# THE HIGH COURT OF SINDH, KARACHI

**Suit No. 1192 of 2022**

[Ziauddin Ahmed & Co. (Pvt.) Limited versus Karachi Shipyard & Engineering Works Ltd. & Others]

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| Plaintiff | : | Ziauddin Ahmed & Co. (Pvt.) Limited through M/s. Khawaja Shams-ul-Islam, Obaid-ur-Rehman, Sabih Ahmed Zuberi and Khalid Iqbal, Advocates. |
| Defendants No. 1 & 2 | : | Karachi Shipyard & Engineering Works Ltd & another through M/s. Arshad M. Tayebaly and Talha Javed, Advocates. |
| Defendant No. 3 | : | Nemo. |
| Defendant No. 4 | : | M/s. Gravity Works through Mr. Faheem Raza, Advocate.<br><br>Mr. Mubashir Mirza, Assistant Attorney General for Pakistan. |
| Dates of hearing | : | 06-10-2022, 11-10-2022, 21-10-2022, 28-10-2022 & Re-hearing on 04-08-2023 |
| Date of decision | : | 31-08-2023 |

## O R D E R

**Adnan Iqbal Chaudhry J. -** This order decides CMA No. 8430/2022 by the Plaintiff for a temporary injunction to stay payment by the Defendant No.3 **[guarantor/bank]** to the Defendant No.1 **[beneficiary]** under two bank guarantees issued at the instance of the Plaintiff **[principal]**. The CMA also prays for restraining the Defendant No.4 from carrying out works at the site of the Defendant No.1. The said prayers are in the following facts.

2. On 26-06-2019, the Plaintiff was awarded a contract by the Defendant No.1 for infrastructure upgradation of Karachi Shipyard and Engineering Works, Package-I: *"Repair/Replacement of Workshop Steel Roof Trusses"* **[the Works]**. As required by the contract, the

Plaintiff caused the Defendant No.3 to issue to the Defendant No.1 the following bank guarantees:

(i) bank guarantee No. IGT09470174119PK dated 26-06-2019 to the extent of Rs. 78,591,002/- (10% of the contract price), renewed uptill 27-06-2022 to guarantee the performance of the contract **[Performance Guarantee]**;

(ii) bank guarantee No. IGT09470174019PK dated 26-06-2019 for Rs. 107,472,461/, last renewed to the extent of Rs. 52,750,860 uptill 27-06-2022 to secure the mobilization advance disbursed by the Defendant No.1 to the Plaintiff **[Mobilization Guarantee]**.

3. The contract required the Works to be complete in 12 months i.e. by July 2020, however, that could not be accomplished. Time and again the Defendant No.1 gave deadlines to the Plaintiff at the risk of cancellation of contract. It appears that the Works were still incomplete when the suit was filed. Both sides of course fault each other for the delay.

The Plaintiff submits that the Defendant No.1 did not specify the Engineer and the Engineer's Representative, and consequently day-to-day approvals required by the contract were delayed. The Defendant No.1 submits that it had nominated a team of Engineers who were in the knowledge of the Plaintiff.

The Defendant No.1 submits that the Engineer had issued numerous notices to the Plaintiff that rate of progress was too slow, that labour and sub-contractors deployed by the Plaintiff were inadequate, that timely completion of Works was crucial to the production of national defence equipment, but the Plaintiff did not take remedial action. The Plaintiff submits that the Defendant No.1 had restricted access to the site, that the scope of work was largely undefined, that the lock-down during the covid-19 pandemic was a set-back for the labour and also hampered cash-flow, hence the delay.

The Plaintiff submits that the balance works could not be completed also for the reason that the Engineer withheld approval for payment of IPC No.14. The Defendant No.1 submits that IPC No.14 had been raised not for any section of the Works but on incomplete

BoQs, hence could not be approved for payment; and that, for the works actually undertaken, the Plaintiff has already been overpaid.

Per the Plaintiff, the Works had been substantially completed by it and that the Engineer's evaluation of incomplete Works was biased towards the Defendant No.1. On the other hand, the Defendant No.1 submits that a subsequent evaluation was also undertaken by a third-party surveyor and despite notices the Plaintiff did not depute any representative for a joint survey.

4. The events leading to the call on the bank guarantees and subsequent relevant events appear as follows:

(i) By letters dated 18-02-2022 and 21-02-2022, the Defendant No.1 invoked clause 64.1 of the contract for engaging another contractor for undertaking a portion of the Works that required urgent action, and called upon the Plaintiff to hand over that part of the Works to the new contractor *viz.* the Defendant No.4. Plaintiff's letter dated 22-02-2022 shows that it agreed, and by its letter dated 04-03-2022 the Plaintiff handed over part of the Works to the Defendant No.4.

