

**4 SCOB [2015] HCD 23****HIGH COURT DIVISION  
(SPECIAL ORIGINAL JURISDICTION)**

WRIT PETITION NO. 1529 of 2013

With

WRIT PETITION NO.16322 of 2012

WRIT PETITION NO.16323 of 2012

WRIT PETITION NO.11229 of 2013

WRIT PETITION NO. 866 of 2013

WRIT PETITION NO. 867 of 2013

WRIT PETITION NO. 609 of 2013

WRIT PETITION NO. 610 of 2013

WRIT PETITION NO. 4045 of 2013

WRIT PETITION NO.16381 of 2012

WRIT PETITION NO.16384 of 2012

WRIT PETITION NO. 235 of 2013

WRIT PETITION NO. 237 of 2013

WRIT PETITION NO.16380 of 2012

WRIT PETITION NO.16383 of 2012

WRIT PETITION NO. 2665 of 2013

WRIT PETITION NO.16386 of 2012

WRIT PETITION NO.16385 of 2012

WRIT PETITION NO.16382 of 2012

WRIT PETITION NO. 2664 of 2013

WRIT PETITION NO. 2670 of 2013

WRIT PETITION NO.16387 of 2012

**Alvi Spinning Mills Ltd and others**

..... Petitioners

-Versus-

**Government of Bangladesh and others**

..... Respondents

Mr. Mainul Hosein,

Mr. A.F.Hasan Arif, Senior Advocates with

Mr. Moudud Ahmed, Senior Advocate,

Mr. Yousuf Hossain Humayun, Senior

Advocate,

Mr. S. M. Rezaul Karim,

Mr. Md. Nuruzzaman Khan,

Mr. Shasti Sarker,

Mr. Md. Imrul Haydar,

Mr. Kazi Akhtar Hosain, and

Mr. Md. Kamruzzaman, Advocates

..... For the petitioners

Mr. Md. Forrukh Rahman with

Mr. Sk. Abdullah, Advocates

.....For the Respondents

Mr. A.S.M. Abdur Razzague, Advocate

..... Respondent No.4

Mr. Abdullah Al-Mubin, Advocate

..... For Respondent No. 6

(In Writ Petition No. 2670 of 2013)

Mr. Md. Abdun Nur, Advocate

.....For Bangladesh Bank

(In Writ Petition No. 16386 of 2012)

Mr. Shamim Khaled Ahmed, Advocate

..... For the Respondents

Mr. Kazi Akhtar Hosain, Advocate.

.....For the Respondents

Mr. Shahjada Al-Amin Kabir, Advocate

..... For the Respondents

Mr. Md. Azizul Huq, Advocate.

..... For the respondents

Mr. Kazi Akhtar Hossain, Advocate

..... For respondent No. 5

(In Writ Petition No.16387 of 2012)

Mr. Md. Azizul Hoque,

Mrs . Shamsed Banu,

Mr. M. Khaled Ahmed,

Mr. Ashiqur Rahman and

Mr. Hosneara Begum, Advocate

.....For the Respondent.

(Sonali Bank Ltd.)

Mr. Sheik Shafique Ahmed Puspa,

Mr. A. M. Masum, Advocates

.....For the Respondents

Mr. Md. Kamruzzaman, Advocate

.....For the Respondents

(Agrani Bank Ltd. and Al-Arafa Islam

Bank Ltd.)

Mr. Sk. Abu Musa Mohammad Arif,

Advocate.

.....For the Respondent

(Nakshi Knit Composite Ltd.)

Mr. Shafiqul Karim Khan, Advocate.

..... For the Respondent

(One Bank Ltd.)

Mr. A.S.M Abdur Razzaque, Advocate.  
.....For the Respondents

Mr. Kazi Akhtar Hossain, Advocate  
..... For respondent No. 4  
(In writ petition No.16380 of 2012).

Mr. Md. Kamruzzaman, Advocate.  
..... For respondents

Mr. A. M. Showkatul Huq, Advocate  
..... For the respondents

Mr. M. Khaled Ahmed , Advocate.  
.....For Respondent No.6  
(In writ petition No.866 of 2013).

Mr. Md. Kamruzzaman, Advocate.  
..... For respondent No.10.  
(In writ petition No.5087 of 2013)

Mr. Md. Shafiqur Rahman, Advocate  
..... For respondents

Mr. Md. Arifur Rahman, Advocate  
..... for the respondent No. 5 and 6  
(National Bank Limited)

Mr. Shafayat Ullah, Advocate  
..... For respondents

Heard on 22.01.2014 & 23.01.2014  
Judgment on 30 January 2014

**Present:**

**Mr. Justice Md. Ashfaquul Islam**

**And**

**Mr. Justice Md. Ashraful Kamal**

**Letter of Credits must be respected:**

The decisions referred to above consistently spelt out that when an irrecoverable Letter of Credit issued / opened and confirmed by the bank such a bank is left with no option but to respect its obligation under the letter of credit and pay if the draft and documents are found to be in order and terms and conditions of such L/C satisfied.

...(Para 28)

**Payment can be refused by the issuing bank only when fraud is established:**

Customer cannot instruct the bank not to pay and bank cannot act upon such instruction, if any, for withholding the payment. Any dispute between buyer and seller is to be settled between them in accordance with the terms and conditions of the contract of sale. If the buyer suffers in any way, he can file suit for damages. But at the same time in all these decisions it has also been manifested that only exception to such general statement of principle i.e. recognized by a court of law is obvious and clear case of fraud brought to the knowledge of the L/C issuing bank. However, mere allegation of fraud is not sufficient to entitle the issuing bank to withhold payments. It must be found that the draft/ documents submitted for payment must be tainted by real fraud. When that can be established only in that case payment can be refused by the issuing bank.

...(Para 30)

**Judgment**

**Md. Ashfaquul Islam, J:**

1. All these Writ petitions are taken up together and disposed of by a single judgment as there involved common question of fact and law.

2. In Writ Petition Nos. 1529 of 2013, 11229 of 2013, 866 of 2013, 867 of 2013 and 16322 of 2012 Rule was issued calling upon the respondents to show cause as to why a direction should not be given upon the respondents to pay the outstanding bill along with over due interest of the petitioners.

