নকলের জন্য আবেদনের তারিখ	এস্টিমেট দেওয়ার তারিখ	ষ্ট্যাম্প ফোলিও দাখিলের তারিখ	অনুলিপি প্রস্তুতের তারিখ	
02/2/22	০১/৩/২২	০১/৩/২২	০৭/৩/২২	৮

০৭/৩/২২

কোর্ট ফি ....২৮........
সঠিক আছে।

মোঃ আব্দুর রশিদ
প্রধান তুলনাকারী
০৭/৩/২২

High Court Form No. 5(2)

Heading of judgment in Original Suit

District-Dhaka

In the court of Artha Rin Adalat No. 3, Dhaka.

Present-Mehar Nigar Suchona
Judge
Artha Rin Adalat No. 3, Dhaka.

Date: 10, October, 2021

Artha Rin Suit No. 285/2013

National Bank Limited- ---------Plaintiff.

-Versus-

Mr. Md. Nazrul Istam & others---Defendant.

This Suit has come on for final hearing on 31.03.2015 in presence of

1. Mr. Md. Arifur Rahman-
-------Barrister-at-Law for Plaintiff.

2. Mr. Md.Mozaharul Islam-
-------Advocate for Defendant No. 1.

3. Mr. Shaharin Sultana Mala-
-------Advocate for Defendant No. 2.

And having considered the evidence on record and argument the court delivered the following judgment:

The plaintiff's case in brief is that, the plaintiff is a Banking Company licensed under the Banking Company Act, 1991, and incorporated under the relevant Companies Act and carrying on banking business through its various branches in Bangladesh. The defendant No.1 is Proprietor of "M/S. Gomti Textiles" and has been carrying on business of production of fabrics and availed Credit Facilities from the plaintiff bank. The defendant No.2 is a Branch of Sonali Bank Limited which is Banking Company licensed under the Banking Company Act 1991. In the course of business, the defendant No. 1 opened a Current Account being No.33029481 with the plaintiff Bank on 03.11.2009 under the name & style of his proprietorship concern M/s Gomti Textiles. The defendant No.2 at the instance of M/S. Green Printers having its address at 385/1, East Rampura (2nd Floor), Dhaka (L/C Application) time to time opened several Letters of Credit (L/Cs) including the followings in favour of the defendant No. 1 (L/C Beneficiaiy) for local import of Fabrics:

SI.	LC No.	Date	LC value in BDT
I	444041199104	13.10.2011	21,28,835.00
2.	44404119910[illegible]	16.10.2011	21,28,835.00
i	44404119910[illegible]	18.10.2011	21,28,835.00
4.	44404119911[illegible]	20.10.2011	21,28,835.00
5.	444041199114	23.10.2011	21,28,835.00
6.	444041199116	25.10.2011	21,28,835.00
7.	444041199126	24.11.2011	21,29,750.00
8.	444041199128	27.11.2011	21,29,750.00

Subsequently, from time to time, the defendant No.1 beneficiary of the above L/Cs transported the consignment under the respective L/Cs and sent the documents along with the bills drawn on the defendant No.2 through the plaintiff Bank to the defendant No.2

for acceptance. The above L/Cs were subject to Uniform Customs and Practice for Documentary Credit (UCPDC 600). Being the issuing Bank, the defendant No. 2 was under strict obligation to effect payment under the L/Cs if the documents are found as per the mandate. In the given situation, since the L/Cs were established on deferred payment basis, the defendant No.2 time to time having found the documents in order effected its acceptance to the respective Bills and communicated the same to the plaintiff bank vide separate letters. The defendant No. 1 upon receipt of the above L/Cs, from time to time vide letters dated 20.10.2011, 13.11.2011, 14.11.2011, 17.11.2021, 20.11.2011, 27.11.2011 1 29.11.2011 requested the plaintiff bank for extending LDBP facilities against the Bills drawn under the L/Cs undertaking inter alia that the plaintiff bank will have a right of recourse to the defendant No. 1 in respect of the Bills purchased by the plaintiff bank which remains unpaid by the defendant No.2 for any reason whatsoever, in the following terms:

"We will repay the entire loan amount availed against the above Bill with upto date interest and penal interest (if any) immediately on receipt of the intimation from the plaintiff bank.".

