

**In the High Court at Calcutta
Commercial Division
Original Side**

Judgment (2)

**PRESENT :
THE HON'BLE JUSTICE ANIRUDDHA ROY**

**IA No. GA-COM/1/2024
In CS-COM/680/2024**

**ABHIRAJ ASSOCIATES PRIVATE
LIMITED**

Vs

**AL AMANAH ISLAMIC
INVESTMENT BANK OF THE
PHILIPPINES AND ORS**

&

**IA NO. GA-COM/4/2025
In CS-COM/680/2024**

**ABHIRAJ ASSOCIATES PRIVATE
LIMITED**

Vs

**AL AMANAH ISLAMIC
INVESTMENT BANK OF THE
PHILIPPINES AND ORS**

**For the plaintiff : Mr. Rupak Ghosh, Adv.
Mr. Sourath Dutt, Adv.
Mr. Abhik Chitta Kundu, Adv.
Ms. Abhipiya Sarkar, Adv.**

**For the defendant No. 2 : Mr. Ayan Dutta, Adv.
Ms. Sarmistha Das, Adv.**

**For the defendant No. 5 : Mr. Paritosh Sinha, Adv.
Mr. Jaydeep Roy, Adv.**

Heard on : February 11, 2026

**Judgment on : February 11, 2026
[In Court]**

ANIRUDDHA ROY, J :

1. **IA No. GA-COM/1/2024** is an application filed by the plaintiff praying for an order of injunction against the defendants to protect the alleged balance claim on account of price of goods sold and delivered in connection with the Letter of Credit. The order of injunction has already been granted by the Co-ordinate Bench on **June 10, 2024** and was then modified by an order dated **January 31, 2025** to the extent to bring the defendant No. 2 within the purview of the said order of injunction and since then the order of injunction is also operating against the defendant No. 2.
2. Learned Counsel, Mr. Ayan Dutta appearing for the defendant No. 2 submits that his client has filed an application being **IA GA-COM/4/2025**, *inter alia*, praying for rejection of plaint as against the defendant No. 2 and the deletion of its name from the array of the parties.
3. In the said application, the plaintiff has filed its affidavit in opposition but the defendant No. 2 has not filed affidavit in reply.
4. At this juncture, Mr. Rupak Ghosh, learned Advocate appearing for the plaintiff submits that the plaintiff shall not rely upon the affidavit in opposition filed in the application filed by the defendant No. 2 and he shall defend the application only on the basis of the statement made therein.

5. In view of the above, by consent of the parties, both these applications being the instant one and **IA GA-COM/4/2025** are taken up for consideration one after another.
6. Since the application filed by the defendant No. 2 is for rejection of plaint, the same is taken up first.

In Re: GA-COM/4/2025

1. This is an application taken out by the second defendant, *inter alia*, praying for rejection of plaint as against it and consequently, for deleting the name of the second defendant from the array of the parties.
2. The plaint case is that the plaintiff has sold certain goods/articles to the defendant No. 4 at Bangladesh. Covering the entire price of the goods, the defendant No. 4 has opened a Letter of Credit with the defendant No. 1. The proforma defendant No. 5 is the banker of the plaintiff who is to receive the entire proceed covered under the Letter of Credit on account of the price of goods sold and delivered and then make over the same to the plaintiff. The defendant No. 4 as the buyer of the goods accepted the proforma invoice on **October 30, 2023** and then requested its banker, the second defendant herein to arrange for issuance of irrevocable and unconditional Letter of Credit (for short "**LC**") covering the entire value of proforma invoice. The defendant No. 2 found it difficult to open the said LC from its own counter and requested the defendant No. 1 to issue the LC for an aggregated sum of **USD 4,95,000.00** equivalent

