. Phone: 9563873,
9563884*

Deponent

*The deponent is known to me, he
put his signature in front of me
and identified by me.*

Sd:/-Muhammad Rafiqul Islam

*05.10.21 B.Com (Hon's) M. Com. LLB, LLM
Advocate*

*Supreme Court of Bangladesh Room # 9/1 (9th
floor)*

Eastern Mansion, 67/9. Kakrail, Dhaka-1000

Mobile : 01711-485698

Advocate

গুরুত্বপূর্ণ বিধায় জেলা জজ আদালত, ঢাকা কর্তৃক সামারী মোকদ্দমা নং-
০৫/২০২০-এ প্রদত্ত বিগত ইংরেজী ২৫.১০.২০২১ তারিখের ০৮নং আদেশটি নিম্নে
অবিকল অনুলিখন হলোঃ-

“জেলা- ঢাকা

মোকদ্দমাঃ জেলা জজ আদালত, ঢাকা

উপস্থিতঃ এ, এইচ, এম হাবিবুর রহমান ভূঁইয়া
জেলা জজ, ঢাকা।

সামারী মোকদ্দমা নং- ০৫/২০২০

Bengal Hurricane Dyeing Printing (Pvt.) Ltd.

..... Plaintiff.

-Versus-

Al-Arafah Islamic Bank and others

..... Defendants.

ক্রমিক তারিখ আদেশ স্বাক্ষর

০৮
২৫.১০.২০২১

অদ্য দরখাস্ত শুনানীর জন্য দিন ধার্য আছে। ১নং বিবাদী পক্ষ হাজিরা

দিয়েছে। বাদী পক্ষ হাজিরা দাখিল করে নাই।

নথি শুনানীর জন্য নেয়া হলো। ১নং প্রতিপক্ষের বিজ্ঞ কৌশলীর বক্তব্য শ্রবন করা হলো। শুনানীকালে বলেন যে, তার প্রতি সমন জারী হয়নি এবং তিনি অপর বিবাদীদের নিকট হতে জানতে পেরে অত্র মোকদ্দমায় হাজির হয়ে প্রতিদ্বন্দ্বিতা করার জন্য নিবেদন করেন। এমতাবস্থায় ন্যায় বিচারের স্বার্থে ১নং প্রতিপক্ষের দাখিলী দরখাস্তটি মঞ্জুরক্রমে মামলায় প্রতিদ্বন্দ্বিতা করার অনুমতি দেয়া গেল। আগামী ইং ২৭.০২.২০২২ তারিখ আপত্তি দাখিলের জন্য দিন ধার্য করা হলো।

আমার জবানীতে মুদ্রিত ও সংশোধিত

স্ব/- এ, এইচ, এম হাবিবুর রহমান ভূঁইয়া স্ব/- এ, এইচ, এম হাবিবুর রহমান ভূঁইয়া
জেলা জজ, ঢাকা। জেলা জজ, ঢাকা।”

বাদী-দরখাস্তকারী তার আরজীর ৫নং প্যারায় বলেছেন যে, “That, the plaintiff continued with the work after receiving LC and finished the work. The finished goods were transported to the factory of the defendant no. 2 on 04.10.2018 where the defendant no. 2 duly received the goods without any complain, signed the delivery challan and also endorsed and gave acceptance to the commercial documents by signing in the back of the "Bill of Exchange"”, ৬নং প্যারায় বলেছেন যে, “That, thereafter, the plaintiff handed over the commercial documents to its bank the proforma defendant no. 4 for negotiation. The proforma defendant no. 4 forwarded the commercial documents to the defendant no. 1 on 07.10.2018.” এবং ৭নং প্যারায় বলেছেন যে, “That, with sheer disappointment and utter dismay, it was observed that on the next day, the defendant no. 1 bank has returned a swift message and gave discrepancies upon the LC under Clause 16 C. (iii) (b) of the Uniform Customary Practice for Documentary Credits 600 (UCP 600) whereas, the applicant itself clearly waived all discrepancies and gave acceptance on 04.10.2018.”

