

IN THE HIGH COURT OF KARNATAKA AT BENGALURU

DATED THIS THE 22<sup>ND</sup> DAY OF JULY, 2020

BEFORE

THE HON'BLE MR. JUSTICE P.S. DINESH KUMAR

WRIT PETITION No.6957 OF 2020 (GM-RES)

**BETWEEN :**

M/S RAJESH EXPORT LIMITED  
A COMPANY REGISTERED UNDER  
COMPANIES ACT, 1956  
HAVING REGISTERED OFFICE AT  
NO.4, BATAVIA CHAMBERS  
KUMARA KRUPA ROAD  
KUMAR PARK EAST  
BANGALORE-560 001  
REPRESENTED BY ITS CHAIRMAN  
MR. RAJESH MEHTA

... PETITIONER

(BY SHRI. G.S. KANNUR, SENIOR ADVOCATE FOR  
SHRI. MOHAMMED MIJASSIM, ADVOCATE)

**AND :**

1. RESERVE BANK OF INDIA  
10/3/8, NRUPATHUNGA ROAD  
OPP ST.MARTHA'S HEART CENTRE  
BENGALURU-560 001
2. CANARA BANK  
PRIME CORPORATE BRANCH  
RAMANASHREE ARCADE  
3<sup>RD</sup> FLOOR, M.G.ROAD  
BANGALORE-560 001

... RESPONDENTS

(BY SHRI. K. ARUN KUMAR, SENIOR ADVOCATE FOR  
SHRI. B.C. GURU, ADVOCATE FOR R2;

SHRI. R.V.S. NAIK, SENIOR ADVOCATE FOR  
SHRI. T. SURYANARAYANA, ADVOCATE FOR R1)

THIS WRIT PETITION IS FILED UNDER ARTICLES 226 OF THE CONSTITUTION OF INDIA PRAYING TO DIRECT TO THE R-2 TO DEFER THE PAYMENT OF LC'S AS PER AGREEMENT BETWEEN THE PETITIONER AND THE BENEFICIARY IN THE LIGHT OF THE FORCE MAJEURE PANDEMIC SITUATION PREVAILING DUE TO THE COVID-19 ACROSS THE WORLD.

THIS WRIT PETITION, HAVING BEEN HEARD AND RESERVED FOR ORDERS ON 13.07.2020, COMING ON FOR PRONOUNCEMENT OF ORDERS, THIS DAY, THE COURT PRONOUNCED THE FOLLOWING:-

### **ORDER**

Petitioner, a public limited company has filed this writ petition seeking *inter alia* a Writ of Mandamus against Prime Corporate Branch of Canara Bank to defer payments in respect of Letters of Credit issued by the Bank at petitioner's request in the light of Pandemic situation prevailing due to the Covid-19.

2. Heard Shri. G.S.Kannur, learned Senior Advocate for petitioner, Shri. R.V.S.Naik, learned Senior Advocate for Reserve Bank of India (1<sup>st</sup> respondent) and Shri. K. Arun Kumar, learned Senior Advocate for Prime Corporate Branch, Canara Bank (2<sup>nd</sup> respondent).

3. Though this petition is listed for consideration of application to vacate the interim order dated 20<sup>th</sup> May 2020, with consent of learned Senior Advocates for the parties, petition was taken up for final disposal.

4. Shri. G.S. Kannur, made following submissions:

- Petitioner is in the business of import and export of gold and ornaments. It has been regularly obtaining Letters of Credit from Canara Bank for the last 20 years;
- Due to 'lockdown' announced by the Government of India on 23<sup>rd</sup> March 2020, petitioner's business has come to stand-still. Petitioner approached the beneficiary of Letters of Credit (for short 'L/Cs') and requested for deferment by 90 days and the beneficiary agreed for deferment;
- Petitioner informed Canara Bank that beneficiary had agreed for deferment and requested the Bank to obtain permission from Reserve Bank of India. Canara Bank did not agree, but continued to make payments. Petitioner has also taken up the matter

through its Association with the Reserve Bank of India. Whilst the matter is under Reserve Bank's consideration, Canara Bank has continued to make payments of L/Cs;

- If exports were in progress, petitioner would have received value for goods in Swiss currency. Now, Canara Bank will buy foreign exchange in open market and it will cause huge loss to the petitioner.