to **Rs.4,12,08,750/-** in favour of the plaintiff. In terms of such request, the defendant No. 1 had issued LC dated **November 21, 2023** for the above sum in favour of the plaintiff, which would expire on **February 21, 2024**. The copy of the **Letter of Credit** is **Annexure B** at **page 28** to the instant application. The Letter of Credit as advised by the proforma defendant being the advising bank, was forwarded to it by a swift message by the defendant No. 2. The plaintiff states in the plaint that the said LC had diverse terms and conditions and the same was issued from the office of the defendant No. 1, being the issuing bank, but routed through the defendant No. 2 to the proforma defendant No. 5. The LC was subsequently amended by letters. The LC was then received by the plaintiff. Upon being satisfied with the authenticity of the same, as advised by the proforma defendant, the plaintiff had exported a total quantity for about **100 MT + 100 MT (two consignments)** of the goods. After completion of the export, the plaintiff sent the entire set of negotiable documents as contemplated under the LC, to proforma defendant. The proforma defendant then sent the negotiable documents under the said LC to the defendant No.1, the issuing bank, by its letter dated **February 20, 2024 and February 5, 2024**. The defendant No. 1 had raised a purported discrepancy by its communication dated **February 24, 2024** in connection with the documents sent by through the cover letter dated **January 20, 2024**. However, the same had been raised significant period after the stipulated five days provided for issuing discrepancies under

UCP-600. The petitioner had still obtained a letter, dated **February 29, 2024** waiving any discrepancy from the respondent No. 4, for abundant caution. As such the defendants have also forfeited their right to dispute the documents sent for negotiation any further and have made themselves liable to pay the entire amount raised in the invoices which is covered by the LC. The defendant No.3 had affirmed the said LC issued by the defendant no.1 as confirming bank as defined under **Article 8** of **UCP**. In **paragraph 22** to the plaint, the plaintiff states the role of the defendant No. 3 as confirming bank. The plaintiff further states that it has come to know that the defendant Nos. 1, 2 and 3 have allowed the original negotiable documents to be parted with in favour of the defendant No. 4 to facilitate the delivery of goods. In **paragraph 21 and 23** to the plaint, the plaintiff states that the defendant No.4 in collusion and conspiracy with the defendant Nos.1, 2 and 3 have taken delivery of the entire goods but the part of the sale consideration has not been paid. It is also stated that the defendant Nos.1, 2 and 3 had issued No Objection Certificates enabling the defendant No.4 to take delivery of the said goods in collusion and conspiracy with each other. The plaintiff through its letters, as stated in **paragraph 28** to the plaint, had demanded payment from defendant No.3 and defendant No.1. The case of the plaintiff stated in the plaint is that liability of the defendant Nos.1, 2 and 3, as the issuing bank, banker of the defendant No.4 and confirming bank respectively are co-extensive. **Paragraphs 26** and **33** to the plaint state the collusion

and conspiracy alleged by the plaintiff by and between the defendant Nos.1 to 4. **Paragraph No. 34, 35, 36 and 37** show that the plaintiff has raised its claims against the defendant Nos.1 to 4.

Paragraph 37 to the plaint read with **prayer (b)** to the plaint show that the plaintiff claims compensation against the defendant Nos. 1 to 3.

3. Mr. Ayan Dutta, learned Counsel appearing for the defendant No.2/applicant submits that the entire transaction is governed under UCP. Referring to the relevant provisions from UCP, *inter alia*, **Article 7 and 8** thereof, Mr. Dutta submits that no liability can be foisted upon the defendant No.2 in the facts of the case stated in the plaint. Mr. Dutta submits that the defendant No.2 has neither acted as confirming bank nor an issuing bank nor the nominated bank. The defendant No.2 merely has forwarded/relayed the LC to the proforma defendant No.5. He submits that, the issuing bank being the defendant no.1 first sent the LC to **Asia Pacific Investment Bank of Malaysia** (for short "**Malaysian Bank**"), which in turn had forwarded the same to the defendant No.2 and the defendant No.2 had forwarded the same to the proforma defendant.
4. Specifically referring to **Article 8** from the **UCP**, Mr. Dutta, learned Counsel for the applicant submits that the liability, if any, has to be foisted upon the defendant No.1 first and then the confirming bank being, the defendant No.3 and no liability can be foisted upon the defendant No.2.

