
‘PARALLEL FORMS, DIVERGENT FOUNDATIONS’: UNMASKING THE MIRRORED FAÇADE BETWEEN LETTER OF CREDIT AND BANK GUARANTEE IN MODERN FINANCE LAW

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ABSTRACT

‘What may be a mirage of resemblance in commerce might also fracture in law, such is the tale of letter of credit and bank guarantee’

The Concept of Letter of Credit and Bank Guarantee are considered to be Life Line in Business and Mercantile Transactions. They are a boon to the Commercial Smoothness in the sense that they aim to secure the Payment Consideration from the competing party and their vested interest so as to be effective and efficient in the world of Financial Propriety. They minimise the associated risk and the inherent jeopardy in securing the payment. Owing to diverse economic conditions and also the physical and geographical distance between the parties to a contract, the risk concerning the payment on the delivery of goods seem to increase. Hence, the instrumental force is the notion of Letter of Credit and Bank Guarantee. They aim to secure the payment and mitigate the afore-mentioned risk and thus, positively increase private financing and the market sentiment towards mercantile growth. In this research paper, the researcher aims to deliberate on the issue of Bank Guarantee and Letter of Credit in great details, identifying their advantages, dis-advantages while specifying their nuances, particulars and functioning. The present research is based on qualitative approach, and it will explore the afore-mentioned implications in business transactions analysed through a perspective of judicial precedents and legal developments

Keywords: Letter of Credit, Bank Guarantee, Strict Compliance, Autonomy, Fraud Exception.

INTRODUCTION

Letters of Credit and Bank Guarantee are in the Nature of an Insured Instrument wherein, the Credibility and Genuity of a Third Party usually a Bank is provided to a party to a contract as a Functional Declaration in protecting the contractual obligations. Therefore, the ultimate significance is that such possess the Imperative Notion of Reliability and Trust i.e., they ensure the payment of the amount of the contract that even an otherwise conscious and hesitant person not willing to expand his business might even consider the safe haven of Legitimacy of these instruments. Owing to diverse economic conditions, geographical distance between the parties to a contract, the risk concerning the payment on the delivery of goods seem to increase. Hence, the instrumental force is the notion of Letter of Credit and Bank Guarantee. They aim to secure the payment and mitigate the said risk of securing payment.

The Increasing prevalence of Letter of Credit and Bank Guarantee demand that the Legal Practitioners in this Contemporary age start focussing on their Economic and Mercantile Transactions and be more aware and cognisant of its various modalities so as to be able to render assistance to their client in a situation of debilitating rights.

The Research herein is directed towards Law and Economic Analysis of Letter of Credit and Bank Guarantee by suggesting its probable utilisation, advantages and dis-advantages. Research shall briefly study the legal development via an in-depth discussion into some of the legal precedents and judicial discourse.

Thus, the Research, pounds upon the Reviewal and Consideration of the Concept of Letter of Credit and Bank Guarantee. The Reviewal commences with the analysis of what exactly connotes a Bank Guarantee and Letter of Credit in Particular wherein, the Parties to such a transaction along with its Advantages and Dis-Advantages has been discussed critically. Subsequently, the Researcher goes on to discuss the Doctrine of Strict Compliance, and the Principle of Autonomy of the Credit. Further, the Fraud Exception Rule has also been laid out wherein, criticism of such deceptive practices on the basis of the Rule of law, Efficacy, Motives and Personality has been put forth.

Further, a discussion on the Distinction between the Concept and Meaning of Letter of Credit and Bank Guarantee has been discussed critically. The Approach of the Researcher is to Analytically review the Concept and Doctrines of the Letter of Credit in Particular while in

brief highlighting the differences between such and the Bank Guarantee. Such has been brought to light in conjunction with an in-depth discussion into such associated Relative.

The research critically follows the approach of Judicial Discourse and Elaborates on such Legal Precedents from a Historical Perspective of English Case Studies and concludes with an Elaborate Conclusion including the synopsis with a personal critique of the researcher.

