

IN THE SUPREME COURT OF BANGLADESH
HIGH COURT DIVISION
(SPECIAL ORIGINAL JURISDICTION)

Writ Petition No. 15920 of 2023

IN THE MATTER OF:

An application under Article 102 of the Constitution of the People's Republic of Bangladesh.

AND

IN THE MATTER OF:

Silver Composite Textile Mills Ltd (Unit-3, Textile), of B.K Bari, Taltoli, Monipur, Mirzapur Bazar, Gazipur Sadar, Gazipur, Bangladesh and also of Silver Tower, 16th Floor, Gulshan Avenue, Gulshan-1, Dhaka-1212, represented by its Managing Director

....Petitioner

Versus

Bangladesh Bank, the Central Bank of Bangladesh, represented by its Governor, Bangladesh Bank Bhaban, Motijheel C/A, Dhaka and others

....Respondents

Mr. Shah Monjurul Hoque, Senior Advocate with

Mr. Muhammad Harunur Rashid, Advocate

....For the Petitioner

Mrs. Quamrun Nahar Mahmud, Advocate

....For the Respondent No. 2

Mr. Sk. Md. Morshed, Senior Advocate with

Mr. Mohammad Samiul Huq, Advocate

....For the Respondent No. 4

Present:

Mr. Justice Md. Iqbal Kabir

And

Mr. Justice Md. Akhtaruzzaman

Judgment on 29.05.2024.

Md. Iqbal Kabir, J:

At the instance of the petitioner, this Rule Nisi under adjudication, was issued on 11-12-2023, as in the following terms:

“Let a Rule Nisi be issued calling upon the respondents to show cause as to why the impugned inaction of the respondent No. 1 in not issuing necessary orders in accordance with sections 45 and 49(1)(cha) of the Bank

Companies Act, 1991 upon the respondent Nos. 2 and 3 for holding payment under commercial invoice EXP/FLM/9000064826/23-24 dated 27.07.2023 for USD 81,321.41 against LC No. 175923020125 dated 20.07.2023 which has been issued by the respondent No. 3 in favour of the respondent No. 4 should not be declared illegal, without lawful authority and is of no legal effect and as to why the respondent No. 1 should not be directed to issue necessary orders in accordance with sections 45 and 49(1)(cha) of the Bank Companies Act, 1991 upon the respondent Nos. 2 and 3 for holding payment under commercial invoice EXP/FLM/9000064826/23-24 dated 27.07.2023 for USD 81,321.41 against LC No. 175923020125 dated 20.07.2023 and/or such other or further order or orders passed as to this Court may seem fit and proper.”

The short facts stated in this application are that the petitioner is a textile company carrying out its business of textile with a good reputation. The petitioner has been running its business and thereby entered into a contract with respondent No. 4 for importing blended yarn who issued a proforma invoice dated 10.06.2023 containing terms and conditions. Upon accepting the terms opened LC bearing No. 175923020125 dated 20.07.2023 in favour of respondent No. 4 for the amount of USD 1,08,000.00 (Annexure-B). Following all formalities exporter loaded the blended yarn on board and on arrival upon making payment of all fees, C&F Agent Commissions, Transportation Costs, and other incidental charges, the same Cargos were delivered at the factory of the petitioner (Annexures-D and D-1). The petitioner sent the blended yarn to third-party experts to test the quality of the yarn and also to check whether the goods were commensurate with the description made in the proforma invoice. After conducting six tests dated 03.09.2023, 07.09.2023, 17.09.2023, 14.09.2023, 21.09.2023, and 23.09.2023 it was found out that all tests yielded negative results i.e., it did not contain the same ingredients as were stipulated in the proforma invoice. Knowing the poor quality of the yarn, the petitioner by writing to respondent No. 3 requested to hold the payment of USD 81,321.41 against LC No. 175923020125 dated 20.07.2023 vide letter dated 01.11.2023. Respondent No. 3 also informed the bank of respondent No. 4 intimating that due to the bad quality yarn, the petitioner has already suffered losses both financial and reputational vide swift message dated 23.08.2023 (Annexures-F and F-1). However, the petitioner made a representation dated 06.12.2023 to respondent No. 1 for passing the necessary order directing respondent

Nos. 2 and 3 to hold payment against LC bearing No. 175923020125 dated 20.07.2023 but respondent No. 1 remained silent (Annexure-G).