5. Mr. Ayan Dutta, learned Counsel for the applicant/defendant No.2 submits that since no liability can be fixed against the defendant No.2 under the UCP, the plaintiff could not have raised any claim even in the nature of compensation against the defendant No.2. The entire transaction is governed under UCP. Indian laws have no application on the transaction.
6. Mr. Rupak Ghosh, learned Counsel being ably assisted by Mr. Sourath Dutt appearing for the plaintiff submits that the plaint case clearly demonstrates the liability of the defendant No.2 towards the unpaid sale consideration along with other defendants, arising out of the said LC.
7. Referring to the reliefs claimed in the plaint, learned Counsel for the plaintiff submits that the claims were made, specifically in **paragraph 34** and **37** to the plaint, against the defendant nos.1 to 3. The allegation of conspiracy is specifically pleaded in the plaint including against the defendant No.2 along with other defendants. He submits that the facts are complicated which are required to be tried by way of witness action. Summarily, it cannot be said, from the instant plaint, that the defendant No.2 is free from any liability arising out of transaction alleged by the plaintiff in the plaint.
8. In the light of the above, Mr. Rupak Ghosh, learned Counsel submits that this application should be dismissed and the plaint must stand for trial against the defendants.
9. After considering the rival contentions of the parties and on perusal of materials on record, at the outset, this Court reiterates the

settled principle of law while adjudicating an application praying for rejection of plaint. While adjudicating of an application for rejection of plaint, it is the duty of the Court to read the plaint and the statements including the reliefs made therein and not beyond that. The statements made in the plaint should be taken as true, correct and sacrosanct. The defence or the probable defence defendant can take to defend the plaint should not be the consideration of the Court while adjudicating an application for rejection of plaint. If on a plain and meaningful reading of the plaint, the Court is of the view that the plaint is either barred by law or does not disclose any cause of action against the defendant or any such defendants and/or if the suit is bad for non-joinder or mis-joinder of the parties, then the Court may reject the plaint in its entirety or against such defendants, as the case may be.

10. On a plain and meaningful reading of the instant plaint, it appears to this Court that the plaintiff has described a transaction relating to sale of goods. The goods were sold to the defendant No.4 who has consumed the goods. The sale consideration was covered under the said LC. The issuing bank of the LC was defendant No.1. The confirming bank was defendant No.3 and the banker of the defendant No.4/purchaser is the defendant No.2 and the negotiating bank on behalf of the plaintiff is the proforma defendant No.5. Collusion and conspiracy have also been stated with the alleged particulars in the statements made in the plaint. The plaint on the face of it does not show to be barred by any law or that it

does not disclose any cause of action against the applicant/defendant No.2. At the stage of final trial, the suit may fail against the defendant No.2 or may succeed. The bundle of facts stated in the plaint which gave rise to the cause of action alleged in the plaint, on a plain reading of the statements made the plaint show an alleged involvement of the defendant No.2 in the transaction. Segregation of cause of action is not possible without a proper trial of the suit. Truth may come out at the time of trial but not at this stage. From the Letter of Credit annexed to the plaint it appears that the defendant No.2 has been described as “Sender” therein. Therefore, the alleged involvement of the defendant No.2 in the transaction *qua* the Letter of Credit cannot be ruled out summarily, at this stage.

11. Considering the submissions made on behalf of the applicant/defendant No.2, it appears to this Court that, if this Court takes them into account at this stage, then a mini trial has to be held, which is not permitted in law.
12. Considering the complicated set of facts involved in the transaction, as pleaded in the plaint, *inter alia*, the allegations made against the defendant No.2 in the plaint, this Court is of the firm and considered view that, it is not a fit case for summary rejection of plaint against the defendant No.2.
13. Accordingly, the suit stands for trial.
14. Resultantly, the instant application being **IA No. GA-COM/4/2025** stands **dismissed**, without any order as to costs.