STATEMENT OF THE PROBLEM

- What are the Trade Related Measures in ensuring Smooth Trading and Traders Transaction vis-à-vis Letter of Credit in Particular and Bank Guarantee whilst the Approach of the Judiciary in Critical Matters of Business Transactions concerning the Strict Compliance Rule, Principle of Autonomy and the Fraud Exception Rule along with such reasoning and market economic growth trajectory that it ensues?

RESEARCH OBJECTIVE

- To critically analyze the Concept and Understanding of the Letter of Credit and Bank Guarantee in Trade Transactions as an Effective and Efficient Disbursement Norm.
- To pound over the Principle of Letter of Credit in regards to the Strict Compliance Rule, Principle of Autonomy and the Fraud Exception Rule along with required and dictated conditions that forge an effective and optimal coverage in an elastic economy in this Globalized World Economy. Moreover, the research also highpoints the market responsiveness towards such issuance and the favorable outcome that ensues
- To highlight the Advantages and Dis-Advantages of the Concept of Letter of Credit in Particular and Bank Guarantee in General while discussing the Typology, Parties to the Transaction, Stages of Availing such Facility and the Holistic Nature of such Instrument.

REVIEW OF LITERATURE

Peter, Ellinger & Dora Neo, “*The Law and Practice of Documentary Letter of Credit*”¹ have

¹ Peter, Ellinger & Dora Neo (2010), “The Law and Practice of Documentary Letter of Credit”, Hart Publishing Ltd, 16C Worcester Place, Oxford, Britain.

intensively elaborated upon the principles governing Letter of Credit wherein, they stated in the backdrop of the Strict Compliance Rule the banks also possess the responsibility of reviewing the presented documents and to examine their Genuity with the terms and conditions for the issuance of funds under the Instrument.

Simone S., “*Understanding International Trade Law*”² deliberated on the crucial necessary components of a Letter of Credit to be those of Strict Compliance read with Autonomy Norm but subject to the exception of Fraud. Author mentioned that the Instrument of Letter of Credit is Functionally Independent and Separate to the underlying contractual constituents and must be paid if the instructions contained within it has been properly met to the satisfaction of the Bank, wherein, fraud and illegality is an absolute defence.

Roy.G, Herbert.K & Ewan.M, “*Transnational Commercial Law*”³ mentions that in a contractual relationship, the seller is to be complicit only if he has a guarantee of payment. Bank Guarantee in such sense provide a sense of confidence and positive conditioning to the party to the contract that the undertaking of making payment shall be duly complied with. Such reinforcement of payment of amount on the production of certain document is imperative.

Myneni.S.R. in his book titled “*Law of Banking*”⁴ provides that the Wagons of Multinationalism and Cosmopolitan Commerce has been brought at a successful cross road owing to the notions of Letter of Credit and Bank Guarantee. Seller has an Absolute Surety as to the Payment of the amount of the contract with minimal risk associated since the financial condition and good faith of the bank is substituted with that of the customer.

Peter. Gillies in his book “*International trade and business: Law, Policy and Ethics*”⁵ provides that the inherent risk of uncertainty of tendering due payment is remedied by the Bank acting as an Effective and Resilient intermediary between the competing interest of the parties in a contractual obligation.

² Simone S. (2010), “*Understanding International Trade Law*”, 2nd Indian Reprint, Universal Law Publishing Co, New Delhi, India.

³ Roy Goode, Herbert Kronke, & Ewan Mckendrick, *Transnational Commercial Law*, Oxford University Press 2007.

⁴ Myneni,S.R (2006), “*Law of Banking*”, Reprinted 2008, S.P.Gogia publisher ,Asian Law House, India

⁵ Peter Gillies (2002), “*International trade and business: Law, Policy and Ethics*, 3rd ed., Cavendish Publishing (Australia), Sydney.