It is at this stage, being aggrieved by and dissatisfied with the inaction petitioner filed this writ petition and obtained the instant Rule and interim order.

Mr. Shah Monjurul Hoque, the learned Senior Advocate for the petitioner upon placing the writ petition submits that respondent No. 1 with bad intention supplied blended yarn by respondent No. 4 which is not satisfactory quality and commensurate with the description of the goods as mentioned in the proforma invoice. According to him respondent No. 1 along with respondents Nos. 2 and 4 who accepted the imported documents committed fraud and cheating with the petitioner by not providing the contracted blended yarns and by making a false declaration in various documents including certificate of Origin, Bill of Lading, etc., and then refusing to take the delivery of yarn or making good of the losses both financial and reputational suffered by the petitioner.

He next submits that the petitioner made representation and respondent No. 1, Bangladesh Bank is the regulatory and supervising authority of all the Banks and financial institutions in the country and it has power under sections 45 and 49(1)(cha) of the Bank Companies Act, 1991 to give necessary direction upon the respondent Nos. 2 and 3 in case of respondent Nos. 2 and 3 bank do not act in the interest of the depositors/clients and accordingly, the respondent No. 1, Bangladesh Bank should have taken steps for withholding payment in the light of the representation dated 06.12.2023 made by the petitioner.

Mr. Mohammad Samiul Huq, the learned Advocate for the respondent No. 4 by filing an affidavit-in-opposition denied the material assertion made in the application and contested the Rule.

Mr. Huq submits that Pro-forma invoice that stipulates an arbitration clause, therefore the goods matched the description made in the proforma invoice or not, which is a disputed question of fact, and cannot be adjudicated in the summary proceedings. According to him, disputes arising out of the business transaction can only be resolved through the arbitration process, and for such they executed an agreement, where they agreed to resolve disputes through arbitration.

Mr. Huq submits that in this instant case, L/C having bearing No. 175923020125 dated 20.07.2023 is a separate contract entered in between respondent No. 4 and the HDFC Bank Limited, Mumbai Branch,

which is not dependent in any way on the terms and conditions of the PI. It is rather dependent on whether the concerned bank of importer finds the documents in relation to the L/C are in order and the petitioner in the writ petition raises no complaint regarding the same and in view of the above, the instant rule has no leg to stand and the same is liable to be discharged.

Mr. Huq by submission brings our notice that a letter of credit is independent and unqualified by the contract of sale or underlying transaction and when an irrevocable letter of credit is opened and confirmed by a bank, and then such bank is left with no option but to honor its obligation under the letter of credit. According to him in such a situation Bangladesh Bank cannot pass an order thereby directing the concerned banks to stop payment. The endeavor of the petition to involve Bangladesh Bank was only to mislead the Court.

Mr. Huq submits that this Court under writ jurisdiction is very reluctant to interfere as this is a commercial transaction. In the case of *Uttara Bank vs. Macneill and Kilburn Ltd. and others*, reported in 33 DLR (AD) (1981) 298, wherein the Appellate Division stated that the court will not interfere in the contractual obligations under an L/C and if the dispute is in regards to the performance of a commercial contract, which is not an L/C, it shall pursue such claims through other appropriate legal actions and that any order that interferes with the normal banking transactions and the contractual obligations of any bank is not the appropriate action and in view of the above, the contention raised in the instant Writ Petition, that the composition of the yarn delivered does not match with the PI is a dispute regarding the performance of the contract and in connivance with the decision of the Appellate Division, such dispute can be resolved by pursuing a separate claim. Given this matter, the instant writ petition is not maintainable, and as such and as such the rule is liable to be discharged.