Having approached by the defendant No.1 as aforesaid and upon receipt of the acceptance of the defendant No.2 confirming the dues of payment of Bills, the plaintiff Bank agreed to negotiate/ purchase 8(eight) Bills (the Bills) and consequently sanctioned (eight) LDBP facilities in favour of the defendant No1 vide separate Office Memos and thereby released payment under the Bills with a view to facilitate running of the business of the defendant No. 1. The defendant availed the LDBP facilities in full and in acknowledgement of the said, executed usual charge documents viz. Demand Promissory Note, Letter of Continuity, Letter of Indemnity, Letter of disbursement, Letter of Agreement etc. dated 04.12.2011 securing the repayment of the facilities. Despite all out supports of the plaintiff bank, the defendant No.2 on the respective maturity dates of the Bills, in blatant violation of its obligation did not effect payment in favour if the plaintiff bank. Even thereafter all the maturity date expired one by one leaving the said liabilities unadjusted by the defendant No.1

and which consequently, rendered the defendant No.2 liable to pay off entire Bills value to the plaintiff bank. Subsequently, a considerable amount of correspondences and reminders have been exchanged between the plaintiff bank and the defendant No.2, including the plaintiff bank's letters dated 20.03.2012, 28.03.2012(4), 30.03.2012(3), 04.06.2012, 13.06.2012, 23.09.2012 I final notice dated 30.12.2012, the defendant No.2 purposefully and unscrupulously neither made any headway towards adjustment of its aforesaid liabilities against the accepted Bills nor provided a workable solution towards adjustment of its liabilities. Since the L/Cs were subject to UCPDC 600, as per Article 7(a)(i) of the same, being the issuing bank, the defendant No.2 is under a legal mandate to honour its acceptance. Besides, chapter-7 section-II paragraph 34 of the Foreign Exchange Guidelines of Bangladesh Bank made it mandatory upon the defendant No.2 that it shall make payment of import liabilities as per L/Cs contract (both foreign & local) on maturity. In the instant situation, way of accepting the Bills, the defendant No.2 irrevocably, unconditionally & unequivocally assured the payments there under in favour of the plaintiff Bank and basis on such acceptance, the plaintiff bank eventually extended the LDBP facilities in favour of the defendant No.1. Thereafter, such acceptance would be deemed a sort of guarantee. On the other hand, as per terms of LDBP facilities as sanctioned in favour of the defendant No.1 by the plaintiff bank, since the defendant No.2 are not effecting the payment following the marutity dates, the defendant No. 1 is liable to repay the same along with interest & charges to the plaintiff Bank. Finally the plaintiff Bank has filed the present suit for recovery of Tk.2,21,50,628/-(Two Crore Twenty One Lac fifty Thousand Six Hundred Twenty Eight) only as on 16.06.2013 from the defendants.

The defendant No.1 and 2 has contested the suit by filing separate written statements.

The defendant No.1 case, in brief, is that the suit is not maintainable in present form and that it is barred by the principles of waiver, acquiescence and estoppels and the suit is barred against this defendant as per provision of Law. The defendant No.1 is the proprietor of Gomti Textile and for supplying full Feeder

Lycra Cotton submitted pro-forma invoices before Green Printers, which is also a proprietorship concern. On the basis of the proforma invoices the proprietor of M/s. Green Printers opened Letter of Credits through the defendant No.2 where the beneficiary was the instant defendant. As per pro-forma invoice the defendant supplied the goods and Submitted its documents before the plaintiff Bank for negotiation as as per part of the business of the plaintiff negotiated the document and having got confirmation from the L/C issuing Bank the plaintiff Bank purchased the document on commission basis and by way purchased the documents the plaintiff bank was also benefited hence the suit is not maintainable in its present form and nature. The defendant on 18.06.2012 vide its Letter No. GOMTI/NBL/FEX/350/2012 requested the Bangladesh Bank to arrange necessary arrangement for making payment against the accepted bill, Bangladesh Bank through its letter No.BRPD (P-02) 748/2012-4050 dated 03.10.2012 directed the Managing Director of the defendant No.2 to pay the accepted bills. The instant defendant submitted as many as 60 Nos. pro-forma invoices before

M/s Greed Printers and M/s. Green Printers opened 60 Nos .L/Cs and the instant defendant submitted all the documents before the plaintiff for negotiation and Bank received the payment in question; but in the present case the plaintiff Bank by concealing the facts submitted the plaint before the learned Court.