(ii) By letter dated 13-04-2022 the Defendant No.1 again invoked clause 64.1 of the contract for the remaining part of the Works, also contracted to the Defendant No.4, and called upon the Plaintiff to transfer the site to it. However, by letter dated 18-04-2022 the Plaintiff resisted, and by letter dated 29-04-2022 it invoked the dispute resolution clause 67.1 of the contract for the Engineer's decision prior to arbitration.

(iii) By letter dated 26-05-2022 the Defendant No.1 gave 14-days notice to the Plaintiff for termination of contract and for taking over the site. By letters of the same date the Defendant No.1 also called upon the Defendant No.3 to encash the bank guarantees. On 27-05-2022 the Plaintiff filed the instant suit.

(iv) The Engineer's decision under clause 67.1 of the contract was communicated by the Defendant No.1 to the Plaintiff under cover of letter dated 03-06-2022, which concluded that the Plaintiff was in breach of contract for failing to complete the Works, and that for the Works actually carried out the Plaintiff was already been overpaid.

(v) On 10-06-2022 the Defendant No.1 issued notice to the Plaintiff that pursuant to its prior notice dated 26-05-2022 the contract stood terminated.

5. As per the dispute resolution mechanism provided in clause 67.1 of the contract, before a reference to arbitration under clause 67.3, the dispute shall first be referred to the Engineer for his decision within 84 days. Learned counsel for the Plaintiff Mr. Khawaja Shams-ul-Islam, assisted by Mr. Obaid-ur-Rehman, submitted that the Plaintiff had already invoked clause 67.1 of the contract; that until such time the Engineer gives his decision and the arbitrator decides which party committed breach, it would be inequitable to allow encashment of the bank guarantees. To address the case of *Shipyard K. Damen International v. Karachi Shipyard and Engineering Works Ltd.* (PLD 2003 SC 191) ***[Karachi Shipyard]***, learned counsel submitted that said case has been revisited by the Supreme Court in *EFU General Insurance Ltd. v. Zhongxing Telecom Pakistan (Pvt.) Ltd.* (PLD 2022 SC 809) ***[Zhongxing]*** to recognize unconscionability as an exception to the rule of non-interference with bank guarantees, and to extend the rule of strict compliance to the letter of demand made on a bank guarantee, both of which aspects required consideration in this case, and hence the bank guarantees should be stayed.

6. Mr. Arshad Tayebaly, learned counsel for the Defendants 1 and 2 submitted that since the Plaintiff failed to complete the Works, the Defendant No.1 was entitled under the contract to engage another contractor at the risk of the Plaintiff which it did. He submitted that the Engineer had already given his decision under clause 67.1 of the contract, and while the parties had yet to invoke clause 67.3 of the contract for arbitration, that was no ground to stay the bank guarantees which were independent contracts, made payable by the Defendant No.3 unconditionally and irrespective of the dispute between the Plaintiff and the Defendant No.1. In that regard Mr. Tayebaly relied on the case of *Karachi Shipyard* and cases from the High Courts that have consistently applied that dictum.[1] Regards

[1] *Guangdong Overseas Construction Group Company v. Creek Marina* (PLD 2011 Karachi 304); *Shan Associates v. Getz Pharma* (2020 CLD 808); *Husein Industries v. Sui Southern Gas Company* (PLD 2020 Sindh 551); and *Pakistan Real Estate Investment & Management Company v. Sky Blue Builders* (2021 CLD 518).

*Zhongxing*, he submitted that said case was of no help to the Plaintiff as it had not pleaded any of the exceptions to the rule of non-interference, nor do the letters of demand in the present suit fail the test of strict compliance. Relying on *Sazco (Pvt.) Ltd. v. Askari Commercial Bank Ltd.* (2021 SCMR 558) learned counsel submitted that in any case the letters of demand had met the test of substantial compliance.

7. Heard learned counsel and perused the record.

8. Regards the prayer in the CMA for restraining the Defendant No.4 from carrying out Works at the site, the same prayer was made by the Plaintiff in Suit No. 879/2022, and though an interim order was granted to the Plaintiff, that was suspended by a Division Bench in HCA No. 193/2022 *vide* order dated 13-06-2022. In the presence of that order of the Division Bench, I do not consider a prayer to the contrary in this CMA.