Further, in the case of *Zyta Garments Limited vs. Union Bank Limited and others*, reported in 2003 BLD (AD) 52, wherein it was held that the initiation of a letter of credit involves the buyer's request for the issuing bank to open a letter of credit in favor of the seller. Upon opening the letter of credit, a contractual relationship is established between the issuing bank and the negotiating bank. The issuing bank commits to making payments under the L/C upon receiving the specified documents, provided there are no discrepancies. Once the letter of credit is established between the two banks, it operates as an autonomous

agreement, with neither the seller nor the buyer having any privity to this arrangement. This autonomy renders it a distinct transaction from the sales agreement between the buyer and the seller. Consequently, the commitments and obligations of a bank, including payment, acceptance, and negotiation under a letter of credit, remain unaffected by claims or defenses from either the seller or the buyer. In view of the above, LC No. 175923020125 dated 20.07.2023 established a contractual relationship between respondent No. 4 and HDFC Bank, Mumbai Branch which formed a completely separate contract from the PI and it is immaterial that there is a dispute in regards to the composition of yarn.

He submits that in the light of Articles-4 and 5 of the UCPDC 600, L/C is a completely separate contract, which is neither dependent on the terms and conditions of the original commercial contract nor on the performance of the contractual obligations of the parties of such original commercial contract, rather on the documents that are required by the bank for releasing the payments under an L/C. As such, in this instant case, for releasing the payments under L/C No. 175923020125 dated 20.07.2023, it is immaterial to consider whether the yarn is defective or not. If the yarn is allegedly defective, such dispute can be resolved by way of a separate claim, and in view of this matter; the Rule is liable to be discharged.

We have heard the learned counsel appearing for the petitioner and respondent No. 4 at length and considered their submissions carefully.

The only question for determination in the instant writ petition is whether under the facts and circumstances and the relevant laws applicable on the issue, respondent No. 1 can pass the necessary order directing the respondent Nos. 2 and 3 to hold payment against LC bearing No. 175923020125 dated 20.07.2023.

It has transpired to this Court that the petitioner filed this petition challenging the inaction of the respondent, Bangladesh Bank in not issuing the necessary order in light of sections 45 and 49(1) (cha) of the Bank Companies Act, 1991.

It is at this juncture, that the petitioner contended that Bangladesh Bank is a strong regulatory body and can interfere with the alleged function in a given situation.

For this purpose, the provisions of sections 45 and 49(1)(cha) of the Bank Companies Act, 1991 are required to be examined:

“৪৫। বাংলাদেশ ব্যাংকের নির্দেশ দানের ক্ষমতা।-(১) বাংলাদেশ ব্যাংক যদি এই মর্মে সন্তুষ্ট হয় যে,-

(ক) জনস্বার্থে, বা

(খ) মুদ্রানীতি এবং ব্যাংক-নীতির উন্নতি বিধানের জন্য, বা

(গ) কোন ব্যাংক-কোম্পানীর আমানতকারীদের স্বার্থের পরিপন্থী বা ব্যাংক-কোম্পানীর স্বার্থের পক্ষে ক্ষতিকর কার্যকলাপ প্রতিরোধ করার জন্য; বা

(ঘ) কোন ব্যাংক-কোম্পানী যথাযথ ব্যবস্থাপনা নিশ্চিত করার জন্য, সাধারণভাবে সকল কোন ব্যাংক-কোম্পানীকে, অথবা বিশেষ কোন ব্যাংক-কোম্পানীকে নির্দেশ প্রদান করা প্রয়োজন, তাহা হইলে বাংলাদেশ ব্যাংক যথাযথ নির্দেশ জারী করিতে পারিবে; এবং সংশ্লিষ্ট ব্যাংক-কোম্পানী উক্ত নির্দেশ পালন করিতে বাধ্য থাকিবে।

(২) বাংলাদেশ ব্যাংক স্বেচ্ছায় অথবা উহার নিকট পেশকৃত কোন আবেদনের পরিপ্রেক্ষিতে উপ-ধারা (১) এর অধীন প্রদত্ত নির্দেশ বাতিল বা পরিবর্তন করিতে পারিবে; এবং এইরূপ বাতিলকরণ বা পরিবর্তন শর্তসাপেক্ষে হইতে পারিবে।

