

Form No: HCJD/C.

**JUDGEMENT SHEET**

**IN THE ISLAMABAD HIGH COURT, ISLAMABAD**  
**JUDICIAL DEPARTMENT**

**Case No: Writ Petition No.2213 of 2021**

**Meezan Bank Limited**  
**Vs.**  
**The President Islamic Republic of Pakistan etc.**

**Petitioner by: Malik Muhammad Sadique Awan,**  
**Advocate.**

**Respondent No.3 by:Mr. Faisal Iqbal Khan, Advocate.**

***Date of Hearing: 22.09.2021.***

**AAMER FAROOQ, J.-** This judgment shall decide the instant writ petition as well as Writ Petition No.2012 of 2021 titled "*Elite Embroideries v. Federation of Pakistan and 2 others*" as they involve common questions of law and facts.

2. Elite Embroideries (the Seller) and M/s OMG Trading and Embroidery and Garments Trading LLC Bur Dubai (the Purchaser) entered into a transaction whereby the Seller was to sell certain garments and the Purchaser to purchase the same for consideration. One of the terms of the sale was that the payment was to be made through Letter of Credit. In pursuance of the referred sale transaction the purchaser established a Letter of Credit in favour of the Seller. The Bank issuing the Letter of Credit was Suisse Credit Capital Limited London (the Issuing

Bank). The referred credit was numbered as 709/583-21/522 and was in the sum of US \$ 100,480/- and its date of expiry was 29.01.2018. The Seller negotiated the credit through Meezan Bank Limited (The Bank) (the Petitioner in Writ Petition No. 2213/2021). The goods were shipped on 30.10.2017. The goods/shipment was apparently received by the Purchaser but the proceeds of the sale were not realized up until the expiry of the Credit i.e. 8.3.2018. The documents presented by the Seller to the Petitioner for onward transmission to the Issuing Bank for payment included Proforma Invoice and Bill of Lading etc. Apparently the documents were discrepant and certain flaws were noted therein by the Bank and objection sheet was accordingly prepared. Following the presentment of the documents chain of communication between the parties especially the Bank and the Issuing Bank ensued whereafter it ended on the intimation by the latter that the parties have settled the matter outside the terms of the Letter of Credit whereby the goods have been received by the Purchaser and the payment has been made to the Seller through cheque. The Seller due to non-realization of the funds under the export of goods subject matter of the transaction, filed a complaint against the Bank, before Banking Mohtasib Pakistan, for its failure to realize the proceeds in the transaction in question. The referred complaint was decided against the Bank vide order dated 30.4.2020. Representation was filed by the Bank against the said order of

Banking Mohtasib which was dismissed vide order dated 29.1.2021, hence the writ petition by the Bank. Due to injunctive relief granted by this Court vide order dated 23.6.2021 in CM No.01/2021 at the time of admission of the petition, therefore, the Seller filed Writ Petition No.2012/2021 seeking direction for implementation of the orders of Banking Mohtasib and the President of Pakistan.

3. Learned Counsel for the Petitioner, *inter alia*, contented that under the law the Bank had no obligation to repatriate the funds and the payment was to be made only as per the terms of the Credit. It was added since the documents presented by the Seller was discrepant which was duly intimated to the Seller; however, upon its insistence the Bank continued with the matter and under the instructions of the Seller directed the Issuing Bank to release the documents to the purchaser. He further submitted that Respondent No.2 had no jurisdiction in the matter as none of the provisions of Section 82 A of Banking Companies Ordinance, 1962 (the Ordinance) are attracted in the facts and circumstances. Learned Counsel further contended that Respondents No. 1 and 2 have not taken into account the law on the subject of Letters of Credit and have decided the issues involved in a perfunctory manner. Learned Counsel further submitted that the Seller and Purchaser arrived at a settlement whereby the goods have been received by the Purchaser and the payment has been received by the Seller through cheque. It was

argued that the complaint was filed by the Seller against the Bank just to evade the implications of non-repatriation of funds under the transaction and imposition of possible penalty by the State Bank of Pakistan.