3. In Writ Petition Nos. 609 of 2013, 610 of 2013 and 4045 of 2013 Rule was issued challenging the enlistment of the names of the petitioners in the CIB list of its Credit Information Bureau as loan defaulter to be illegal and a direction was sought for the enlistment should be declared to have been done without lawful authority having no legal effect.

4. In rest of the Writ Petitions i.e. Nos. 16323 of 2012, 16380 of 2012, 16381 of 2012, 16383 of 2012, 16384 of 2012, 2665 of 2013, 235 of 2013, 237 of 2013, 16385 of 2012, 16386 of 2012, 16382 of 2012, 2664 of 2013, 2670 of 2013 and 16387 of 2012 Rule was issued in both the terms as aforesaid.

5. Broadly the facts are almost similar in all the petition bereft of the particulars of the parties (petitioners and respondents) and their position in the cause title.

6. For the sake of convenience and brevity we would first take up Writ Petition No. 1529 of 2013. The background leading to the Petition is that the petitioner Company Alvi Spinning Mills Ltd. has been running on its business with reputation in respect of trading and import and export, and attracted several companies who became interested to purchase textile and garments products from the petitioner through their several Letter of Credits and accordingly the petitioner accepted the Letter of Credit issued by the Sonali Bank Limited, Hotel Sherton (now Rupashi Bangla) Corporate Branch and supplied the product through Agrani Bank Limited, BWAPDA Branch, Motijheel, Dhaka and also Al-Arafa Bank Jatrabari Branch who are the Negotiating Bank. Respondent No.8 Sonali Bank Hotel Sheraton Branch (Now Rupashi Bangla) is the L/C. issuing Bank. It has been stated that after accepting the export Bills from Respondent No.11 Agrani Bank Limited, the negotiating Bank, 42 Export Bills were accepted by the Sonali Bank. Upon accepting those over due bills amounting to U.S.\$ 52,11,000 the respondent No.8 Sonali Bank is under an obligation to make payment through Respondent No.11 Agrani Bank and also Respondent No.12 Al Arafa Islami Bank to the petitioner. But instead of releasing the same in favour of the petitioner it has been held up by the Sonali Bank. It is at this stage the petitioner moved this Division asking for a direction upon the respondents to pay the over due bills along with over due interest of the petitioner through respondent Agrani Bank and Al Arafa Islami Bank and obtained the present Rule.

7. In Writ Petition No. 609 of 2013 the Rule was issued in the following terms:-“Let a Rule Nisi be issued calling upon the respondents to show cause as to why the action of the respondent No. 1 and 2 enlisting the name of the petitioner in the CIB list of its Credit Information Bureau as a loan defaulter should not be declared to have been done without any lawful authority and is of no legal effect.”

8. Mr. A.F. Hasan Arif, the learned Senior Advocate has appeared in Writ Petition No. 1529 of 2013 and in all other Writ Petitions Mr. Mainul Hossein the learned Senior Advocate appeared for the petitioners. Both of them argued unequivocally that the petitioner, who supplied fabrics and yarns through the negotiating Bank, approached the above branches of Sonali Bank Ltd. for issuing necessary certificate and acceptance that whether the shipping documents in all these transactions namely, L/Cs, Delivery Challan, Bills of Exchange etc.

were genuine and valid. The above branch of respondent-Sonali Bank Ltd., in turn issued certificate and acceptance in favour of the negotiating banks of the petitioners saying that the shipping documents were all genuine and valid and the sale proceeds would be paid by the date of maturity.

9. Their further submission is that the payment has to be made on the documents supplied to L/C opening Bank (namely respondents Sonali Bank by the negotiating Bank Agrani Bank (Agargoan Branch) as per international customs having the force of law, i.e., UCPDC-600 (2007 Revision). L/C is an independent contract and not qualified by the original contract of sale though it is based on it and in the cases in hand since the L/C issuing bank, (Sonali Bank) found no discrepancy in the documents supplied by the sellers bank and moreover, Sonali Bank confirmed payment by advising the date of maturity, there is no scope further to stop the payment as such. It has been also contented that Sonali Bank is a statutory public authority as per Article 152 of the Constitution as well as local authority defined under section 2(27) of the General Clauses Act, 1897. Besides, UCPDC-600 has the force of law as defined by Article 152 of the Constitution. Consequently they have also argued that whatever the allegation may be made against the buyer or the seller outside the contract of L/C has no relevance for the obligations under the L/C. The remedies are available elsewhere, but L/C must be honoured only on the basis of L/C related documents.

10. They further contended that there is no allegation of fraud or forgery in respect of documents supplied by the banks of the sellers. Internal irregularities of the bank also will not affect payment under the L/C. Only vague allegations of fraud against L/C issuing forgery about document supplied by buyers for securing L/Cs are not relevant for the payment under the L/Cs to the negotiating bank. They went on submitting that in respect of payment by the Sonali Bank principle of estoppel shall also operate and the bank is stopped from denying payment in as much as the negotiating bank of the seller acted in buying document on the confirmation made by the respondent Sonali Bank.

11. In support of the Rule in Writ Petition No. 1529 of 2013 i.e. withholding of payment by the Sonali Bank Mr. Mainul Hosein cited some authorities :- Uttara Bank Vs. Macneill and Kilbon Ltd. and others 33 DLR (AD) 298, Zyta Garments Ltd. Vs. Union Bank 55 DLR (AD) 56. , Gujarat State Financial Company Vs. M/s Lotus Hotel Pvt. Ltd. AIR 1983 (SC) 848 and also Standard Bank Ltd. Vs. Tripost Engineering and Training Company (GD) and others 56 DLR 55. All these decisions have been focused on the settled proposition of law that when an irrecoverable Letter of Credit is open and confirmed by a bank such bank is left with no option but to honour its obligation under the Letter of Credit and pay.

12. As it has been submitted that UCPDC-600 through several article has also fortified the said proposition of law as discussed above.