5. In substance, petitioner's case is, due to COVID pandemic, petitioner is not in a position to export and earn foreign exchange. Canara Bank, in order to make payment will purchase foreign exchange at prevalent market price and this will cause loss to the petitioner. Further, the Reserve Bank of India has extended time for export of other commodities, but not gold. Petitioner has no other alternative remedy and hence, this Writ Petition.

6. Shri.Naik, submitted that as per the 'master directions' issued by Reserve Bank of India, usance

period of L/Cs to import gold in any form shall not exceed 90 days. Petitioner approached Reserve Bank of India on 1<sup>st</sup> April 2020 and sought for 15 days deferment. Petitioner again approached on 13<sup>th</sup> April 2020 and sought for extension of 30 days. In view of extant guidelines, Reserve Bank of India has conveyed that it could not accede to petitioner's request. He placed reliance on following authorities:

1. *U.P. Cooperative Federation Ltd. V. Singh Consultants and Engineers (P) Ltd.* (1988) 1 SCC 174
2. *U.P. State Sugar Corporation Vs. Sumac International Limited* (1997) 1 SCC 568
3. *Himadri Chemicals Industries Limited Vs. Coal Tar Refining Co.* (2007) 8 SCC 110
4. *Suresh Chand Gautam V. State of Uttar Pradesh and Others* (2016) 11 SCC 113

7. Shri. Arun Kumar, for Canara Bank, opposing the petition submitted that a writ petition seeking a direction to the Bank to defer payment in respect of L/Cs is not maintainable. It is a matter of contract between

the Bank and its constituent. Petitioner has got issued the L/Cs in favour of its own subsidiary Company called M/s. Valcambi SA.,('Valcambi' for short) and Valcambi has discounted the L/Cs from Canara Bank's branches in London and Honkong. Therefore, petitioner is duty bound to honour its commitment and make payment. He also submitted that Canara Bank is fully guided and controlled by the directions issued by the Reserve Bank of India. He adopted the authorities cited by Shri. Naik and prayed for dismissal of this writ petition.

8. I have carefully considered rival contentions and perused the records.

9. The prayers contained in this writ petition read as follows:

- (a) *Issue a Writ of Mandamus or any other appropriate Writ Order or direction to the Respondent No.2 to defer the payment of LC's as per agreement between the Petitioner and the beneficiary in the light of the force*

*majeure Pandemic situation prevailing due to the Covid-19 across the world.*

*(b) Grant such other order or direction as deemed fit by this Hon'ble Court in the facts and circumstances of the case."*

10. It is not in dispute that Canara Bank has issued various L/Cs in favour of Valcambi. The total value of the L/Cs is about Rs.3,879 Crores. In the sanction memorandum dated 17<sup>th</sup> June 2019 issued by Canara Bank, it is clearly stated that Valcambi is a step-down subsidiary.

11. To a specific query made by the Court, it was fairly submitted by the learned Senior Advocate for petitioner that petitioner has received entire quantity of gold which is approximately about 10 Tonnes from Valcambi and Valcambi has discounted the L/Cs.

12. Thus, the transaction is complete with the delivery of gold and discounting of L/Cs. It was argued by Shri. Kannur that Valcambi has agreed for

deferment. But, Canara Bank's specific case is, there are four parties in this transaction namely, the applicant (Petitioner), the L/C issuing Bank (Prime Corporate Branch of Canara Bank - 2<sup>nd</sup> respondent), the beneficiary (Valcambi) and the discounting Banks (Banks in London and Hongkong). According to the petitioner, beneficiary has agreed for deferment. But, beneficiary is petitioner's subsidiary entity. Hence, it's consent is not very relevant. It is important to note that the two crucial entities namely the discounting Banks who have to receive the money have not agreed for deferment. On the other hand, as per communication dated 1<sup>st</sup> June 2020 (Annexure R9), discounting Bank at Hongkong has demanded the payment. As per communication dated 29<sup>th</sup> May 2020 (Annexure R10), the discounting Bank at London has conveyed that the L/Cs have been discounted by it and has not given consent for deferment. Once L/Cs have been discounted, the L/C issuing Bank is duty bound to honour the L/C and make payment as per



schedule. More so in this case, Canara Bank, a Public Sector Bank, is governed by the guidelines and directions issued by Reserve Bank of India which permit only 90 days to make payment while importing Gold. The said directions are in force as on date. Now, direction is sought against L/C issuing Bank to defer the payment on the ground that the beneficiary has agreed for deferment. This is preposterous. If beneficiary had indeed agreed for deferment, then L/Cs ought not to have been discounted.