The defendant No.2 has contested the suit by filing a written statement. The positive case of the defendant no.2 is that, the defendant no.2 infact has not issued the disputed L/cs, has not given the acceptance. As such the defendant no.2 is not responsible to pay the bill. The plaintiff has not produced any confirmation letter of the defendant no.2. There is no L/c related document in the registers of the defendant no.2 bank nor any computer, leisure, liability statement, marginal deposit statement, commission statement etc. The plaintiff bank has purchased L/c bill from M/s Gomti Textiles without scrutinizing nor examining. The plaintiff bank should have taken the written confirmation which is a clear violation of section-11 21(f) of Guidelines for foreign Exchange Transactions, Vol-1 (2009 in which it is mentioned that L/c covering value more than

USD 5000 or equivalent should be sent through SWIFT or other similar arrangement to the advising bank. The plaintiff bank has never sent any SWIFT or similar arrangements nor the defendant no.2 sent any letter to the plaintiff bank relating the issuance of L/c.

On perusal the evidence adduced by the plaintiff Bank and D.W-1 and cross-examination of P.W.1, D.W-1 the issues are taken for discussion as follows:

<u>Issues</u>

1. Whether the suit is maintainable in its present form ?

2. Whether the defendant no.1 is bound to repay the loan towards the plaintiff bank.

3. Whether the L/c papers were duly issued by the defendant bank?

4. Whether the plaintiff is entitled to get a decree as prayed for?

Discussions and Decision

In order to prove lie plaintiff s case Mr. Md. Mostofa Kamal Ahmed, Officer of the plaintiff Bank has deposed before the court as P.W.1 and has submitted the relevant documents which have been exhibited as exhibit no 1-10. On the other hand to prove the defense case of the defendant No. 1 Mr. Nurul Islam deposed before the Court as D.W.1, and he has submitted a bank statement.

Issue No.1

The defendants in their written statement said that the suit is not maintainable in its present form. But, they would not show any reasonable ground for non maintainability. The present suit is filed for recovery of loan money in the proper Court. This is why there in no bar to run the suit in the present form. So, the defendants claim that the suit is not maintainable in its present form is found to be not correct. Thus the issue has been decided in favour of the plaintiff.

Issue No.2

P.W.1 has deposed in support of the plaint and has submitted the Letter of Authority, Charge documents, L/c documents, Swip message, acceptance, application, disbursement, Final notice, acknowledgement bank statement. These submitted documents have been exhibited as Exhibit no. 1-10. On the other hand to prove the defense case the defendant no.1 deposed before the Court as D.W.1, but he on the defendant no.2 through the plaintiff bank to the defendant no.2 for acceptance. The defendant no. 1 upon receipt of the above L/cs, from time to time vide letters dated 20.10.2011, 13.11.2011, 14.11.2011, 17.11.2011, 20.11.2011, 27.11.2011, 29.11.2011. The plaintiff bank has submitted the L/c no.444041199106, 444041199108, 444041199111, 444041199114, 444041199116, 444041199126, 444041199126, 444041199128 including the bills (Ex:4, 6 series), Acceptance letters (Ex:6 series). Upon perusal of the exhibit 3-6 series, the assertion of the plaintiff, deposition of P.W.1 the above did not produce any documentary evidence. P.W.1 has been cross examined by the lawyer of both the defendant no.1 and 2, The plaintiff bank claims that the defendant no. 2 opened a current account being no. 33029481 with the plaintiff bank on 03.11.2009. The plaintiff also contends that the defendant no.2 opened 8 letters of credits (L/cs) in favour of the defendant no.1 for local import of fabrics. Subsequently, from time to time, the defendant no.1 beneficiary of the above L/cs transported the consignment under the respective L/cs and sent the documents along with the bills drawn mentioned contention of sanctioning BDT 2128835+2128835 + 2128835 + 2128835 + 2128835, 2128835 + 2129750 + 2129750 towards the defendant no.1 have been proved. According to the contents of exhibit: 4 & 6 series. The plaintiff bank sanctioned 8 LDBP facilities in favour of the defendant no. 1 and hereby released payment under the bills with a view to facilitate smooth running of the business of the defendant no.1. Exhibit 8 series further reveal that the defendant no.1 availed the above LDBP facilities in full and in acknowledgment the said, as security, executed usual charge documents namely letter of undertaking, DP note, letter of disbursement etc. (exhibit:2 series). Thus is becomes evident that the plaintiff has issued sanction of the loan facility on the basis of L/cs and the defendant no.1 has availed the facility in full. As such the defendant no.1 bound to repay the loan amount. So, issue no.2 is disposed of in favour of the plaintiff.