13. In respect of Writ Petition No. 609 of 2013 which concerns with the illegal enlistment of the petitioners' name in the CIB list, Mr. Mainul Hosein submits that the petitioners are neither loanee nor borrowers as the claim being for "sale proceed" on receipt of document of title. As no credit limit was sanctioned by the negotiating bank, only by purchase of document of title the petitioners automatically do not become borrowers under Article 42 of the Bangladesh Bank Order 1972.

14. The respondent Sonali Bank Ltd. in some cases paid 70% and in some cases even 90% of the 'sale proceeds' in advance and purchased the relevant shipping documents

namely, L/Cs, Delivery Challan, Bills of Exchange etc. from the petitioners. The said negotiating Banks thereafter obtained sale proceeds from Sonali Bank Ltd. in some cases and failed to receive the sale proceeds in other cases. Hence, the negotiating Bank of the petitioners requested for payment and issued reminders to Sonali Bank Ltd. for payment of the unpaid sale proceeds. But the negotiating Banks failed to receive payment of the sale proceeds from Sonli Bank Ltd. Thereafter in league with Sonali Bank Bangladesh Bank illegally but on a misconception of law has shown the said sale proceeds as loan and included the petitioners' name in the CIB list of Bangladesh Bank.

15. CIB is creation to Bangladesh Bank Order 1972 and it being protected by first schedule of the Constitution which shall prevail over the Bank Companies Act. It was also positive argument from the bar that the petitioners are not borrower under Article 42 where Credit Information has been defined in Bangladesh Bank Order 1972.

16. The petitioners received the advance payment against sale proceeds by selling their shipping documents to the negotiating bank thus transfer their title over the sale proceeds to the negotiating bank on the basis of the documents and the purchasing bank should get money from Sonali bank. Therefore, it cannot be claimed that the petitioners became loanee under the Bank Companies Act or borrower under the Bangladesh Bank Order. In any view of the matter the petitioners names should not have been included in CIB list as they are not borrower or loanee.

17. Notably, in respect of second point for consideration i.e. illegal enlistment of the name of the petitioner in CIB list no authority has been cited by the learned counsel appearing for both the sides.

18. Mr. Azizul Hoque, the learned Advocate appearing for the respondent No.8 in Writ Petition No.1529 of 2012 by filing affidavit in opposition on the other hand opposes the Rule and made his submissions. He has submitted two affidavits in oppositions in support of his contention. Be it mentioned that at one point of time we in our anxiety directed personal appearance of the Managing Director of Sonali Bank to clarify the entire aspect and he personally appeared before us and in his own way tried to give clarification explaining the entire scenario. We then asked Mr. Azizul Hoque, the learned Advocate for the Sonali Bank to give further affidavit in opposition containing the statement of the Managing Director, Sonali Bank that have been stated before us and accordingly he submitted affidavit in opposition where in paragraph 3 it has been stated : In view of the facts and circumstances of the cases as narrated by the petitioner as lately discovered by the writ respondent No.8 Sonali Bank Limited that under a Memo dated 23 September, 2012 a complaint to the Chairman, Anti Corruption Commission, Head Office, Segun Bagicha, Dhaka has been lodged against the writ petitioners and others and the Anti Corruption Commission vide its letter dated 10.3.2013 acknowledged the same stating, inter alia, that Anti-Corruption Commission filed several cases against the petitioners and others in Miscellaneous Case No.4842 of 2013 before this Division and filed Ramna Model Police Station (DNP) Case No.9 dated 04.10.2012. The Respondent bank categorically lodged the complaint stating that :-

উৎসেইনি কবি Zfvtē cZvi Yvi Df'İ tk" Rvj `ıj j I Aw`Zpenıb fēq cıZōıb mRb Kwi qv D<sup>3</sup> Rvj `ıj j vı` I Aw`Zpenıb fēq cıZōıb mgrıK mıVK eıj qv Dc`ıcb Kwi qv ıb=ewj ıLZ Dcvtq ewıZ cwi gıv A\_@AvZıııZ Kwi qvtQ/0

19. The copies of the complaint and their acknowledgement letter of the Anti Corruption Commission have been annexed as Annexure- ‘X’ and ‘X-1’ to the affidavit in opposition. Therefore, he submits that while the cases of the petitioners are under investigation by the Anti Corruption Commission (ACC) and also in other forum, in such situation the respondents bank cannot make any payment to the petitioners till their decisions.

20. In elaborating his submissions the learned counsel by filing another affidavit in opposition dated 8.7.2013 further submits that due to non-compliance/violation of existing rules and regulations in connection with disbursement and drawing of Funded Loan of the respondent No. 8 (Sonali Bank Limited, Hotel Sheraton Corp. Branch, Dhaka), Anti-Corruption Commission (ACC) has filed several cases against the officials of Sonali bank Limited and the applicant (Hall Mark Fashion Ltd., Farhan Fashion Ltd., Dol Apperals Ltd., Islam Fashion Ltd., T & Brothers Knit Composite Ltd. and Dress Me Fashion Ltd.) involving L/Cs. As a result some of the accused persons are now in jail and the cases are still pending before the court. Anti Corruption commission (ACC) also informed Sonali Bank Limited that the non-funded loan (Accepted Liabilities) of respondent No. 8 (Sonali Bank Limited, Hotel Sheraton Corporate Branch, Dhaka) is under their investigation. Bangladesh Bank’s existing guidelines for Foreign Exchange Transactions (GFET) Volum-1, Chapter-7, Page-33 stipulates as under:

“LC covering value more than USD 5000 or equivalent should be sent through SWIFT or other similar arrangements to the advising Bank.”

21. A kvlvq SWIFT mpeav\_vKv mZjl Zv e`envi br Kti Manually typed L/C. BmyKiv ntqtQ Ges mieivnKvixi (tgmvm@Taiba Rotor Spinning wj m wj t)di e`vsk l qvb e`vsk wj t kvLv, Xivv Zv MbY Kti Bill Purchase/negotiate KtiQtQ hv eisj vt`k e`vstKi ve``gib GTFET`l wbt`Rbvi cwi cws` (Violation)/

22. The relevant text of Bangladesh Bank’s existing guidelines for Foreign Exchange Transactions (GFET) Volume-1, Chapter-7, Page-39 Para 37 stipulates as under:

“Inland back to back L/Cs denominated in foreign exchange may be opened in favour of local manufacture-cum-suppliers of inputs.”