Moreover, the author provides that in securing the payment of contract money the bank also safeguards the interest of the buyer in the sense that unless and until the specified and stipulated documents are not furnished by the seller, no amount is credited to the seller off of the Instrument. Therefore, such instrument is a conditional undertaking and not absolute in the sense that on the production of certain documents and supporting paper trail that the instrument is enforced.

Kulkarni. Z, in book titled "*Laws of Co-operative Banking*"⁶ critically commented on the preposition of Safety Valve of the Letter of Credit and Bank Guarantee that such does not involve automatic deposition and payment of the contractual amount but requires that the bank ought to make reasonable enquiry and must ascertain the propriety of the document before making payment of any consideration. The principles of Economics and Law need to be sought in the minds since such is an instrumental tool in enabling the efficient trade transactions and mercantile progress.

Sheldon & Fidler in their book titled, "*Practice and Law of Banking*"⁷ provides that since the issuing bank i.e., the bank which issues the Letter of Credit of the Bank Guarantee must ought to be a financial prowess of credibility and Genuity that the seller remain confident and certain of his assured payment post the delivery of contracted goods or service.

Kulkarni Z, and, Peivikaran M, and Salvi. D in their book titled, "*Laws and Practices Relating to Banking*"⁸ analysed the preposition of the Fraud Exception Norm where he they mentioned that unless there is a flagrant identification or apparent fraud or illegality, the Courts must not issue any sort of injunction so as to prevent the banks from making payment under the instrument owing to Party's Autonomy and trade enablement.

RESEARCH QUESTION

- What are the Concepts, Nature and the Advantages and Dis-advantages of Letter of Credit and Bank Guarantee in relation to Commercial and Mercantile Transactions concerning the Applicability of the Theories of Strict Compliance Rule, Principle of

⁶ Kulkarni Zacharia (2009), "*Laws of Co-operative Banking*" 1st Ed., Mumbai, India, MacMillan Publishers India Ltd.

⁷ Sheldon & Fidler (2007), "*Practice and Law of Banking*" 11th Edition, MacDonald & Evans Ltd Publisher, London

⁸ Kulkarni Zakaria, Peivikaran M, Salvi A.D(2004), "*Laws and Practices Relating to Banking*" 1st Edition, MacMillan India Ltd, Mumbai, India.

Autonomy and the Fraud Exception Norm along with required and dictated conditions that forge an effective and optimal coverage in an elastic economy in a Globalized World Economy?

RESEARCH HYPOTHESIS

- The Notion of Letter of Credit including its inherent Doctrines including those of Strict Compliance Rule, Principle of Autonomy and the Fraud Exception along with the Concept of Bank Guarantee Projects an Effective, Efficient, Enabling and Affirmative Mercantile and Commercial Progression in the Contemporary Trans-National Economic Realities.

RESEARCH METHODOLOGY

- **RESEARCH DESIGN:** The researcher adopts Exploratory Research Design wherein; an concentrated focus has been made upon the Law and Economic Analysis of providing for a Positive Market Sentiment and Mercantile Growth vis-à-vis Letter of Credit and Bank Guarantee, research being primarily qualitative, descriptive and analytical in its pertinence.
- **METHOD OF DATA COLLECTION:** The Qualitative Nature of the Research connotes Triangulation Methodology wherein, Doctrinal Analysis via reviewal of multi-dimensional data concerning a common subject matter to achieve a definitive and certain result.
- Online Databases, Legal Journals, Judicial Precedents were referred to.
- **TOOLS OF ANALYSIS:** The researcher has pounded over the matter of Letter of Credit and Bank Guarantee imputing secondary data for data analysis while employing tabling methods for effective data representation. Researcher evaluated the data qualitatively demonstrating the effectiveness of the law and procedures.
- **SCOPE:** The research paper, in its very essence, is of an extensive nature, however, for the purpose of the study, relatives concerning the Letter of Credit Particularly and the Notions of Strict Compliance Rule, Principle of Autonomy and the Fraud Exception have been intensively focussed upon via Judicial Discourse and analysis of Legal