[(৩) উপ-ধারা (১) ও (২) এর বিধানাবলী সরকারি মালিকানাধীন বাণিজ্যিক ব্যাংক ও বিশেষায়িত ব্যাংকসহ সকল ব্যাংক-কোম্পানীর ক্ষেত্রে সমভাবে প্রযোজ্য হইবে।^{১৮২}

৪৯(১)(চ): ঋণ শৃঙ্খলার স্বার্থে বাংলাদেশ ব্যাংক সাধারণভাবে সকল ব্যাংক-কোম্পানী বা কোন বিশেষ ব্যাংক-কোম্পানী বা বিশেষ শ্রেণীর ব্যাংক-কোম্পানীর জন্য ঋণ শ্রেণীকরণ ও সঞ্চিত সংরক্ষণ, ঋণ মওকুফ, পুনঃতফসিলীকরণ কিংবা পুনর্গঠন সংক্রান্ত বিষয়সমূহে বাধ্যতামূলকভাবে অনুসরণীয় নির্দেশ প্রদান করিতে পারিবে।^{১৯৩}”

Upon plain reading, it appears to us that to bring discipline amongst the Bank companies in providing loans Bangladesh Bank can give general direction/directives having a binding effect upon all the Bank companies or any special bank company or special categories of Bank Company with regard to classification of loan, waiver of interest, re-schedule meant etc. But said the power of the Bangladesh Bank cannot be sought by the petitioner as a right for giving direction upon the respondent to withhold the payment in light of the representation made by the petitioner.

Section 45 read with section 49(1)(Cha) of the Bank Companies Act, 1991 gives a clear indication, as to which situation the Bangladesh Bank shall act. However, the petitioner failed to show or suggest under which of these provisions Bangladesh Bank would interfere, in fact, none of the provisions mentioned in the Ain and section 45 would allow Bangladesh Bank to intervene in respect of payment under the letter of credit for discrepancy in goods as reflected in Annexure-G to the writ petition. According to the respondent, this issue has already been settled in the case of Alvi Spinning Mills Ltd. and others vs. Government of Bangladesh, reported in 66 DLR(2014) 558.

Further, in the case of National Engineers vs. Ministry of Defence, as reported in 44 DLR (AD) (1992) 179, our Apex Court emphasized:

“In order to enforce or to compel public bodies to fulfill any public duty through mandamus, the applicant must have a specific legal entitlement to demand such fulfillment.”

In view of the alleged principle, a writ of mandamus can only be granted when public bodies are under a statutory obligation, and there is a failure on their part to fulfill those obligations. Therefore, mandamus to be issued compelling public bodies to act, it must be demonstrated that there exists a statute imposing a legal duty, and the aggrieved party has a legal right under that statute to enforce its execution.

However, at this juncture, it can be brought to light that upon arrival of the goods, the petitioner accepted such goods and retained in his custody. Thereafter, the goods were sent for testing to the six persons. After receiving the goods the petitioner has no scope to ask such questions that the goods are not matched with the description made in the proforma invoice and or poor quality goods. As the goods have been received by the petitioner, therefore, scope has gone out of his jurisdiction to claim the goods do not match with the description.

Further, from the record, it appears, it is an individual issue of the petitioner. Therefore, this Court cannot allow to give any direction to the Bangladesh Bank to take appropriate initiative in light of sections 45 and 49(1)(cha) of the Bank Companies Act, 1991.

Under the prevailing law payment for the commercial contract cannot be stopped. Moreover, the allegation of the petitioner is directed towards their negotiating banks, which are private entities rather than public bodies.

In light of the above, we find no merit in the submissions made by the petitioner, rather find substance in the submissions made by the respondent and force of it.

Accordingly, the Rule is discharged.

The interim order granted at the time of issuance of the Rule is hereby recalled and vacated.

There will be no order as to cost.

Communicate the order.

Md. Akhtaruzzaman, J:
I agree.