Issue No.3

The defendant no.2 claims that it has no idea concerning the alleged 2 L/cs, Sonali Bank has n ot issued the L/cs and has not given the confirmation. He wants to say that the L/c documents submitted by the plaintiff are false and fabricated.

As per the contention of the written statement and the deposition of D.W.1, the authority of the bank has no knowledge about the said letter of credits and the record of such L/cs are not available either in register or in computer system. On perusal of the exhibit:4 series, it appears that it contains all kinds of information relating to the matter of issuing L/cs. At the top of L/c, the irrevocable documentary credit njamber is shown as 444041299014. This number revals the code of

AD or non AD branch, the type of L/c (local or foreign), the year of issuing L/c and lastly the number of L/c issued by them. It also contains every details required for issuing L/c. Here, Sonali Bank, Agargaon Branch is the issuing bank. National Bank is the advising bank. Other details relating to applicant, beneficiary, shipment and covering shipment of goods are laid down in the L/c. Most importantly, in place of authorized signature, the sign and seal containing the name and number of authorized person are available. It appears that exhibit: 4

series are separate L/cs bearing separate number with same kind of contents. It appears to the Court that the authorized and responsible officer of the defendant no.2 bank issued the alleged L/cs in favour of the National Bank. However, admittedly, Sonali Bank Agargaon branch is anon AD branch and in that case, it requires permission through SWIFT Code or in that appropriate case through mail from the head office according to the section-11 21(f) Vol.1 (2009) Guidelines for Foreign Exchange Transaction (Bangladesh Bank). This is the formality which have to be complied with by the branch office. The branch office of Sonali Bank has not complied with the formality of securing permission from the head office and therefore the swift code is not available in the L/cs. As such it can be said that the L/cs have not been duly issued complying all the formalities.

Now the dispute is whether the defendant bank is bound to pay the scheduled amount to the plaintiff bank. According to Article 7 of UCPDC 600, the advising bank shall take reasonable care to check the apparent authenticity of the credit which it advices. P.W.1

L/cs and letter of acceptances. As such, the defendant no.2 is not responsible to the claiming bank to reimburse. In this way issue no.3 is disposed of against the plaintiff.

Issue No.4

As in issue no.1 and 3 it has been decided in favor of the Bank and issue no.3 has been decided against the plaintiff* The plaintiff is entitled to get relief from the defendant no.1 and not from the defendant no.2.

From the above discussions it appears that the plaintiff Bank has been able to prove that it in his cross examination agreed that there is no signature of the branch manager of Sonali bank. There is receiving seal of the concerned branch office. So, it is clear that the plaintiff bank did not take reasonable care to confirm the authenticity of the L/cs. Besides, documents show that the loan is sanctioned towards the defendant no.1.

In view of the above mention facts and circumstances, it can be concluded that fraud and irregularities have been committed in connection of the issuance of L/cs and therefore the defendant bank is not bound by the alleged is entitled to get back Tk.2,21,50,628/-(Two Crore Twenty One Lac fifty Thousand Six Hundred Twenty Eight) only as on 16.06.2013 from the defendant. The statement of account is found to be correct. The defendant no.1 being the borrower cannot get rid of his liabilities. Thus, it has been decided that the defendant no. 1 is liable for the loan to the Bank.

The Court fee paid is correct.

Hence, It is

Ordered

That the suit be decreed on contest against the defendant no. 1 Mr. Md. Md. Nurul Islam for an amount of Tk.2,21,50,628/- (Two Crore Twenty One Lac fifty Thousand Six Hundred Twenty Eight) only as on 16.06.2013. The suit be dismissed on contest against the defendant no.2. The Manager, Sonali Bank Ltd. Agargaon Branch, Dhaka.

The defendant no.1 is directed to pay the decretal amount within 60 (sixty) days from date under section 50(2) of The Artho Rin Adalat Ain, 2003 failing which the plaintiff may recover it by filing execution case. The Plaintiff is also directed to deduct the payment (if there is any) made by the defendant during pendency of the suit (after 20.06.2013) before proceeding the execution case.

Dictated & Corrected by me.

Sd/-Meher Nigar Suchona Judge Artha Rin Adalat No.3, Dhaka.	Sd/-Meher Nigar Suchona 10/10/21 Judge Artha Rin Adalat No.3, Dhaka.

07/3/22