4. Learned Counsel for the Seller, *inter alia*, contended that it was obligation of the Bank to ensure receipt of funds under the Letter of Credit in question and failure on its part to do the needful amounts to dereliction in duty for which the complaint was filed. It was further contended that pursuant to orders passed by Respondents No.1 and 2 the Bank is to pay the Seller amount of US \$ 100,480/-. It was added the Seller never instructed the Bank to communicate with the Issuing Bank regarding release of the documents to the Purchaser.

5. Arguments advanced by both the learned counsel have been listened with utmost care and the documents placed on record examined with their assistance.

6. The factual aspect of the controversy has been stated with brevity hereinabove hence, need not be repeated. As noted above the Seller agitated the jurisdiction of Banking Mohtasib under Section 82 A of the Ordinance with the prayer to release or to manage the release of US \$ 100480/- under Letter of Credit No.709/583-21/522 dated 29.9.2017. The Banking Mohtasib under the referred provision of law has the jurisdiction to entertain complaints on behalf of the customer in the following instances:

- a) Enquire into complaints of banking mal-practices.
- b) Perverse, arbitrary or discriminatory actions.
- c) Violations of banking laws, rules, regulations or guidelines.
- d) Inordinate delay or inefficiency and
- e) Corruption, nepotism or other forms of mal-administration.

7. Under Section 82 A (4) of the Ordinance the complaint can be *inter alia* filed by the customer of the Bank with respect to one of the grievances noted above. The orders that can be passed by the Banking Mohtasib in the complaint filed before it are provided in section 82 E *ibid*. The Mohtasib can issue the following directions to a Bank under the referred provision:

- a) To reconsider the matter
- b) To modify or cancel the earlier decision, action or failure to take action
- c) To pay reasonable compensation to the complainant as fixed by the Banking Mohtasib
- d) To take the requisite steps to improve the functioning or efficiency of the Bank and
- e) To take such other remedial or actions as may be specified by the Banking Mohtasib.

8. The Banking Mohtasib ordered the Bank to pay sum of US \$ 100,480/- to the Seller. The referred order was modified by the President of Pakistan and the Seller was required to furnish security for receipt of the said money.

9. Since the dispute between the parties revolve around the non-payment of money under the Letter of Credit hence it is only proper to discuss the basics of the law on the subject. In *Intraco Limited versus Notis Shipping Corporation of Liberia* (1981) 2 Lloyd Report 256), Documentary Credit was eloquently described by Donaldson LJ with the concurrence of Ackner L.J. in the following terms:

*“Irrevocable letters of credit and bank guarantees given in the circumstances such that they are equivalent to an irrevocable letter of credit have been said to be the life blood of commerce. Thrombosis will occur if, unless fraud is involved, the courts intervene and thereby disturb the mercantile practice of treating rights thereunder as being equivalent to cash in hand.”*

10. The feature common to all types of Letters of Credit is in accordance with the agreement between the seller and the buyer in the contract of sale (the Underlying Contract) the buyer arranges that the payment of the price is made by a bank, normally the seller's place, on presentation of specified documents, which usually include the transport documents and the performance of other conditions stated in the credit and advised by the bank to the seller. On presentation of the documents the bank pays the purchase price, according to the terms of the credit, by sight payment, deferred payment, or by acceptance or negotiation of a bill of exchange drawn by seller

[Schmittohf's Export Trade]. Lord Wright in T.D. Bailey Son and Co. versus Ross T. Smyth and Co. Ltd. (1940) 56 T.L.R. 825), commented that as the general course of international commerce involves the practice of raising money on the documents so as to bridge the period between the shipment and the time of obtaining payment against the documents. Under the documentary credit the parties to the transaction deal with documents rather than the goods. The purchaser of the goods, who generally is in a different country than the seller approaches a Bank in his country for establishment of letter of credit, the buyer is the applicant. The Bank then establishes the credit on the basis of the request of the buyer and the terms of the same is dependent on the mandate provided by the latter. Generally the documents which form part of the mandate include the shipping documents, the Proforma invoice, Bill of Exchange etc. The Bank opening the credit is the issuing bank. The letter of credit can be irrevocable or revocable. Any Bank in the country of the seller acts as the advising bank and if it confirms the credit is also the confirming bank. The function of the advising bank is to ensure realization of the proceeds under the credit once the documents are presented for payment according to the mandate. If the documents are discrepant then the consequences flow and the payment is not to be made to the seller unless the discrepancy is waived by the buyer. The advising bank or the bank negotiating the transaction acts negligently if it fails to