Precedents. In regards to the Bank Guarantee, the Conceptual Framework and its Inter-relation with the Letter of Credit has been Highlighted and Briefed

FINANCING INTERNATIONAL TRADE

International Trade enables the Development of the Domestic Market and the Outreach of goods and services amongst its Global counterparts thus, establishing a Cosmopolitan Culture

If for instance the conditions in a municipal economy are unstable characterised by heavy risk undertaking, then the market sentiment in terms of trade will collapse. Hence, the forbearer is the safety and security of the investments. Mitigation of Market and Trade Risks in domestic as well as international transaction becomes the imperative necessity for the mercantile transactions, wherein, such bank Guarantee and Letter of Credit plays a crucial role.

LETTER OF CREDIT: AN INTRODUCTION

In the sense of Trans-National Trade and Commerce, it is very important to understand that the buyer and seller may not be related to each other in terms of certainty of contractual relationship, hence, risk and insecurity in the sense of payment subsists. Therefore, the trade negotiations are enabled via the issuance of the Letter of Credit which is regarded as a trustworthy mechanism of protecting the dual interest of both buyer and seller.

MEANING:

Letters of Credit is extensively utilised to settle payment in international transactions. Herein, the Bank provides a document wherein, it undertakes to make the payment on behalf of the person (Importer / Buyer) for such goods or services to a third party (Exporter / Beneficiary); provided that documents are presented in conformity to the conditions stipulated in the instrument.⁹

NATURE:

HAMZEH MALAS & SONS V BRITISH IMEX INDUSTRIES LTD¹⁰

⁹ Annual Audit Policy: Letters of Credit, Union Bank of India (2021), https://www.unionbankofindia.co.in/pdf/HKB_20_AuditPolicyLettersofCredit.pdf

¹⁰ [1958] 2 Q.B. 127

- **LORD JUSTICE JENKINS:** “The opening of a confirmed letter of credit constitutes a bargain between the banker and the vendor of the goods, which imposes upon the banker an absolute obligation to pay, irrespective of any dispute there may be between the parties.”¹¹

PURPOSE AND ESSENCE:

The objective of the issuance of the Letter of Credit is to provide an affirmative insurance to the person who is providing the goods and services of the payment of such transaction.

The Bank is only concerned with the Presentation of appropriate documents and shall make such payment when the due documents are laid out.¹²

Therefore, the Letter of Credit is in the nature of a stipulated undertaking wherein, the bank shall be making payment to a certain beneficiary when proper documents and the terms and conditions of such trade arrangements are fulfilled.

PARTIES TO LETTER OF CREDIT

APPLICANT/ OPENER	Such is the Person who Buys (Buyer) the Goods or imports (Importer) the same and on whose consideration the Documentary Credit is issued.
ISSUING BANK	This is the Bank which provides the Letter of Credit and undertakes to make payment on behalf of the Applicant on the condition of fulfilment of contractual obligation and production of proper document.
BENEFICIARY	This is most often the Seller or the Exporter of the Goods who is the beneficiary and is entitled to receive the payment on production of document and fulfilment of terms and conditions.

¹¹ ICC Global Trade and Finance Survey 2015. The official website of United States Council for International Business. (2015). Date View September 17, 2017 <http://www.uscib.org/icc-bankingcommission-global-survey-highlights-impact-of-trade-finance-gap-on-smes/> (Visited on 20.07.2024)

¹² Alphonse M. Squillante, “Letter of Credit: A Discourse Part 11” 84 Com. L.J. 426 1979 available at: <http://heinonline.org> (visited on July 17, 2024)

ADVISING BANK	This is the Bank located in the Beneficiary's territory which confirms to the legitimacy and authenticity of the issued letter of credit.
CONFIRMING BANK	The Bank which provides confirmation to the issued letter of credit located in the Beneficiary's territory after which the issuing bank makes payment.