13. The law with regard to injunction against payment when Bank guarantees are invoked, is stated thus in ***U.P. State Sugar Corporation V. Sumac International Limited.***<sup>1</sup>

*"12. The law relating to invocation of such bank guarantees is by now well settled. When in the course of commercial dealings an unconditional bank guarantee is given or accepted, the beneficiary is entitled to realize such a bank guarantee in terms thereof irrespective of any pending disputes. The bank giving such a guarantee*

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<sup>1</sup> (1997) 1 SCC 568

*is bound to honour it as per its terms irrespective of any dispute raised by its customer. The very purpose of giving such a bank guarantee would otherwise be defeated. The courts should, therefore, be slow in granting an injunction to restrain the realization of such a bank guarantee. The courts have carved out only two exceptions. A fraud in connection with such a bank guarantee would vitiate the very foundation of such a bank guarantee. Hence if there is such a fraud of which the beneficiary seeks to take advantage, he can be restrained from doing so. The second exception relates to cases where allowing the encashment of an unconditional bank guarantee would result in irretrievable harm or injustice to one of the parties concerned. Since in most cases payment of money under such a bank guarantee would adversely affect the bank and its customer at whose instance the guarantee is given, the harm or injustice contemplated under this head must be of such an exceptional and irretrievable nature as would override the terms of the guarantee and the adverse effect of such an injunction on commercial dealings in the country. The two grounds are not necessarily connected, though both may coexist in some cases. In the case of U.P. Coop. Federation Ltd. v. Singh Consultants and Engineers (P) Ltd. [(1988) 1 SCC 174] which was the case of a works contract where the performance guarantee given under the contract was sought to be invoked, this Court, after referring extensively to English and Indian cases on the subject, said that the guarantee must be honoured in accordance with its terms. The bank which gives the*

*guarantee is not concerned in the least with the relations between the supplier and the customer; nor with the question whether the supplier has performed his contractual obligation or not, nor with the question whether the supplier is in default or not. The bank must pay according to the tenor of its guarantee on demand without proof or condition. There are only two exceptions to this rule. The first exception is a case when there is a clear fraud of which the bank has notice. The fraud must be of an egregious nature such as to vitiate the entire underlying transaction. Explaining the kind of fraud that may absolve a bank from honouring its guarantee, this Court in the above case quoted with approval the observations of Sir John Donaldson, M.R. in *Bolivinter Oil SA v. Chase Manhattan Bank* [(1984) 1 All ER 351] (All ER at p. 352): (at SCC p. 197)*

*"The wholly exceptional case where an injunction may be granted is where it is proved that the bank knows that any demand for payment already made or which may thereafter be made will clearly be fraudulent. But the evidence must be clear both as to the fact of fraud and as to the bank's knowledge. It would certainly not normally be sufficient that this rests on the uncorroborated statement of the customer, for irreparable damage can be done to a bank's credit in the relatively brief time which must elapse between the granting of such an injunction and an application by the bank to have it charged."*

**14.** *On the question of irretrievable injury which is the second exception to the rule against granting of injunctions when unconditional bank guarantees are sought to be realised the court said in the above case that the irretrievable injury must be of the kind which was the subject-matter of the decision in the Itek Corpn. case [566 Fed Supp 1210] . In that case an exporter in USA entered into an agreement with the Imperial Government of Iran and sought an order terminating its liability on stand by letters of credit issued by an American Bank in favour of an Iranian Bank as part of the contract. The relief was sought on account of the situation created after the Iranian revolution when the American Government cancelled the export licences in relation to Iran and the Iranian Government had forcibly taken 52 American citizens as hostages. The US Government had blocked all Iranian assets under the jurisdiction of United States and had cancelled the export contract. The Court upheld the contention of the exporter that any claim for damages against the purchaser if decreed by the American Courts would not be executable in Iran under these circumstances and realisation of the bank guarantee/letters of credit would cause irreparable harm to the plaintiff. This contention was upheld. To avail of this exception, therefore, exceptional circumstances which make it impossible for the guarantor to reimburse himself if he ultimately succeeds, will have to be decisively established. Clearly, a mere apprehension that the other party will not be able to pay, is not enough. In Itek case [566 Fed Supp 1210] there was a certainty*