23. A\_P Ki e`vstKi c`vnb Kvhfj q KZK MmVZ cwi`k` wLgi` wLj KZ.cwi`k` czZte`tb ixU Avte`bKvix Auj fx w`wbs wj m wj t (mieivnKvix cZövb) Gi d`vixZ Drcw`Z 10-20 KvDtUi mZv i BvbigLx bix MvtgMm wkft e`enviti i tKvb AeKvk tbB| d`vixi Drcv`b flgZvi Zjybvq Awak mieivn A\_@ ve``gib tgukb Gi gva`tg Drcw`Z hrmvgvb` cY` Öriv Gj mÖi Pmn`vKZ.cY`l thvMrb t`qv/mieivn Kiv tKvb fiteB mvgÄm`cY`bq| KviLvbi mmeR`w`K Z\_v Drcw`Z cY`i aiY, `wbK Drcv`b flgZv ev m flgZvi wePti gvt Wt 52,11,000.00 gj`gvtbi wecj` cwi gib mZv mieivni wel qU ht\_ó AmsMwZcY`gtg`Dtj L Kiv ntqtQ|

24. Though the subject L/Cs stipulate that “ this credit is subject to uniform customs and practice for documentary credit 2007 (Revision) International Chamber of Commerce publication No. 600” but this rule/norms are not applicable where High Scale irregularities, fraud/forges are involved and the Court cases filed by ACC is pending. So at this stage the question of payment the bills does not arise.

25. Therefore, he submits that in all fairness this Rule should be discharged outright.

26. That being the situation the questions need to be addressed by this Division in all these Petitions are whether under the facts and circumstances of the different cases in hand

the L/C issuing bank was at all justified in withholding the payment to be paid by honouring respective L/Cs and whether the enlistment of the names of the petitioners in the list of CIB by the respondent Bangladesh Bank is in keeping with the relevant provisions of law.

27. Let us now discuss the first point.

28. The decisions referred to above consistently spelt out that when an irrevocable Letter of Credit issued / opened and confirmed by the bank such a bank is left with no option but to respect its obligation under the letter of credit and pay if the draft and documents are found to be in order and terms and conditions of such L/C satisfied.

29. In 55 DLR (AD) (56) referred to above our Appellate Division clearly observed in paragraph-9

“As soon as the letters of credit are established between the issuing bank and the negotiating bank, it becomes an independent agreement between the two banks, neither the seller nor the buyer has any (privacy) to that agreement. It is by nature a separate transaction from the sale agreement between the seller and the buyer. Consequently, the undertakings and obligation of a bank to pay, accept and pay drafts or negotiate under a letter credit are not subject to claims or defences by either the seller or the buyer. The only exception to this strict rule is the knowledge of the bank that the documents presented are forged and fraudulent.”

30. Customer cannot instruct the bank not to pay and bank cannot act upon such instruction, if any, for withholding the payment. Any dispute between buyer and seller is to be settled between them in accordance with the terms and conditions of the contract of sale. If the buyer suffers in any way, he can file suit for damages. But at the same time in all these decisions it has also been manifested that only exception to such general statement of principle i.e. recognized by a court of law is obvious and clear case of fraud brought to the knowledge of the L/C issuing bank. However, mere allegation of fraud is not sufficient to entitle the issuing bank to withhold payments. It must be found that the draft/ documents submitted for payment must be tainted by real fraud. When that can be established only in that case payment can be refused by the issuing bank.

31. Article-5 of UCPDC-600 envisages that bank deal with documents and not with goods, services or performance to which the documents may relate.

32. Article-7 depicts issuing Bank under taking as under:-

- a. Provided that the stipulated documents are presented to the nominated bank or to the issuing bank and that they constitute a complying presentation, the issuing bank must honour if the credit is available.
- b. An issuing bank is irrevocable bound to honour as of the time it issues the credit.
- c. An issuing bank undertakes to reimburse a nominated bank that has honoured or negotiated a complying presentation and forwarded the documents to the issuing bank. Reimbursement for the amount of a complying presentation under a credit

available by acceptance or deferred payment is due at maturity, whether or not the nominated bank prepaid or purchased before maturity. An issuing bank's undertaking to reimburse a nominated bank is independent of the issuing bank's undertaking to the beneficiary.

33. On the other hand UCPDC-600 through its several Articles also focused exception to the proposition of law as discussed above. Article 34, 36 & 37 of UCPDC-600 envisage a bank assumes no liability or responsibility for the Form, sufficiency, accuracy genuineness, falsification or legal effect of any document or for general or particular condition stipulated in a document. Needless to mention that it concerns about L/Cs.

34. UCPDC-600 Article-36 clarifies further:-

“A bank assumes no liability or responsibility for the consequences arising out of the interruption of its business by Acts of God, riots, civil commotions, insurrections, wars, acts of terrorism, or by any strikes or lockouts or any other causes beyond its control.”

35. The submissions of Mr. Hasan Arif and Mr. Mainul Hosein on different points have been considered by us in meticulous adherence to the settled proposition of law in a given situation.

36. Lord Denning once observed in [R. -Vs- Metropolitan Police Commissioner (1968) 2 All. E.R.-139] that silence is not an option when things are ill done. May be His Lordship in a particular case observed this but we have found that in many grave exigencies this immutable observation still applies. We have come across from the affidavit in opposition of the Respondent bank as quoted above that the parties involved in all these petitions are alleged to have been involved in a large scale of scam and mall practices which touched the conscience of the people of the country of late. However, that is not relevant for the purpose of deciding the petition at all. Significantly in all the decisions referred to above we have found that all the cases were first filed in the court of origin i.e. the trial court and then went up to the High Court Division and Appellate Division. Not a single decision on this issue could be found in a Writ jurisdiction.