9. It is settled law that a bank guarantee is an autonomous contract, and as such it to be construed on its own terms, independent of the underlying contract between the principal and the beneficiary and irrespective of claims pending between them. Accordingly, the nature and text of the bank guarantee assumes great importance.

10. Of the two well-known types of bank guarantees, a Mobilization Guarantee is given to secure the advance payment received by the principal from the beneficiary for the contracted works. Usually, as also the case here, the beneficiary deducts that advance payment from bills raised by the principal from time to time and the Mobilization Guarantee is then renewed for the unadjusted amount. A Performance Guarantee, generally speaking, is to guarantee that the principal will fulfil its obligations under the underlying contract.

11. Given that a Mobilization Guarantee is essentially the beneficiary's money with the principal, the Courts ordinarily invoke

**'the rule of non-interference'** with a banker's obligation to construe such guarantee as not being subject to a restraining order even if there is a dispute between the parties to the underlying contract.[2] However, in cases involving guarantees such as Performance Guarantees, the Courts grant or refuse injunction depending upon the text of the guarantee construing it on **'the rule of strict compliance'**. Therefore, for example, if the Performance Guarantee contains a stipulation to the effect that payment thereunder is conditioned on a default by the principal under the underlying contract, an injunction may follow on the theory that default has yet to be proved. On the other hand, if the stipulation is to the effect that the guaranteed sum is payable unconditionally, or irrespective of any dispute between the principal and beneficiary, or that the beneficiary shall be the sole judge of the default alleged, then an injunction is refused. However, to the latter scenario there are at least two recognized exceptions. One, where the court is satisfied that the beneficiary's demand on the bank guarantee is fraudulent and the guarantor is aware of the fraud; and two, where the court is satisfied that the case gives rise to a 'special equity' in favor of the plaintiff. For the stated principles, one of the leading cases is *Shipyard K. Damen International v. Karachi Shipyard and Engineering Works Ltd.* (PLD 2003 SC 191) ***[Karachi Shipyard]*** where the Supreme Court held:

> "7. After having gone through the precedented law as mentioned hereinabove the judicial consensus seems to be as follows:--
>
> (i) The performance of guarantee stands on the footing similar to an irrevocable letter of credit of Bank, which gives performance guarantee must honour that guarantee according to its terms. It is not concerned in the least with the relations between 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 all demand if so stipulated without proof or conditions. Only exception is when there is a clear fraud of which Bank has notice.
>
> (ii) There is an absolute obligation upon the banker to comply with the terms and conditions as enumerated in the guarantee and to pay the amount stipulated therein irrespective of any disputes there may

[2] See *National Construction Ltd. v. Aiwan-e-Iqbal Authority* (PLD 1994 SC 311).

be between buyer and seller as to whether goods are up to contract or not.

(iii) The bank guarantee should be enforced on its own terms and realization against the bank guarantee would not affect or prejudice the case of contractor, if ultimately the dispute is referred to arbitration for the reason, once the terms and conditions of the guarantee were fulfilled, the bank's liability under the guarantee was absolute and it was wholly independent of the dispute proposed to be raised.

(iv) The contract of bank guarantee is an independent contract between the bank and the party concerned and is to be worked out independently of the dispute arising out of the work agreement between the parties concerned to such work agreement and, therefore, the extent of the dispute and claims or counter-claims were matters extraneous to the consideration of the question of enforcement of the bank and were to be investigated by the arbitrator.

(v) Where the bank had undertaken to pay the stipulated sum to respondent, at any time, without demur, reservation, recourse, contest or protest, and without any reference to the contractor, no interim injunction restraining payment under the guarantee could be granted.

(vi) The Bank guarantee is an autonomous contract and imposes an absolute obligation on the bank to fulfil the terms and the payment on the bank guarantee becomes due on the happening of a contingency on the occurrence of which the guarantee becomes enforceable.

(vii) …….

(viii) In the absence of any special equities and the absence of any clear fraud, the bank must pay on demand, if so stipulated and whether the terms are such must be have to found out from the performance guarantee as such.

(ix) The unqualified terms of guarantee could not be interfered with by Courts irrespective of the existence of dispute."