*on this issue. Secondly, there was good reason, in that case for the Court to be prima facie satisfied that the guarantors i.e. the bank and its customer would be found entitled to receive the amount paid under the guarantee.”*

14. If the case on hand is examined, keeping the above principles in mind, the first exception namely, the 'fraud' is not available to the petitioner because it is neither pleaded nor argued. The second exception of 'irreparable loss' is also not available for the main and simple reason that petitioner has admitted that it has received the gold and L/Cs have been discounted and the discounting Banks are demanding payment. Therefore, loss if any, cannot be attributed to the lawful act which the Bank issuing L/C is required to perform. Incidentally, L/C issuing bank is owned by Government of India and fully bound by the Reserve Bank of India guidelines which permit only 90 days in respect of usance L/Cs issued for import of Gold. Hence, there is no

ground to restrain Canara Bank from honouring its commitment or even to defer the same.

15. The other argument of Shri. Kannur that Reserve Bank of India has discriminated gold exporters *vis-à-vis* the exporters of other goods with regard to extension of time for export is noted only to be rejected, because, firstly it is a policy matter which is uniformly applied to all exporters of gold and secondly, there is no challenge to the said policy.

16. Shri. Kannur, as an alternative submission, urged that, in the event, petitioner's plea to defer payment of all L/Cs does not find favour with this Court, Canara Bank may be directed to honour the L/Cs one after the other, so that, petitioner will get some breathing time. In other words, he sought for grant of a portion of the prayer. The main prayer cannot be granted in view of the settled position in law. By the

same analogy, a portion of the prayer also cannot be granted.

17. Shri. Naik, placing reliance on paragraph No. 42 in ***Suresh Chand Gautam***<sup>2</sup> rightly contended that in a case of this nature, petitioner is not entitled for a writ of mandamus. The relevant paragraph reads thus:

*"42. In this regard reference to the decision in Director of Settlements v. M.R. Apparao [Director of Settlements v. M.R. Apparao, (2002) 4 SCC 638] would be fruitful. In the said case, a three-Judge Bench of the Court, while dealing with the order of the High Court to issue mandamus, opined: (SCC p. 659, para 17)*

*"17. ... One of the conditions for exercising power under Article 226 for issuance of a mandamus is that the Court must come to the conclusion that the aggrieved person has a legal right, which entitles him to any of the rights and that such right has been infringed. In other words, existence of a legal right of a citizen and performance of any corresponding legal duty by the State or any public authority, could be enforced by issuance of a writ of mandamus. "Mandamus" means a command. It differs from the writs of prohibition or certiorari in its demand for some activity on the part of the body or person to whom it is addressed. Mandamus is a command issued to direct any*

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<sup>2</sup> (2016) 11 SCC 113

*person, corporation, inferior courts or government, requiring him or them to do some particular thing therein specified which appertains to his or their office and is in the nature of a public duty. A mandamus is available against any public authority including administrative and local bodies, and it would lie to any person who is under a duty imposed by a statute or by the common law to do a particular act. In order to obtain a writ or order in the nature of mandamus, the applicant has to satisfy that he has a legal right to the performance of a legal duty by the party against whom the mandamus is sought and such right must be subsisting on the date of the petition (Kalyan Singh v. State of U.P. [Kalyan Singh v. State of U.P., AIR 1962 SC 1183] ). The duty that may be enjoined by mandamus may be one imposed by the Constitution, a statute, common law or by rules or orders having the force of law.”*

*(Emphasis supplied)*

18. To sum up, Canara Bank has issued the L/Cs at Petitioner's request. Petitioner has received the gold and L/Cs have been discounted. Therefore, Canara Bank is duty-bound to honour the L/Cs and make payment. Further, Petitioner has not made out a case that it has a legal right over the performance of a legal duty by the Canara Bank against whom the mandamus is sought. Therefore, petitioner is not entitled for a Writ of Mandamus.



19. In the result, this writ petition must fail and it is accordingly ***dismissed***.

20. In view of disposal of the Writ Petition, all pending interlocutory applications stand disposed of. No costs.

Sd/-  
JUDGE

SPS