In Re: GA-COM/1/2024

1. Mr. Sourath Dutt, learned Advocate led by Mr. Rupak Ghosh, learned Advocate appears for the plaintiff/petitioner.
2. Mr. Ayan Dutta, learned Advocate appears for the respondent No. 2.
3. Mr. Joydeep Roy, learned Advocate appears for the proforma defendant No. 5.
4. This is the final hearing of an injunction application filed by the plaintiff/petitioner in which by two different orders dated **June 10, 2024** and **January 31, 2025**, the Co-ordinate Bench has passed orders of injunction against the defendants/ respondents restraining from withdrawing or transferring any amount from the bank account as mentioned in **paragraph 57** to the injunction application without leaving the balance of **Rs.1,66,90,785/-**. Initially, the order of injunction was for a limited period. Subsequently, the same was extended from time to time and the same is subsisting till **January 15, 2026** by virtue of the last order of extension dated **November 4, 2025**.
5. The defendant/respondent No. 2 has only filed its affidavit in opposition, to which the petitioner has filed affidavit in reply.
6. The rest of the defendants/respondents have not been represented at any point of time, despite notices. The non-appearing respondents have not filed their affidavit in opposition.

7. The appearing parties inform this Court that no appeal has been preferred from the orders of injunction dated **June 10, 2024** or **January 31, 2025**.
8. The petitioner states that the petitioner has sold and delivered goods to the respondent No. 4 upon proforma invoice being issued by it dated **October 30, 2023**. Upon the said proforma invoice being placed before the respondent No. 2, which has been described as the banker of the respondent No. 4, the respondent No. 2 agreed to issue the Letter of Credit covering the purchase price of the goods sold and delivered in favour of the respondent No. 4.
9. However, for the crunch in foreign currency prevailing at the relevant country where the respondent No. 4 is domiciled, the respondent No. 2 requested the respondent No. 1 to issue Letter of Credit. Accordingly, the Letter of Credit for a sum of **USD 4,95,000** equivalent to **Rs.4,12,08,750/-** dated **November 21, 2023**, **Annexure B** at **Page No. 28** to the injunction application, was issued by the respondent No. 1. The respondent No. 3 at all material time has been described as the confirming bank by the petitioner and the proforma respondent No. 5 has been described by the petitioner as the negotiating bank who shall receive the amount covered under the Letter of Credit (for short **"LC"**) and shall ultimately make over to the petitioner, the seller of the goods.
10. The Letter of Credit appearing at **page 28** to the application shows that the name of **"Swift Output Sender"** is the respondent No. 2 and the **"Receiver"** is proforma respondent No. 5.

11. The petitioner contends that no part of the sale consideration has been paid which is covered under the LC. The amount was initially released by the respondent No. 3 in favour of the proforma respondent No. 5 and then was paid to the petitioner by the proforma respondent No. 5.
12. Claiming the unpaid sale consideration, the instant suit has been filed.
13. The instant injunction application was moved before the Co-ordinate Bench on **June 10, 2024** when the order of injunction was passed to the effect, as already narrated above, and the same was then extended from time to time and is still subsisting till **January 15, 2026**.
14. Subsequently after receiving further information, the petitioner has filed a supplementary affidavit with the leave of the Co-ordinate Bench when after hearing the petitioner, the Co-ordinate Bench had modified the order of injunction dated **June 10, 2024** by its order dated **January 31, 2025**, to the extent that the defendant Nos. 1, 2 and 3 were also restrained from withdrawing or transferring any amount from the bank account mentioned in the said order.
15. Mr. Sourath Dutt, learned Advocate appearing for the petitioner submits that the Letter of Credit annexed to the petition clearly bears the name of the respondent No. 2 as the **Swift Output Sender**. Therefore, the involvement of the respondent No. 2 in the transaction and *qua* the Letter of Credit cannot be denied.