12. I now turn to the case of *EFU General Insurance Ltd. v. Zhongxing Telecom Pakistan (Pvt.) Ltd.* (PLD 2022 SC 809) ***[Zhongxing]*** upon which the case of the Plaintiff came to rest. In that case the Supreme Court has in fact reiterated the principles set-out in *Karachi Shipyard,* however with the caveat that the law on performance guarantees had since moved on, as in Singapore where 'unconscionability' was now an established ground for the Court intervening to restrain payment under the guarantee, and therefore it was observed that:

> "While *Karachi Shipyard* is clearly an important milestone in this area of the law, the High Courts should not consider themselves as limited only to what may be regarded as falling strictly within the four corners of the decision. In commercial and corporate matters in particular the development of the law must continue apace and it should be recognized that the real engines of change are the High Courts. While of course always keeping Article 189 of the Constitution in mind and adhering to the requirements thereof, the decisions of this Court should, in these areas of the law, be regarded as being akin (to borrow a famous phrase from elsewhere in the law) to 'living tree[s]', "capable of growth and expansion within [their] natural limits".

However, the question whether the exception of 'special equities' carved out in *Karachi Shipyard* would also cover 'unconscionability', was left open by the Supreme Court.

13. Therefore, with *Zhongxing*, counsel for the Plaintiff are correct to the extent that *Karachi Shipyard* should not be considered as limiting fraud and special equities as the only possible exceptions to non-interference with bank guarantees. That being said, the principles enumerated in para 7 of *Karachi Shipyard* (reproduced above) continue to hold the field.

14. The more illuminating aspect of *Zhongxing*, and one on which judgment there was eventually rendered for the appellant/guarantor in that case, is the extension of the rule of strict compliance also to the letter of demand raised on the bank guarantee as distinct from the guarantee itself. The facts of that case were that the guarantee stipulated that EFU as guarantor would make payment to the beneficiary *"on receipt of your first written demand stating that the sub-contractor has breached the above mentioned contract with you."* While seeking an extension in the date of the guarantee the beneficiary wrote to the guarantor that *"In case the party for which guarantee has been issued do not agree for further extension of guarantee, this letter may be treated as notice for encashment of guarantee."* The contractor/principal did not extend the guarantee. EFU/guarantor did not encash the guarantee and denied liability on the ground that the letter of demand did not strictly comply with the text for demand stipulated

in the guarantee. The beneficiary filed suit for recovery against the guarantor, which was decreed, and the guarantor's appeal also failed. Thus, the question before the Supreme Court was whether the rule of strict compliance, as in letters of credit, would also apply to the letter of demand raised on the bank guarantee. It was held that:

> "8. In our view, the correct approach to be adopted in this jurisdiction is for the Court to initially proceed on the basis that strict compliance is required. If this test is not met it is then for the party claiming otherwise to show that the test of substantial compliance should be applied in the facts and circumstances of the case, while keeping in mind the actual text of the bond/guarantee. However, it should be kept in mind that the threshold required for the party to succeed on such a submission is a high one and is not to be lightly or easily accepted by the Court. There must be clear justification (which must be recorded in appropriate reasoning) for the Court to so hold, i.e., to uphold the claim notwithstanding that the rule of strict compliance has not been met."

The guarantors appeal before the Supreme Court that it was not liable to pay, was allowed on the ground that the letter of demand was in substance a letter seeking extension in the date of the bank guarantee wherein encashment was sought only as an afterthought, and such demand was far from making a substantial compliance with the text of the demand required by the guarantee.

15. Adverting now to the facts of this suit, the relevant text of the bank guarantees is reproduced under.

> "*PERFORMANCE GUARANTEE*
>
> ……..
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> *We, Habib Bank Limited, Industrial Estate Commercial Centre, Site Branch Karachi (the Guarantor), waiving all objections and defenses under the Contract, do hereby irrevocably and independently guarantee to pay to the Employer without delay upon the Employer's first written demand without cavil or arguments and without requiring the Employer to prove or to show grounds or reasons for such demand any sum or sums up to the amount stated above, against the Employer's written declaration that the Principal has refused or failed to perform the obligations under the Contract which payment will be effected by the Guarantor to Employer's designated Bank & Account Number.*
>
> *PROVIDED ALSO THAT the Employer shall be the sole and final judge for deciding whether the Principal (Contractor) has duly performed his obligations under the Contract or has defaulted to fulfilling said obligations and the Guarantor shall pay without objection any sum or sums up to the amount stated above upon first written demand from the Employer forthwith and without any reference to the Principal or any other person."*