37. Truth or otherwise of the allegation whatsoever branded against the parties shall have to be decided of course on evidence and in the court of origin i.e. in the trial court. This Court in summary jurisdiction under Article 102 while exercising its discretion will be loath to interfere with and give a decision in such a situation. In the case of Chairman, Bangladesh Water Development Board and another -Vs- Shamsul Hoque and Company Ltd. and others 51 DLR (AD) 169 Chief Justice Mustafa Kamal (As his Lordship then was) held the direction of the High Court Division to pay a sum of Taka 24,90,724.25 by the respondent No. 1 Bangladesh Water Development Bank to the Writ Petitioner to be untenable in Writ jurisdiction His Lordship observed:





of loan and its implication in terms of Section 5 GaGa of Bank Companies Act read with section 27 KaKa and Article 42 of Bangladesh Bank Ordinance 1972 with special reference to section 2 of Artha Rin Adalat Ain that defines loan. Mr. Khaled categorically submits that in paragraph 5 of the Writ Petition No. 235 of 2013 in particular and also in other petitions statements to the effect that amount received by the Respondent beneficiary is not a loan rather a “sale proceed” is totally misconceived and not at all correct. He clarified: –

“It is stated that in amount admittedly received by the writ petitioner from the respondent No.4 United Commercial Bank Ltd. admittedly by way of ‘bill purchase’ is a term of art known and understood throughout the business world. The term bill purchase is very much in the definition of loan in Artho Rin Adalat Ain 1990 and its substitute Artho Rin Adalat Ain 2003. ‘Loan’ as defined in section 2 of the Ain is as follows:-

০০ FY০ A\_©

1| AৱM০, ari, bM` FY, I fvi WrdU, e`vsmKs tμWU , evUvKZ.ev μqKZ wej , Bmj vgx kixqv tgiZvteK cwi Pnij Z Aৱ\_℞ cāZōvb KZR℞ weib̄tqMKZ.A\_©er Ab` th tKvb Aৱ\_℞ Avb̄k̄j` er m̄jh̄m- m̄gar , th b̄t̄gB Aৱf̄inZ nDK b̄v tKb;

2| M`vi WU, Bb̄t̄Wgub̄U, FYc̄I er Ab` tKvb Aৱ\_℞ ēt̄`ve`I h̄v̄v tKvb Aৱ\_℞ cāZōvb FY M̄hx̄Zvi c̄t̄q̄ c̄ōvb er R̄vix K̄ti er `vq w̄m̄v̄te M̄hb̄ K̄ti |

3| tKvb Aৱ\_℞ cāZōvb KZR℞.D̄n̄vi tKvb KgR̄ZP̄ev KgP̄ix̄t̄K c̄² Ē tKvb FY; Ges

4| cēZ̄x̄μ̄q̄K (1) nB̄t̄Z (3) G D̄ij̄m̄L̄Z FY, er t̄q̄ĪgZ Bmj vgx kixqv Ab̄h̄v̄q̄x cwi Pnij Z Aৱ\_℞ cāZōvb KZR℞ weib̄tqMKZ A\_©Gi D̄ci %̄af̄īte Av̄t̄īw̄c̄Z m̄`y` Ū m̄ȳ er ḡh̄ȳdv̄ er f̄rov : 0

44. We have found considerable force in the submissions of learned counsel for Bangladesh Bank. It is clear that the assertions and averments made by the petitioners in different petitions that the amount received from the negotiating bank is a “sale proceed” does not at all merit substance. We hold that it is absolutely an “advance” taken by the customer within the meaning of section 2 of the Artha Rin Ain, 2003 that defines advance as a loan and therefore, attracts section 5 (GAGA) of the Bank Company Act and for that reason inclusion of the names of the petitioners in the list of CIB is justified. Submission of Mr. Moinul Hosein for the petitioner on that score is misconceived and fallacious one. Our Appellate Division and this Division in several decisions had already decided this aspect which is no longer a resintegra.

(All the underlings are mine to add emphasis)

45. Fortified with all the decisions referred to above conjunct with the discussions and observations made thereto we are of the view that both the Writ petition Nos. 1529 of 2013 and 609 of 2013 miserably fail and for that matter all other Writ Petitions having been standing on the same footing also equally fail. They are absolutely devoid of any substance and should be discharged outright.

46. In the result, all the Rules are discharged without any order as to cost. The orders of stay granted earlier by this court are hereby recalled and vacated.

**Md. Ashraful Kamal, J**

47. I agree with His Lordship Md. Ashfaul Islam, J. that the Rules should be discharged. I would however, add some observations of my own since the questions raised in the Rules are of considerable public importance.

48. The Hall Mark episode has been the 'talk of the country'. The Hall Mark loan scandal has put the entire banking sector in an embarrassing situation and the confidence of the depositors has gone shattered in consequence.

49. The petitioners' cases are based on a claim arising out of a commercial letter of credit. The facts may be briefly stated at the outset:

According to the petitioners, their customers intended to purchase garments products from them to export garments to their (purchasers) buyers. For the purpose of facilitating trade, their customers opened back-to-back letter of credit in their respective banks in favour of the petitioners to purchase the garments products. After that their customers sent those LCs to the petitioners.

50. The petitioners then submitted those LCs to their respective banks and took 90% of the LC amount as sale proceeds. Thereafter, petitioners have supplied the goods and their customers received those goods duly.

51. After that petitioners respective banks (Negotiating Bank) submitted all the documents of the goods delivered by the petitioners as per LC before the LC issuing bank i.e Sonali Bank to have their payment against the letter of credit. But the respondent Sonali Bank refused to pay LC amount of the petitioners' to their respective banks.

52. In view of the above situation the petitioners invoked this extraordinary jurisdiction under Article 102 of the Constitution and the above Rules were issued in the following three different terms:

*a) Why a direction should not be given upon the respondents to pay the outstanding bill along with overdue interest of the petitioners.*

*b) Challenging the enlistment of the names of the petitioners in the CIB list of its Credit Information Bureau as loan defaulter to be illegal and a direction was sought for the enlistment should be declared to have been done without lawful authority having no legal effect.*

*c) both the terms as aforesaid.*

53. Since the entire matter relates to Letter of Credit, therefore, it is necessary to understand what Letter of Credit is.