16. The extent of liability, as pleaded in the petition, insofar as the respondent No. 2 is concerned are, *prima facie*, apparent from the Letter of Credit and the allied records disclosed in this proceeding.
17. Mr. Sourath Dutt, learned Advocate appearing for the petitioner then refers to the orders passed by the Co-ordinate Bench and submits that after recording the facts in detail and after being satisfied, *prima facie*, on the basis of those facts, the order of injunction has been passed and the respondent No. 2 has not come up with any case which can demolish the said *prima facie* finding.
18. Hence, Mr. Dutt prays for continuation and confirmation of the interim order till disposal of the suit.
19. Mr. Ayan Dutta, learned Advocate appearing for the respondent No. 2 at the threshold refers to the statement from **paragraph 13** of the injunction application. He submits that it is the specific case of the petitioner that the proforma respondent was acting as advising bank and the negotiating bank on behalf of the petitioner and after receipt of the negotiable documents under the said LC, the same were forwarded duly by the proforma respondent to the respondent No. 1. He then refers to **Article 12** of the **UCP-600** and submits that unless a nominated bank is the confirming bank, an authorization to honour or negotiate does not impose any obligation on that nominated bank to honour or negotiate, except when expressly agreed to by that nominated bank and so communicated to the beneficiary. He then refers **Article 8** of **UCP-600** and submits that the same provided the stipulated documents are presented to

the confirming bank or to any other nominated bank and that they constitute a complying presentation then only the confirming bank must honour the Letter of Credit. In the facts of the instant case, as would be evident from the statement made in **paragraph 13** of the petition, the LC was presented before the respondent No. 1 being the issuing bank. Therefore, no liability on the part of the respondent No. 2 arises under the said **UCP-600** or otherwise in any manner.

20. Mr. Ayan Dutta, further refers to **Annexure B** at **page 21** from the affidavit in opposition and submits that in the said document, the name of the **Swift Output Sender** is mentioned as one Asia Pacific Investment Bank Limited and not the name of the respondent No. 2, but the name of the respondent No. 2 has been mentioned as **Receiver**. Therefore, there is no responsibility on the part of the respondent No. 2 to make any payment to the petitioner under the said Letter of Credit. The name of the respondent No. 2 even does not feature at the relevant Letter of Credit.
21. In the light of the above submissions, Mr. Ayan Dutta, learned Advocate appearing for the respondent No. 2 submits that no *prima facie case* has been made out based on available documents on record that any liability can be foisted upon the respondent No. 2 arising out of said LC. He further submits from **page 23** of affidavit in opposition that the name of **Sender to the Receiver** is mentioned as **Asia Pacific Investment Bank Limited**.
22. Hence the interim order should be vacated.

23. After considering the rival contentions of the parties and upon perusal of the materials on record, it appears to this Court that, the transaction of sale of goods by the petitioner in favour of the respondent no.4 has not been denied. The opening and existence of the said Letter of Credit is also not denied. Therefore, the transaction on record stands admitted, *prima facie*. The question whether any sum, is payable to the plaintiff or not is the subject matter of the trial in the suit.
24. Save and except the respondent no.2 and proforma respondent no.5, the other respondents have not entered appearance. The respondent no.2 and proforma respondent no.5 have also filed their written statement.
25. In between two documents at **page 28** to the injunction application and **page 21** to the affidavit in opposition filed by the respondent no.2 which one is to be taken as correct, that will also depend on trial of the suit. The document disclosed by the petitioner in its petition at **page 28**, *prima facie*, shows that the name of the **Swift Output Sender** is mentioned as the name of the respondent no.2.
26. The affidavit in opposition filed by the respondent no.2 also shows the involvement of the respondent no.2 in the transaction, but it may so happen at the time of final trial of the suit it may fail or succeed against the respondent no.2 after ascertaining its actual role in the transaction but *prima facie* involvement of the respondent no.2 has been found by this Court, of course with a triable issue.

27. The provisions referred to from the UCP-600 and its applicability, as raised by the respondent no.2 would also depend upon the correct facts being ascertained after conducting a detail fact finding trial.
28. This Court is of the view that, on a *prima facie* finding, this Court now is not in a position to decide whether any liability can be foisted upon or not on the respondent No.2 by applying the provisions under UCP-600 unless concrete finding of facts are arrived at.
29. In view of the foregoing reasons and discussions, this Court is of the considered and firm *prima facie* view that the orders of injunction passed by the Co-ordinate Bench, as referred to above, should continue and accordingly the same stand **confirmed** until disposal of the suit. The balance of convenience and/or inconvenience is also in favour of confirmation of the interim orders already passed.
30. In view of the above, the instant application being **IA No. GA-COM/1/2024** stands **allowed**.

(ANIRUDDHA ROY, J.)

RS