realize the proceeds expeditiously by presenting the documents to the issuing bank. Prompt action is required on part of the advising bank and what amounts to delay in approaching the issuing bank and delay in realizing the money varies from case to case. The banking practice relating to letters of credit is standardized by the Uniform Customs and Practice for Documentary Credits, which is amended from time to time.

11. The Honorable Supreme Court of Pakistan in a recent pronouncement titled **Messrs SAZCO (Pvt.) LTD. Versus Askari Commercial Bank Limited** (2021 SCMR 558) revisited the law on the subject of the Letters of Credit and highlighted the salient features of same. It was observed by Mr. Justice Yahya Afidi, opining for the Court, that one of the essential features of documentary credit is the doctrine of strict compliance. It was added that the other principle governing documentary credit- doctrine of strict compliance, posits the bank to stringently follow the terms of the credit, while examining the documents tendered by the seller thereunder. This rule has its strong roots dating back a century, when the application of the principle was adjudged as common sense and elementary. The judicial opinion since then has had no room for documents, which were almost the same or which would do just as well. His Lordship further went on to opine that over time, there has been a judicial realization that in certain cases, the



principle of strict compliance should not be followed in a literal and robotic manner.

12. The dispute between the parties and the decisions rendered by the Banking Mohtasib and the President of Pakistan now need to be examined in light of the facts and the law, mentioned above. The seller had authorized the Bank to deal with the issuing bank and realize the proceeds under the documentary credit. The documents furnished by the seller were clearly discrepant and under the doctrine of strict compliance were liable to be rejected. The discrepancies in the documents were duly noted by the Bank as are reflected from the objection sheet attached with the instant petition. However, despite the referred fact the seller authorized the Bank to deal further in the matter and make the buyer accept the documents. The controversy germinating after tendering documents by the seller is clearly spelt out from letter dated 13.2.2018 written by the Bank to the seller. It further is evident from the referred letter that the seller through email dated 25.1.2018 gave consent to the bank for release of the documents to the buyer despite the discrepancies. The said consent and eventual release of the documents by the issuing bank to the importer/buyer transcended the matter beyond the scope of the Letter of Credit. In this behalf it is pertinent to observe the mandate of the issuing bank was to make payment to the seller through Meezan Bank Limited upon tendering the documents as per the mandate. Since

the mandate was not fulfilled and under the doctrine of strict compliance the documents were required to be rejected. The subsequent dealing between the issuing bank, the bank and the seller and ultimately the buyer, *prima facie* ended the responsibility of the bank including the issuing bank.

13. Respondents No. 1 and 2 while deciding the matter has not taken into account the law of Letter of Credit. They have dealt with the matter on general facts and circumstances and declared the Bank responsible as being negligent. Moreover, the referred respondents have also not taken into consideration whether under the facts they had jurisdiction to entertain the complaint in light of section 82 *A supra*. They have also not considered the effect of settlement, if any between the seller and buyer; in this behalf an opportunity ought to have been afforded to the bank to substantiate its plea of compromise/settlement between the parties.

14. The decisions impugned in the instant petition suffer from error of law and hence are not sustainable.

15. For the above reasons the instant Writ Petition No. 2213/2021 is allowed and the aforementioned orders passed by the Respondents No.1 and 2 are set aside; consequently the complaint filed by the Seller namely M/s Elite Embroidery shall be deemed to be pending before Banking Ombudsman and be decided in light of the observations made above. Since the orders passed by Banking Ombudsman and President of Islamic

Republic of Pakistan have been set aside hence Writ Petition No.2012/2021 seeking implementation of the said orders has become infructuous and is disposed of accordingly.

**(AAMER FAROOQ)**  
**JUDGE**

*Announced in open Court on the 21<sup>st</sup> day of December 2021*

**JUDGE**

\*M.Naveed\*

*Approved For Reporting*