54. Letters of credit (LCs) are one of the most versatile and secure instruments available to international traders. An LC is a commitment by a bank on behalf of the importer (foreign buyer) that payment will be made to the beneficiary (exporter) provided that the terms and conditions stated in the LC have been met, as evidenced by the presentation of specified documents. Since LCs are credit instruments, the importer's credit with his bank is used to obtain an LC. The importer pays his bank a fee to render this service.

55. Letters of credit (LCs) are also referred to as a documentary credit, is a contractual agreement whereby the issuing bank (importer's bank), acting on behalf of its customer (the importer or buyer), promises to make payment to the beneficiary or exporter against the receipt of "complying" stipulated documents. The issuing bank will typically use intermediary banks to facilitate the transaction and make payment to the exporter.

56. Letters of credit (LCs) are a separate contract from the sales contract on which it is based; therefore, the banks are not concerned with the quality of the underlying goods or whether each party fulfils the terms of the sales contract. [Article 4 of UCP 600 (2007 Revision)]

57. The bank's obligation to pay is solely conditioned upon the seller's compliance with the terms and conditions of the LC. In LC transactions, banks deal in documents only, not goods. [Article 5 of UCP 600 (2007 Revision)]

58. The Letters of credit (LCs) are always irrevocable, which means the document may not be changed or cancelled unless the importer, banks, and exporter agree. [Article 2 of UCP 600 (2007 Revision)]

59. There are two types of letters of credit: *commercial and standby*. Commercial letters of credit are used primarily to facilitate foreign trade. The commercial letter of credit is the primary payment mechanism for a transaction, whereas the standby letter of credit is a secondary payment mechanism.

60. A commercial letter of credit is a contractual agreement between a bank, known as the issuing bank, on behalf of one of its customers, authorizing another bank, known as the advising or confirming bank, to make payment to the beneficiary. The issuing bank, on the request of its customer, opens the letter of credit. The issuing bank makes a commitment to honor drawings made under the credit. The beneficiary is normally the provider of goods and/or services.

61. Commercial letters of credit have been used for centuries to facilitate payment in international trade. Their use will continue to increase as the global economy evolves.

62. Letters of credit used in international transactions are governed by the International Chamber of Commerce Uniform Customs and Practice for Documentary Credits. The general provisions and definitions of the International Chamber of Commerce are binding on all parties.

63. The International Chamber of Commerce's (ICC), which was established in 1919, had as its primary objective facilitating the flow of international trade.

64. The Uniform Customs and Practice (UCP) for Documentary Credits is promulgated by the Commission on Banking Technique and Practice of the International Chamber of Commerce headquartered in Paris, France. It articulates standard international commercial letter of credit practice.

65. The current revision, ICC Publication No. 600 (UCP600), became effective July 2007. Prior versions were issued in 1933 (UCP82), 1951 (UCP151), 1962 (UCP222), 1974 (UCP290), 1983 (UCP400) and 1994 (UCP 500).

66. On the other hand, domestic letters of credit or Inland Letter of Credit (ILC) are used as payment instruments for business transactions in which the principal and the beneficiary live in the same country. They are defined as the conditioned payment order a loan institution (issuing bank) issues to guarantee that a business corporation (buyer/principal) will pay another (seller/beneficiary) and honor its payment obligations upon receiving certain documents regarding the sale of goods or services, which must comply with all of the terms and conditions established in such Letter of Credit.

67. In the cases in hand, admittedly the applicants of the Letters of Credit and the beneficiaries (petitioners) of the letters of credit are living in the same country i.e Bangladesh; therefore, the back-to-back letters of credit herein are Domestic Letters of Credit or Inland Letters of Credit (ILC). In these letters of credit it is stipulated that those are governed by the International Chamber of Commerce Uniform Customs and Practice for Documentary Credits UCP 600 (2007 Revision).

68. Since in the case in hand, the Inland Letters of Credit presented by the petitioners are alleged to have been obtained by fraud, so these Letters of Credit have to be examined thoroughly.

69. As per Article 28 of the ICC Uniform Customs and Practice says that;

- “ a.....  
 b.....  
 c.....  
 d.....  
 e.....  
 f. (i) *The insurance document must indicate the amount of insurance coverage and be in the same currency as the credit.*  
 (ii) *A requirement in the credit for insurance coverage to be a for a percentage of the value of the good's of the invoice value or similar is deemed to be the minimum amount of coverage required.*  
*If there is no indication in the credit of the insurance coverage required, the amount of insurance coverage must be at least 110% of the CIF or CIP value of the goods.*  
*When the CIF or CIP value cannot be determined from the documents, the amount of insurance coverage must be calculated on the basis of the amount for which honour or negotiation is requested or the gross value of the goods as shown on the invoice, whichever is greater.*  
 iii. *The insurance document must indicate that risks are covered at least between the place of taking in charge or shipment and the place of discharge or final destination as stated in the credit.*  
 G. *A credit should state the type of insurance required and, if any, the additional risks to be covered. An insurance document will be accepted without regard to any risks that are not covered if the credit uses imprecise terms such as “usual risks” or “customary risks”.*  
 h.....  
 i.....  
 j..... ”

70. On a plain reading of the aforesaid Article 28 it appears that a credit should state the type of insurance required but in the case in hand none of the letters of credit mentioned the name of the insurance company and its type. Rather the column of the insurance of the Letters of Credit was found blank.

71. Moreover, according to the guidelines issued by Bangladesh Bank for foreign exchange transactions (FFET) Volume I, Chapter-7, page-33, which provide that "LC covering value more than USD 5000 or equivalent should be sent through SWIFT Code or other similar arrangements to the advising Bank". But, mysteriously, in the instant letters of credit, SWIFT Code were not used and issued either by the negotiating Bank or by the L/C issuing Bank.

72. Apart from that, according to inspection report dated 8<sup>th</sup> July, 2012, the letters of credit in question were not issued by the Sonali Bank Limited, and acceptance also were not issued by the said bank and the respective Inland Letters of Credit (ILC) were not found in Bank's record.