বাদী-দরখাস্তকারীর আরজীর উপরিলিখিত প্যারা ৫, ৬ এবং ৭ পর্যালোচনায় এটি কাঁচের মত স্পষ্ট যে, অত্র Letter of Credit (LC) সঠিক তথা এটির সম্পাদন প্রশ্নাতীত। সুতরাং বাদী-দরখাস্তকারী অত্র Letter of Credit (LC) কোন জ্বাল কিংবা প্রতারণামূলকভাবে সৃজিত কোন দলিল নয় মর্মে স্বীকার করেন।

বাদী-দরখাস্তকারীর আরজীর বক্তব্য মোতাবেক ১নং বিবাদী বাদী-দরখাস্তকারী সকল কাগজপত্র গ্রহণ করে ‘acceptance’ প্রদান করতঃ কিছু অপ্রয়োজনীয় discrepancies এর অজুহাতে বাদীর কাগজপত্র বেআইনীভাবে দখলে রেখেছেন।

স্বীকৃতমতেই, বাদী-দরখাস্তকারীর Letter of Credit (LC) টি ইস্যু হয়েছিল **United Customary Practice for documentary credit (UCPDC) 600** এর আওতায়।

United Customary Practice for documentary credit (UCPDC) 600 এর Article 1 নিম্নে অবিকল অনুলিখন হলঃ

“UCP 600 Article 1

Application of UCP

The Uniform Customs and Practice for Documentary Credits, 2007 Revision, ICC Publication no. 600 (UCP0 are rules that apply to any documentary credit (“credit”) (including, to the extent to which they may be applicable, any standby letter of credit) when the text of the credit expressly indicates that it is subject to these rules. They are binding on all parties thereto unless expressly modified or excluded by the credit.”

উপরিলিখিত অনুচ্ছেদ ১ পর্যালোচনায় এটি স্পষ্ট প্রতিয়মান যে, **United Customary Practice for documentary credit (UCPDC) 600 এর Article 1** মোতাবেক ইস্যুকৃত সকল Letter of Credit (LC) এর ক্ষেত্রে UCP 600 মেনে LC এর চলতে সকল পক্ষ বাধ্য।

গুরুত্বপূর্ণ বিধায় **UCP 600- Article 4** নিম্নে অবিকল অনুলিখন হলোঃ

UCP 600- Article 4

Credits V. Contracts

a. A credit by its nature is a separate transaction from the sale or other contract on which a may be based. Banks are in no

way concerned with or bound by such contract, even if any reference whatsoever to it is included in the credit. Consequently, the undertaking of a bank to honour, to negotiate or to fulfill any other obligation under the credit is not subject to claims or defences by the applicant resulting from its relationships with the issuing bank or the beneficiary.

A beneficiary can in no case avail itself of the contractual relationships existing between banks or between the applicant and the issuing bank.

b. An issuing bank should discourage any attempt by the applicant to include, as an integral part of the credit, copies of the underlying contract, proforma invoice and the like.

UCP 600- Article 4 পর্যালোচনায় এটি কাঁচের মত স্পষ্ট যে, ‘beneficiary’ তথা অত্র বাদী দরখাস্তকারীর সাথে ব্যাংকের সাথে অত্র বিবাদী-প্রতিবাদীগণের কোনরূপ আইনগত, চুক্তিগত বা অন্যকোনরূপ সম্পর্ক সৃষ্টি হয় নাই যা দ্বারা অত্র বাদী-দরখাস্তকারীর কোন প্রকার আইনগত অধিকার বিবাদী-প্রতিবাদীগণের উপর সৃষ্টি হয়। **UCP 600- Article 4** মোতাবেক অত্র বাদী-দরখাস্তকারীর **Letter of Credit (L/C)** এর **beneficiary** হিসেবে অত্র বিবাদী-প্রতিবাদী ব্যাংকের বিরুদ্ধে কোনরূপ আইনগত কার্যক্রম রুজু করার হকদার নহে।

স্বীকৃত মতেই ব্যাংক অত্র বাদী-দরখাস্তকারী বরাবরে পত্র প্রেরণের মাধ্যমে **UCP 600- Article 14(b), 16(b) এবং 16(c)** অনুযায়ী **discrepancies** আছে মর্মে বাদী-দরখাস্তকারীদেরকে জানান। কিন্তু বাদী-দরখাস্তকারী উক্ত **discrepancy** বিষয়ে কোনরূপ পদক্ষেপ গ্রহণ না করে নিশ্চুপ বসে থাকে। উপরন্তু অত্র বেআইনী এবং আইনগত কর্তৃত্ব বর্হিভূত মিথ্যা মামলা আদালতে দায়ের করে।