THE TWOFOLD ROLE OF THE BANK IN THE LETTER OF CREDIT

The Bank acts as an Intermediary between the Interest of the Buyer and Seller to establish a Balance by protecting both of their rights and entitlements.

FIRST: The Bank provides a Confirmation or an Insurance to the Seller from the Risk and Insecurity of the Payment from the Buyer and thus, mitigates negative fall-out of trade.

SECOND: The Bank correspondingly also secures the interest of the Buyer by mandating that the payment from the letter of credit is not to be made unless and until the proper documents are presented signifying the fulfilment of the terms and conditions of the mercantile arrangements.

ADVANTAGES AND DISADVANTAGES OF LETTER OF CREDIT

ADVANTAGES	DIS-ADVANTAGES
Letter of Credit enables the Trading Parties to expand the horizons of their Mercantile Business to new frontiers and geographical locations with minimum risk and security of payment.	The Procurement and the Production of relevant documents and paperwork often is time consuming. Hence, Cost of Doing Business relatively seems to aggravate.
On the fulfilment of the terms and conditions and the production of the relevant paperwork and documents, the payment is to be made by the bank regardless of other considerations.	The Appreciation and Depreciation of a Currency is one of the probabilities wherein, the party may be detrimentally be affected by it.

• Letter of Credit can also be used as a Credit Certificate of the insured payment of transaction thus, mitigating risk of dealing with a foreign business personnel.	• Fraudulent Transactions may occur because of the production of illicit and forged paperwork and documents
• No Credit Risk of Insolvency or Bankruptcy of the Buyer or Importer. The Credit-worthiness of the bank is forwarded to that of the beneficiary.	• The release of the funds by the Issuing Bank has also been found to have consumed substantial time.

CASE REVIEWAL

- **R D HARBOTTLE (MERCANTILE) LTD V. NATIONAL WESTMINSTER BANK¹³**

FACTUAL MATRIX OF THE CASE:

In this case, the Plaintiff were Buyers from Egypt who had contracted with English Businessman wherein, the Buyers had provided a Guarantee of payment in the form of Letter of Credit. There were certain disputes in the transaction because of which the letter of credit was not confirmed and subsequently not honoured.

JUDGEMENT

“It is only in exceptional cases that the Court will interfere with the machinery of irrevocable obligations assumed by banks. They are the life-blood of international commerce.”

- JUSTICE KERR

Since, the rights and obligations between the parties arise out of their pure mercantile and business association and keeping into consideration Party’s Autonomy Rule, Court shall not interfere in such commercial matters except in clear case of fraud and illicit conduct.

If the functioning and operability of the banks are to be guided on the orders of the court then the trust over international instruments such as the Letter of Credit itself shall degrade which

¹³ [1978] 1 QB 146

in all cases must be mitigated.

FINDINGS OF THE CASE

First, the **AUTONOMY OF THE CREDIT**, which mandates that the Letter of Credit is in itself an Independent and Distinct piece of Document from the underlying contractual provisions and terms and conditions and thus, stands on a separate and autonomous pedestal.

Second is “**FRAUD EXCEPTION**” Principle that provides that the Buyer may bring into limelight any case of fraud or deprivious conduct on the part of the seller to obtain illicit and undue payment under the Letter of Credit; post which the banks are not obliged to make payment.

Third, **DOCTRINE OF STRICT COMPLIANCE** which mandates that unless and until the seller strictly and objectively confirms and complies to the requirement mentioned in the Letter of Credit, the bank is not obliged to make any payment.

CRITICAL REVIEWAL OF THE PRINCIPLES

1. PRINCIPLE OF AUTONOMY OF THE CREDIT

Letter of Credit is a Distinct, Separate, Autonomous and Independent piece of Document from the *Perse* Contractual Agreement. Hence, the concept of Letter of Credit is relevant only to the production of the relevant document from the seller to the bank and the consequent payment.