73. Further, according to Inspection report dated 14<sup>th</sup> October, 2012, the letters of credit in question issued by the 26 Branches of several Banks for which no register acceptance of margin and realization of commission and acceptance of the bills were not available in the records of the Sonali Bank. This may be the result of running unauthorized/parallel banking operation by some officials in connivance with the concerned client.

74. During the course of Sonali Bank's audit, the audit team have obtained and reviewed the documents provided by the private banks in support of their lodged claims against accepted bills, but they have however been informed by the Branch Management that no Inland Letters of Credit were opened or issued from the concerned Branch and acceptance on inland bills were not given by the said Branch. Transaction occurred between Sonali Bank Ltd. and other commercial Banks which purchased inland bills, has been obtained illegally out of Bank's network, without recording of the related transactions in the books of the Branch.

75. So, in issuing these Inland Letters of Credit, Credit discipline has been grossly violated and disregarded in defiance of the existing rules, regulations, principles and guideline of bank.

76. The documents submitted by the private commercial banks do not contain all the required supporting papers to establish their right against the claims. They could not provide any documents to confirm that the acceptances have been taken by them from concerned branch through the Branch Management or proper official channel. Moreover the documents submitted by other banks against accepted bills were not signed /endorsed by the Branch In-charge or the Manager.

77. Bills purchasing banks (negotiating banks of the petitioners) should be held responsible for taking such acceptances without observing generally accepted banking norms i.e. through official channel. Therefore, we can assume that the concerned private commercial banks have purchased inland bills from the suppliers without discharging their responsibility diligently in purchasing such bills. They have also taken the acceptances without any proper channel of Agargaon Branch of Sonali Bank Ltd. We have also found that in most of the

cases acceptances were obtained from concerned Branch by these bill purchasing banks through interested party which has created the opportunity of parallel banking.

78. So it appears from the record that Hall mark group has managed to obtain a fake letter of credit (LC) from abroad and submitted it to Sonali Bank, Rupashi Bangla Branch to have opening local back-to-back letter of credit in the name of its sister concern, which maintain their account with other banks. The other banks thereafter submitted a fake fabricated local bill to Rupashi Bangla Branch of Sonali Bank for acceptance. After having obtained the acceptance of Sonali Bank, the respective banks paid the bill amount to the beneficiary by debit to their IBP account. On maturity date of the bill, the collecting bank availed the bill proceeds from the Sonali Bank and adjusted the IBP outstanding accordingly. Without movement of any goods, Hall mark group have snatched away the public money in the name of fake spinning companies.

79. The Sonali Bank is not only the largest nationalised bank in Bangladesh, but also the biggest commercial bank in this sector having the responsibility to perform the treasury function of the Sonali Bank places, where Bangladesh bank does not have its runs. Sonali Bank has been functioning with full confidence of the people and the nation as a whole. The Hall mark scam has not only thrown the Sonali Bank in a 'black hole' but also ruined the trust and confidence of the people in the entire banking sector.

80. About Tk. 3700 crore that has been distributed alone in the name of Hall Mark by Sonali Bank, Rupashi Bangla Branch, which includes the amount taken by their sister concern in the name of various Spinning Mills from other banks.

81. As per Bangladesh Bank guide lines, the single/party exposure is maximum 30% (funded 15% and non-funded 15%) of the respective banks paid up capital. The present paid up capital of Sonali Bank Ltd. is Tk. 1125.00 crore. Therefore, Sonali Bank Ltd. can extend credit facility to a single party to the tune of Tk. 168.75 crore as funded and Tk. 164.75 as non-funded, Tk. 337.50 crore in total. Therefore, it is crystal clear that Sonali Bank allowed Tk. 3700 crore to a single party (Hall Mark) as opposed to the 337.50 crore breaking the single party exposure limit as fixed by Bangladesh bank, the central bank of the country.

82. Lord Denning Mr. in the case of Edward Owen Engineering Ltd. Vs. Barclays Bank International Ltd. and Umama Bank reported in 1978 Lloyd's Law Reports Vol-1 page 166, wherein it has been observed.

*"It 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 contracted obligation or not nor with the question whether the supplier is in default or not. The bank must pay according to its guarantee on demand, if so stipulated, without proof of conditions. The only exception is when there is clear fraud of which the bank has notice."*

*(emphasis is supplied)*

83. As per Article 34 of the ICC Uniform Customs and Practice the UCP 600 (2007 Revision) it speaks about the disclaimer on effectiveness of Documents which reads as thus;

*"A bank assumes no liability or responsibility for the form, sufficiency, accuracy, genuineness, falsification or legal effect of any*

*document, or for the general or particular conditions stipulated in a document or superimposed thereon; nor does it assume any liability or responsibility of the description, quantity, weight, quality, condition, packing, delivery, value or existence of the goods, services or other performance represented by any document, or for the good faith or acts or omissions, solvency, performance or standing of the consignor, the carrier, the forwarder, the consignee or the insurer of the goods or any other person. ”*

*(emphasis is supplied)*

84. Therefore, on a reading of the aforesaid article 34 it is crystal clear that a bank assumes no liability or responsibility for the form, sufficiency, accuracy, genuineness, falsification.

85. Since in the present cases in hand the respondents Bangladesh Bank and Sonali Bank disputed the Inland back-to-back letters of credit presented by the petitioners (beneficiaries) being forged documents, therefore, the issuing bank of the letters of credit has no liability or responsibility to honour them.

86. So, a letter of credit bank undertakes to honor a document that represents the underlying transaction. But, it does not undertake to honor a document that is fraudulent regardless of the innocence of the person presenting it.

87. In the present case it was alleged that Inland back-to-back letters of credit submitted by the petitioners are false documents by colluding with the applicant or a third party and there isn't any true basic transaction.

88. Fraud vitiates everything and in most cases it originates when a commercial party contracts with a rogue.

89. Thus it appears that only in two exceptional circumstances an issuing bank can absolve its responsibility of not honoring the obligation created by it under a letter of credit. Firstly, if it is proved that there is a clear fraud of which it has knowledge the bank may refuse to pay and secondly, if the cases are of such a nature that there is very special circumstance which warrants an interference by the court.