"*MOBILIZATION GUARANTEE*

> *"NOW THEREFORE, The Guarantor hereby guarantees that the Contractor shall use the advance for the purpose of above mentioned Contract and if he fails and commits default in fulfilment of any of his obligations for which the advance payment is made, the Guarantor shall be liable to the Employer for payment not exceeding the aforementioned Guaranteed Amount.*
>
> *Notice in writing of any default, of which the Employer shall be the sole and final judge, on the part of the Contractor, shall be given by the Employer to the Guarantor, and on such first written demand, payment shall be made by the Guarantor of all sums then due under this Guarantee without any reference to the Contractor and without any objection."*

*Prima facie*, both the bank guarantees are unconditional undertakings to pay on a demand in writing from the beneficiary and without reference to the principal or the underlying contract, with it being stated that the beneficiary shall be the sole and final judge that default has been committed by the principal. Therefore, the general rule of non-interference with the guarantees as enumerated in *Karachi Shipyard* and as endorsed in *Zhongxing* is squarely attracted here.

16. The Plaintiff has not pleaded any particulars of fraud as required by Order VI Rule 4 CPC, nor is it the case of the Plaintiff that the Defendant No.3 bank was aware of a fraud underpinning the demand on the bank guarantees. As observed in *Karachi Shipyard*, a plaintiff has to make out a 'clear' case of fraud to invoke that as an exception to the general rule of non-interference. Even at the hearing, learned counsel for the Plaintiff did not urge this exception.

17. The precise case of the Plaintiff is that it would be inequitable and hence unconscionable not to stay the bank guarantees when the arbitrator has yet to decide which party committed breach of the underlying contract. But a similar submission has been rejected by the Supreme Court time and again in *National Construction Ltd. v. Aiwan-e-Iqbal Authority* (PLD 1994 SC 311), in *National Grid Company v. Government of Pakistan* (1999 SCMR 2367), and then also in *Karachi Shipyard* to hold that pending claims and counter-claims do not

constitute an exception to the rule of non-interference with bank guarantees. As discussed, *Zhongxing* brings no change to that. In other words, the argument that the arbitrator has yet to decide which party is at fault, does not draw on the exception of special equities or on unconscionability assuming for the time being that the latter is not encompassed by the former. Facts of the case discussed in paras 3 and 4 above leading to the demand on the bank guarantees is also to show that *prima facie* such demand cannot be termed unconscionable.

18. I now turn to the last leg of the Plaintiff's submission *viz.* that the letters of demand raised by the Defendant No.1 on the bank guarantees did not comply with the terms of the bank guarantees thus failing the test of strict compliance as in *Zhongxing*.

19. The letter written by the Defendant No.1 to the Defendant No.3 to raise a demand on each bank guarantee was in the same text as follows:

> *"Consequent upon the failure of M/s. Ziauddin Ahmed and Company Private Limited (ZCL) to fulfill their contractual obligations, we return an original bank guarantee with amendments (containing twenty three pages). The details of bank guarantee is as under:*
> *…….*
> *Therefore you are requested to encash the above mentioned bank guarantee and issue pay order in favour of Karachi Shipyard & Engineering Works Ltd."*

In comparison, the stipulation in the Performance Guarantee was that the Defendant No.3 /guarantor will pay *"…. against the Employer's written declaration that the Principal has refused or failed to perform the obligations under the Contract"*; and the Mobilization Guarantee stipulated *"Notice in writing of any default, of which the Employer shall be the sole and final judge,…."*.

20. It is well known that the rule of strict compliance applied to bank guarantees is borrowed from a principle underpinning letters of credit *viz.* that the documents presented by the beneficiary/seller to the issuing/confirming bank for payment must conform strictly to the terms of the credit, failing which the bank is entitled to refuse

payment. The standard of that rule as propounded in the early 19th century in the case of *Equitable Trust of New York v. Dawson Partners Ltd.*[3] was a rigid one, *viz.* that a document that nearly complies or one that is just as good, does not suffice. As a result, even typographical errors that were immaterial to the terms of the credit were taken as grounds to reject documents. That standard has since undergone a change. As noted by the Supreme Court in *Sazco (Pvt.) Ltd. v. Askari Commercial Bank Ltd.* (2021 SCMR 558) ***[Sazco]*** that: "Over time, there has been a judicial realization that in certain cases, the principle of strict performance should not be followed in a literal and robotic manner"; and that, the rule of strict compliance is to be construed with a rigidity "that preserves the legitimacy of documentary credits subject to the facts and circumstances of each case". That same realization also manifests in UCP 600 (where applicable)[4], where Article 14(d) provides that: "*Data in a document, when read in context with the credit, the document itself and international standard banking practice, need not be identical to, but must not conflict with, data in that document, any other stipulated documents or credit.*" Previously, Article 13(a) of the UCP 500 had provided that the documents must "*appear, on their face, to be in compliance with the terms and conditions of the Credit*" and must not "*appear on their face to be inconsistent with one another*". The departure from the test of 'inconsistency on the face of the document' for the test 'that the document need not be identical but must not conflict' signified that the rule of strict compliance should not be construed as too rigid a standard.