However, an exception to the said rule which the researcher shall be discussing further is the Fraud Exception Rule, wherein, on the production of such evidence which indicates illicit, undue and any fraudulent practices on the part of the seller to obtain payment under the Letter of Credit without fulfilling his/her liability, the bank may refuse to make any such payment.¹⁴

‘ESSENCE’: BANK OF NOVA SCOTIA V ANGELICA-WHITEWEAR¹⁵

The independence of the Letter of Credit implies that the Bank is under an Obligation to objectively honour the Documentary Credit on the production of relevant and specified

¹⁴ Discount Records v Barclays Bank and another [1975] 1 WLR 315

¹⁵ [1987] SCR 59

documents thus, respecting trans-national principles of comity and economic efficiency.

Any dispute or conflict in the terms and conditions of the instrument of the Letter of Credit is not to permit the bank or the buyer to cancel or withhold payment under the Letter of Credit.

ARTICLE 4, UNIFORM CUSTOMS AND PRACTICE 600, 2007¹⁶

“A credit by its nature is a separate transaction from the sale or other contract on which it may be based. Banks are in no way concerned with or bound by such contract, even if any reference whatsoever to it is included in the credit”

COMMENT: The Principle of the Autonomy of Credit enables the Seller to receive the Payment under the Letter of Credit wherein, the Bank is to make the payment on the production of relevant documents but can inspect only the submitted documents of delivery of goods and not goods *per se*.

2. “FRAUD EXCEPTION” RULE

On the Production of such evidence of any cogent fraudulent conduct on the part of the seller to obtain payment under the Letter of Credit with capricious, *mala-fide* and deprivious conduct, the issuing bank is not obligated to make any payment to the beneficiary.

CASE REVIEWAL:

- **R SZTEJN V J. HENRY SCHRODER BANKING CORPORATION¹⁷**

FACTUAL MATRIX

The Plaintiff avers that the shipping crate of the goods that had been ordered contained “cow-hair and other worthless material” and not what had been originally ordered. Hence, there was a case filed by the R. Szejn against the illicit delivery of goods by Transea Traders in the Henry Schroder Banking Corp. to declare the Letter of Credit as void and *non-est*.

¹⁶ The Uniform Customs and Practice 600 of 2007, Article 4

¹⁷ [1941]177 Misc. 719, 31 NYS 2d 6318

JUDGMENT

“The bank ought not to pay under the credit if it knows that the documents are forged, or that the request for payment is made fraudulently in circumstances where there is no right to payment”

- JUSTICE LANE

- **JUSTICE SHIENTAG:** The Principle of Autonomy of Credit and the obligation of the banker to pay the amount on the production of specified document is the critical forbearer of the principle of Letter of Credit. However, such is not to be allowed when clear and cogent evidence of fraud and capricious conduct of the seller is apparent so to obtain payment under the Documentary Credit for their duped delivery of goods.

IMPERATIVE CONSIDERATION

- **UNITED CITY MERCHANTS V ROYAL BANK OF CANADA¹⁸**

FACTUAL MATRIX

The Documents that were submitted to the bank for inspection and subsequent payment under the Letter of Credit contained a Mis-Statement of the Delivery date, hence, cause of action arose to cancel the payment under the Letter of Credit.

OBSERVATION OF THE COURT

“Exception is that where the documents under the credit are presented by the beneficiary himself and the bank knows when the documents are presented that they are forged or fraudulent, the bank is entitled to refuse payment”

- JUSTICE BROWN

LORD DIPLOCK: On the production of such evidence which indicates illicit, undue and any fraudulent practices on the part of the seller to obtain payment under the Letter of Credit

¹⁸ United City Merchants (Investments) Limited v. Royal Bank of Canada [1982] 2 All ER 720

without fulfilling his/her liability, the bank may refuse to make any such payment.