90. Since the genuineness of these letters of credit have been questioned by the issuing bank, therefore, under Article 102 we cannot entertain complicated disputed question of the fact as to whether the letters of credit annexed herein in the writ petitions are genuine or not.

91. The well-known principle that complicated questions of fact should not be entertained in a writ petition and the writ jurisdiction cannot be invoked when any alternative remedy is available to the aggrieved party cannot be disregarded at all. In the summary proceedings under Article 102 of the constitution, it is neither desirable nor advisable to enter into their merit and record a finding as to a disputed question of fact.

92. In the case of New India Tea Company Ltd. Vs. Bangladesh and others reported in 31 DLR(AD) (1979)-303 it was held that;

“There is a long line of decisions in favour of the view that the High Court should not enter into disputed questions of fact nor



decide any question as to title which require investigation into facts and taking of elaborate evidence.”

93. It is necessary to quote Section 45 of the Banking Companies Act, 1991, which runs thus:

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

(ক) জনস্বার্থে, বা

(M) j ħjef@a Hhw hÉjwL -নীতির উন্নতি বিধানের জন্য, বা

(N) ®Lje hÉjwL -কোম্পানীর আমানতকারীদের স্বার্থের পরিপন্থী বা hÉjwL -কোম্পানীর স্বার্থের পক্ষে ক্ষতিকর কার্যকলাপ প্রতিরোধ করার SeĤ; hj

(O) ®Lje hÉjwL -®LjĤfjefl kbjkb hÉhUĤfej te00Qa LI jI SeĤ, সাধারণভাবে সকল ব্যাংক-কোম্পানীকে, অথবা বিশেষ কোন ব্যাংক - কোম্পানীকে নির্দেশ প্রদান করা প্রয়োজন, তাহা হইলে বাংলাদেশ ব্যাংক যথাযথ নির্দেশ জারী করিতে পারিবে; এবং সংশ্লিষ্ট ব্যাংক -®LjĤfjef উক্ত নির্দেশ পালন করতে 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।

94. So the supervisory powers of the Bangladesh Bank within the meaning of Section 45 of the Bank Companies Act, 1991 which is to the effect:

(a) *In the public interest; or*

(b) *In furtherance of monetary and banking policy; or*

(c) *To prevent the affairs of any banking company being conducted in a manner detrimental to the interest of the depositors of any banking company or in a manner prejudicial to the interest of the banking company; or*

(d) *To secure the proper management of any banking company.*

95. It is a well-settled principal of law that in order to get a Rule of mandamus the petitioner must show that his claim is rooted in the statute or statutory Rule.

96. So, it is always required that the applicant for a mandamus should have a specific legal right to enforce the performance of those duties.

97. In the case of Queen v. Guardians of the Lewisham Union, reported in (1897) 1 QB 498 it was observed;

“This court would be far exceeding its proper functions if it were to assume jurisdiction to enforce the performance by public bodies of all their statutory duties without requiring clear evidence that the person who sought its interference had a legal right to insist upon such performance.”

98. In the case of Talekhal Progressive Fisherman Co-operative Society Ltd. Vs. Bangladesh and others reported in 1981 BLD(AD)-103 wherein it has been runs thus:

*“In order to entitle a person to ask for performance of any public duty by mandamus it is necessary to show that he has a legal right for claiming such performance apart from the fact that he is interested in the performance of the duty.”*

99. In the case of National Engineers vs. Ministry of Defence reported in 44 DLR (AD) (1992) 179 our Apex Court held thus:

*“In order to enforce the performance by public bodies of any public duty by mandamus, the applicant must have a specific legal right to insist upon such performance”.*

100. So, a writ of mandamus can be granted only in a case where there is a statutory duty imposed upon the public bodies and there is a failure on the part of that public bodies to discharge their statutory obligations. The paramount function of a writ is to compel performance of public duties prescribed by statute and to keep public bodies exercising public functions within the limits of their jurisdiction. Therefore, mandamus may issue to compel the public bodies to do something, it must be shown that there is a statute which imposes a legal duty and the aggrieved party has a legal right under the statute to enforce its performance.

101. Section 45 of the Act gives a clear indication, as to which situation Bangladesh Bank shall act and the petitioners failed to show us any legal right under section 45 of the Act which imposed a legal duty upon the Bangladesh Bank. Therefore, the petitioners are not entitled to seek any relief under section 45 of the Banking Companies Act, 1991 and as such these writ petitions are not maintainable in law.

102. The petitioners’ main allegation is against their respective negotiating banks (those are private banks) and as such writ petition does not lie under the provision of Article 102 of the Constitution.

103. Since the petitioners are borrowers (as they took 90% of the sale proceeds of the letters of credit as loan from their respective negotiating banks), they are obliged to repay their outstanding liability to their respective banks as their letters of credit were refused by the LC issuing banks being forged and the petitioners are also subject to the provisions of Artha Rin Adalat Ain, 2003.

104. The petitioners being defaulter-borrowers completely failed to show us any such specific legal right which imposes a legal duty upon the Bangladesh Bank.

105. According to M/S. Ripon Traders and others Vs. Bangladesh Bank reported in VII ADC(2010)152, it was held that “ once the borrower is found by the bank as loan defaulter under section 27 ka ka of Bank Companies Act, 1991. Every bank is required to send its report to Bangladesh bank and then Bangladesh Bank in turn is required in the interest of the lending market and the national economy at large in general and for compliance of the relevant laws in particular to send such list of loan defaulter to each and every banking company and or financial institution.”

106. In the instant cases as the petitioners as borrowers cannot curtail the power of the respondent No.2 by filing the instant writ petitions with a prayer for direction upon the respondents not to show their names in the CIB list.

107. Relying on the principle of law, in the instant case, we find that alternative forum is open to the petitioners to place their grievances seeking remedy before the civil court and hence we are inclined to keep our hands off in the matter of deciding the case on merit.

108. Having regard to the facts and circumstances of the case, we hereby discharge the Rules with observation that the petitioners may seek remedy in the proper forum, if any, for vindication of their right, if they are so advised.