21. Therefore, strict compliance does not mean that trivial and immaterial variations from the requirements of the letter of credit would render the documents discrepant, or that a rigid, meticulous

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[3] [1926] 27 Lloyd's Rep 49, 52.

[4] Uniform Customs and Practice for Documentary Credits [UCP] is a publication of the International Chamber of Commerce [ICC] setting out harmonized rules for dealing with letters of credit. The version in field is UCP 600 which came into effect on 01-07-2007 and which replaced the UCP 500 which was prevailing since 1993. However, as per Article 1 of the UCP, these rules bind the parties only if and to the extent they are incorporated in the letter of credit.

fulfilment of precise wording is called for in each and every case,[5] the intent being to preserve the legitimacy of the documentary credit.[6] Applying that principle to a demand made on an independent guarantee, some treatise suggest that if the demand required to be made is worded very generally, it would be sufficient for a beneficiary to comply in a way that conforms to those general words, but if the guarantee stipulates a detailed requirement, as for instance stating the exact form of words that must be used in making the demand, the beneficiary would have to comply strictly with those requirements; in other words, the degree of the 'strict' standard may vary with the words used in the guarantee.[7]

22. The arguments of learned counsel insinuated that there was a variance between the pronouncements of *Zhongxing* and *Sazco*. I think not. From the case of *Zhongxing* it seems that in Pakistan the afore discussed variation in the degree of strict compliance in relation to demands on bank guarantees is addressed by the **'test of substantial compliance'**. However, that test is not to be applied in the first instance, but only after 'initially' proceeding on the assumption that strict compliance is required. If then the Court is satisfied that exact literal compliance is not a requirement of the guarantee and the demand so raised constitutes strict compliance, or if the guarantee did require exact literal compliance but the variation in the demand was trivial or immaterial to the obligation to pay under the guarantee, the Court would be justified in holding substantial compliance.

23. In the present suit, as regards the demand made on the Mobilization Guarantee, there can be no question to strict compliance when the guarantee itself only required notice in writing of "*any default*", and the letter of demand stating that the Plaintiff had failed "*to fulfill their contractual obligations*" was in fact notice of **a** default.

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[5] *The Law and Practice of Documentary Letters of Credit* by Peter Ellinger and Dora Neo, 2010, Chapter 10, page 228.
[6] *Sazco (Pvt.) Ltd. v. Askari Commercial Bank Ltd.* (2021 SCMR 558).
[7] *The Law and Practice of Documentary Letters of Credit*, ibid, Chapter 13, page 325.

24. As regards the letter of demand raised on the Performance Guarantee, the submission of Plaintiff's counsel is essentially that the rule of strict compliance entails that such demand should have read: "*the plaintiff has refused or failed to perform the obligations under the Contract*" instead of reading "*failure of plaintiff to fulfil their contractual obligations*"; and since it does not, payment under the guarantee is to be stayed. In response, counsel for the Defendant No.1 submitted that the words in the guarantee for raising a demand were used generally, and therefore the Defendant No.1 was only required to comply with words that were to the same effect, which it did. With that, I agree. The subject guarantee cannot be construed as having prescribed an exact text for raising a demand, and therefore use of words to the same effect met the requirement of strict compliance. Even assuming for the sake of argument that the words for the demand in the guarantee were intended as a prescribed form for the actual demand, the demand so raised was nevertheless in substantial compliance as envisaged in *Zhongxing*. In contrast to *Zhongxing,* this is not a case were the guarantor has taken any issue to the demand, and more importantly, not a case where it is pleaded or argued that the semantics of the actual demand could be construed as anything but the required demand. For these reasons, the last leg of the Plaintiff's submission also fails.

25. Having considered that the Plaintiff's case does not bring forth any exception to unsettle the general rule of non-interference with bank guarantees, and that the demand raised on the bank guarantees too meets the test of strict compliance, the Plaintiff does not have a *prima facie* case for the grant of a temporary injunction to stay payment under the bank guarantees, nor a case of irreparable harm. The balance of convenience is also in favour of the Defendant No.1. Therefore, CMA No. 8430/2022 is dismissed.

**JUDGE**

Karachi
Dated: 31-08-2023

Announced by & on