Any material irregularity or wrongful documentary presentation vitiates the receipt of the amount under the Letter of Credit. Such is based on the Legal Maxim “*EX TURPI CAUSA NON ORITUR ACTIO*” i.e. No Legal Action lies against an Illegal Act.

3. DOCTRINE OF STRICT COMPLICANCE

The Doctrine provides that the bank is entitled to reject a Letter of Credit if it Strictly and Objectively does not confirm to the terms and conditions. Therefore, the bank is obligated to honour the Letter of Credit only if the proper and due documents which are laid out by the buyer are presented such as the bill of lading, shipment, etc.

CASE REVIEWAL

- **EQUITABLE TRUST COMPANY OF NEW YORK V DAWSON PARTNERS LTD¹⁹**

JUSTICE VISCOUNT SUMMER: The bank is under a legal liability to honour the Letter of Credit only if it confirms to the documents and the terms and conditions as laid out by the buyer. Any departure from such a rule would imply that the mercantile integrity is being threatened and hence, the banks ought to remain vigilant and objective in determining the validity of the documents submitted so that due and proper payment under the Letter of Credit could be made.

ANALYSIS

International Trade had been plagued by the issue of uncertainty of payment by the buyer/importer owing to differing political, social and legal arenas.

This Legal Research provides that the Letter of Credit is indeed a sound and effective instrument for financing international trade and mitigating risks of which following outcomes may be sought:

¹⁹ (1927) 27 Ll. L. Rep. 49

- Letter of Credit is an Efficient Method of Financing International Trade. Letter of Credit can also be used as a Credit Certificate of the insured payment of transaction thus, mitigating risk of dealing with a foreign business personnel
- Such Letter of Credit is also an Enabler for Affirmative Mercantile Relationship because it fosters a sense of Positive Market Sentiment amongst the buyer and seller to indulge in trading activities with minimum risk and assured payment from an independent party (Bank) on the production of certain stipulated documents.

Letters of Credit are the “life blood” and “backbone” of Trans-National Business Arrangements wherein, risk is mitigated and the payment is assured and made certain via such instrument providing safety and security to the buyer and seller.

Hence, the Letter of Credit is a Securitising Instrument which is Separate and Distinct from the primary commercial contract along with strictly confirming to the documents as laid out by the buyer. Banks have the liability to only inspect the submitted documents and not anything more however, such is excused when the following circumstance is evidenced:

- i) Documents do not confirm to the terms and conditions of the Letter of Credit,
- ii) Apparent Fraudulent and illicit transaction

Therefore, the Letter of Credit is in the Nature of a Guarantee of Payment to the seller on behalf of the buyer if there is a failure on the part of the buyer to make the payment. Hence, it acts as a Bridge between the rights of the buyer and seller and an attempt to balance the same.

BANK GUARANTEE

Bank Guarantee is a Mercantile Instrument wherein, the Payment of the amount is secured by the bank. It is an arrangement between the issuing bank and the person in whose favour it has been drawn, i.e., the beneficiary, that on his default of payment, it is to be made by the bank.

The Bank Guarantee enables the efficiency of the market by providing for smooth, efficient and efficacious payment system via banks. Banks acts an Intermediary out of Trust between the seller and the buyer and obliges itself to make payment unconditionally to the relevant person

NATURE AND ESSENCE

- **BASANT RLYMERS ALWAR V. STATE CHEMICAL AND PHARMA. CORP.**²⁰

Ruled that since the Economic and Financial Base of an Economy is the Critical Component of the Contemporary age, the Bank Guarantees must be encash-able; otherwise, the confidence in the banking system altogether might collapse and the faith of the people in the instrument such as the Bank Guarantee might tarnish.