গুরুত্বপূর্ণ বিধায় **UCP 600- Article 14(b)** নিম্নে অবিকল অনুলিখন হলোঃ

UCP 600- Article 14

Standard for Examination of Documents

a. -----

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

c. -----

গুরুত্বপূর্ণ বিধায় UCP 600- Article 16(b), (c) নিম্নে অবিকল
অনুলিখন হলোঃ

UCP 600- Article 16

Discrepant Documents, Waiver and Notice

a. -----

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

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

The notice must state:

i. *that the bank is refusing to honour or negotiate; and*
ii. *each discrepancy in respect of which the bank refuses to honour or negotiate; and*

iii. *(a) that the bank is holding the documents pending further instructions from the presenter; or*

(b) that the issuing bank is holding the documents until it receives a waiver from the applicant and agrees to accept it, or receives further instructions from the presenter prior to agreeing to accept a waiver; or

(c) that the bank is returning the documents; or

(d) that the bank is acting in accordance with instructions previously received from the presenter.

d. -----

**United Customary Practice for documentary credit
(UCPDC) 600 এর Article 5 নিয়ে অবিকল অনুলিখন হলঃ**

UCP 600-Article 5

Documents v. Goods, Service or Performance

Banks deal with documents and not with goods, services or performance to which the documents may relate.

উপরোক্ত Article 5 পর্যালোচনায় এটি কাঁচের মত স্পষ্ট যে, ব্যাংক শুধুমাত্র তথা কেবলমাত্র নথি নিয়ে কাজ করবে, মালপত্র তথা goods নিয়ে নয়।

সুতরাং বর্তমান মোকদ্দমায় বাদী-দরখাস্তকারী মালপত্র তথা Goods ডেলিভারি দিয়েছেন কি দেন নাই সেটি বিবেচ্য বিষয় নয়। ব্যাংকের নিকট বিবেচ্য বিষয় হল বাদী-দরখাস্তকারী **United Customary Practice for documenatry credit (UCPDC) 600** এর বিধানমতে যাবতীয় কাগজপত্র দাখিল করেছেন কিনা এবং ব্যাংক ক্রেতার নিকট থেকে Acceptance পেয়েছেন কিনা।

স্বীকৃত মতেই বাদীর দাখিলকৃত কাগজ পত্রে discrepancies আছে এবং ব্যাংক ক্রেতার নিকট থেকে Acceptance পান নাই।

উপরোক্ত অবস্থায় বাদী-দরখাস্তকারী বর্তমান মোকদ্দমাটি **United Customary Practice for documenatry credit (UCPDC) 600** এর বিধানমতে চলতে পারে না তথা পরিপন্থী।

যেখানে বাদী-দরখাস্তকারীর মূল মোকদ্দমাটি **United Customary Practice for documenatry credit (UCPDC) 600** এর পরিপন্থীভাবে দাখিলকৃত সেখানে বাদী-দরখাস্তকারী অত্র সিভিল রিভিশন দরখাস্তটি সরাসরি প্রত্যাহ্যান যোগ্য।

উপরোক্ত আলোচনা ও পর্যালোচনায় এটা সুস্পষ্ট যে, বিজ্ঞ আপিল আদালত তথ্য উপাত্ত বিচার বিশ্লেষণ এবং মূল্যায়নপূর্বক যে রায় ও আদেশ প্রদান করেছেন তা যেমনি আইনসম্মত, তেমনি ন্যায় বিচার সম্পন্ন হয়েছে বলে প্রতীয়মান। এমতাবস্থায় বিগত ইংরেজী ২৫.১০.২০২১ তারিখের রায় ও আদেশ হস্তক্ষেপযোগ্য নয়।

অতএব, আদেশ হয় যে, অত্র রিভিশনাল দরখাস্তটি প্রাথমিক শুনানীতে সরাসরি প্রত্যাহ্যান করা হল।

অত্র রায় ও আদেশের কপি সংশ্লিষ্ট সকলকে দ্রুত অবহিত করা হউক।

(বিচারপতি মোঃ আশরাফুল কামাল)