BENEFITS OF BANK GUARANTEE

BENEFITS TO THE GOVERNMENT
• Ameliorates Private Investment in Infrastructure projects including Social and Physical. • Accessibility to Commercial Banks and transactions via Banking System thus, formalising the Indian Economy. • Sovereign Liability is minimised by the inclusiveness of the Private Sector • Enables the Private Sector to expand their commercial and business horizons by securing the payment of amount • Project Sustainability is strengthened. • Mitigates Risk

Bank guarantees are in the nature of an Unconditional Undertaking wherein, the Bank supposes to provide the payment on the default of payment by the concerned party. Thus, it acts as a Contingent Instrument which is enforced the moment there is non-payment of liability.

Bank Guarantee is an Unequivocal undertaking of the acceptance of the liability of making payment on default of the payment by another. The bank binds itself to make the payment in case of non-payment of the amount.

²⁰ AIR 1986 Raj. 1: 1985 Raj LW 23

LETTER OF CREDIT V. BANK GUARANTEE

LETTER OF CREDIT	BANK GUARANTEE
• Can be availed only after the production of relevant and pertinent documentary proof and fulfilment of terms and conditions of letter of credit. (Positive Guarantee)	• Can be availed in case of non-payment of the amount by the concerned person. (Negative Guarantee)
• Used in International Transactions between Exporters and Importers.	• Used in Domestic Transactions
• Involves Multi Party Association from the Applicant, Issuing Bank, Beneficiary, Corresponding Bank amongst others.	• Three Party Transaction including Buyer, Seller and Bank
• Commonly used in EXIM Trade	• Used more often in Government Bidding with minimum Bank Guarantees to be filed

REMARKS

In the words of Christopher Columbus Langdell:

“Law, considered as a science, consists of certain principles and doctrines ...the number of fundamental legal doctrines is much less than is commonly supposed; the many different guises in which the same doctrine is constantly making its appearance, and a great extent to which legal treaties are petition of each other being the cause of much misapprehension”

Letter of Credit and Bank Guarantee are both crucial and imperative necessity of the contemporary age. In the current times, the Export-Import Market along with Globalisation has strengthened hence, a cosmopolitan culture demands that the economic and financial base feels confidence and certainty in trading internationally. However, owing to differing social, political and economic instabilities, the sentiment of the market seems to degrade. The guiding forebears hence, is the Bank Guarantee and the Letter of Credit. They seem to encourage the foreign trade by mitigating the risk to the maximum possible extant. They provide the much-needed

security and safety in international trading. They are such economic instruments owing to which the positive market sentiment is being cultivated in the minds of mercantile and business personnel.

Therefore, the Letter of Credit and Bank Guarantee is in the Nature of a Guarantee of Payment to the seller on behalf of the buyer if there is a failure on the part of the buyer to make the payment. Hence, it acts as a Bridge between the rights of the buyer and seller and an attempt to balance the same.

The Bank Guarantee and Letter of Credit enables the efficiency of the market by providing for smooth, efficient and efficacious payment system via banks. Banks acts an Intermediary out of Trust between the seller and the buyer and obliges itself to make payment unconditionally to the relevant person.

Thus, the Research, pounds upon the Reviewal and Consideration of the Concept of Letter of Credit and Bank Guarantee. The Reviewal commences with the analysis of what exactly connotes a Bank Guarantee and Letter of Credit in Particular wherein, the Parties to such a transaction along with its Advantages and Dis-Advantages has been discussed critically. Subsequently, the Researcher goes on to discuss the Doctrine of Strict Compliance, and the Principle of Autonomy of the Credit. Further, the Fraud Exception Rule has also been laid out.

Further, a discussion on the Distinction between the Concept and Meaning of Letter of Credit and Bank Guarantee has been discussed critically. The Approach of the Researcher is to Analytically review the Concept and bring to light such associated Relative.

Letters of Credit and Bank Guarantee are the “life blood” and “backbone” of Trans-National and Domestic Business Arrangements wherein, risk is mitigated and the payment is assured and made certain via such instrument providing safety and security to the buyer and seller.

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