

IN THE COURT OF SH. SANDEEP YADAV,
DISTRICT JUDGE (COMMERCIAL)-03, SOUTH,
SAKET COURTS, NEW DELHI

CS (Comm) 29/2018
CNR NO. : DLST01-008026-2018

M/s. Devang Solar
A-4/16, Site IV, Adarsh
Industrial Area, Sahibabad
Ghaziabad, UP 201010

..... Plaintiff

Versus

1. Punjab National Bank
43, SCO, Basant Lok
Vasant Vihar
New Delhi-110057

..... Defendant no.1

2. M/s. SEW Engineering Works (P) Ltd.
Plot No. A-21, Sector-23
Noida-201301, U.P.

..... Defendant no.2

Date of institution of suit	:	05.12.2018
Date of reserving judgment	:	11.09.2025
Date of pronouncement	:	17.09.2025

J U D G M E N T

1. Plaintiff M/s. Devang Solar filed this suit for recovery of Rs. 16,45,300/- with interest against Oriental Bank of Commerce (original defendant no.1) and defendant no. 2 M/s. SEW Engineering Works (P) Ltd. Subsequently plaintiff filed an application seeking to place on record amended memo of parties stating that Oriental Bank of Commerce has

been merged with Punjab National Bank. Amended memo of parties has been filed by plaintiff.

2. Case of plaintiff emanating from the plaint is as under :-

3. Plaintiff firm is engaged in the business of manufacturing and sale of street lights, LED lights, solar lights, batteries, etc. Defendant no. 2 gave a purchase order for purchase of 83 Solar Street Lights from the Plaintiff. Plaintiff issued tax Invoice for Rs.16,12,275/- and on the same date, a Delivery Note was also issued by Plaintiff. Defendant no. 2 paid Rs. 2,00,000/- as advance and for the remaining amount of Rs.14,12,275/- LC dated 23.08.2017 was arranged by the Defendant no. 2 through Defendant no.1. One solar light was given as sample and on 23.09.2017 Defendant no.2 received the 82 number of solar lights, vide acknowledgment on the transporter's Consignment Note dated 20.09.2017.

4. Kotak Mahindra Bank, banker of Plaintiff, intimated on 01.09.2017 about LC being opened. It was not clarified in the plaint as to what is meant by the words '**LC**'. However, it subsequently transpired that the words '**LC**' means 'Letter of Credit'. Consequently, Plaintiff issued Bill of Exchange for release of the funds arranged through Letter of Credit. On 07.12.2017, Defendant no.2 acknowledged the delivery of the Tax Invoice.

5. Plaintiff issued In-House test report for the quality check of the goods. Goods were delivered to the defendant no.2 on 23.09.2017 and duly received and acknowledged by the defendant no.2 from the transporter.

Plaintiff submitted the bill of exchange of suit amount to its Banker on 27.11.2017. Plaintiff's Bank, Kotak Mahindra Bank, issued the Bill Covering Schedule for suit amount on 29.11.2017. On 08.12.2017, Defendant no.1 informed the banker of Plaintiff that the required documents for release of Letter of Credit are not in line with the terms and conditions of the Letter of Credit.

6. After receiving this message, plaintiff vide its letter dated 20.12.2017 sent original receipt of material to the Kotak Mahindra Bank. On 22.12.2017 Defendant no.1 issued Inland Bill Refusal Advice to the Kotak Mahindra Bank in which reason for refusal has been mentioned as "Bill not accepted by our party as documents sent are not in line with the terms and conditions of said LC". Plaintiff also sent an engineer with team of Defendant no. 2. The lights were checked and after certifying that the lights were giving proper output and backup, to remove the discrepancy the plaintiff submitted documents vide letter dated 20.12.2017.

7. Defendant no. 1 again issued a letter of refusal for making the payments of the suit amount to the Banker of the Plaintiff on the basis of Letter of Credit on the ground "Bill not accepted by our party as documents sent are not in line with terms and conditions of said LC". Plaintiff vide e-mails dated 16.02.2018 and 08.03.2018 intimated that in-spite of supplying the material in first week of November 2017, payment has not been received and it was requested that LC payment may kindly be cleared immediately. Plaintiff again sent email dated 08.08.2018 demanding payments of amount due. It is an established legal position that the banker with whom, LC

advice is opened, is only concerned with the terms of LC to be satisfied. It is clear that the payment has been withheld by defendants in connivance with each other without any reason and basis. The needed documents required for the purpose of LC as per Defendant no. 2 i.e. purchase order, delivery challan and test certificate were submitted through the banker of Plaintiff. Defendant no.1 has no right to withhold the payment as the LC was created by the Defendant no.1 to release the payment after delivery of the goods and the same should have been released the moment it was conveyed to Defendant no.1. Failure of defendants to pay the due amount despite repeated requests of plaintiff, compelled the plaintiff to issue legal notice dated 05.09.2018 to defendants. When the said legal notice failed to produce any result, plaintiff filed the present suit for recovery of Rs. 16,45,300/- alongwith pendente lite and future interest @ 18 % per annum.

8. Defendant no. 1 in written statement contested the suit submitting that defendant no. 1 refused the request for release of LC amount as documents supplied were not in line with terms and condition of LC. It was further stated in the written statement that plaintiff supplied defective documents and purchase order, delivery challan & test certificate were not acknowledged by defendant no. 2 which was pre-requisite as per terms and conditions of LC.

9. Defendant no. 2 stated in the written statement that defendant no. 1 rightly rejected the payment to be made to plaintiff as plaintiff failed to submit necessary and relevant document in accordance with Letter of Credit. The suit was also contested by defendant no. 2 submitting that suit

is not maintainable on the ground that authorisation in favour of Deepak Kumar Jha does not empower him to file the present suit. It was further submitted that plaintiff has not been signed, verified and filed by a duly authorised person. Defendant no. 2 also contested the suit on the ground that this Court lacks territorial jurisdiction to decide this case as defendant no. 2 runs its office from Noida and leave of this Court has not been taken to file the suit in Delhi. On merit, it was stated by defendant no. 2 that plaintiff has supplied defective material to defendant no. 2. Defendant no. 2 admitted that order for supply of equipments was placed by plaintiff and defendant made payment of Rs. 2 lacs and LC dated 23.08.2017 was opened. It was further stated that LC was opened for 83 solar lights and not for 82 solar lights. Defendant no. 2 denied that he has acknowledged tax notice on 07.12.2017. Defendant no. 2 specifically stated in the written statement that plaintiff has only supplied 82 numbers of batteries and not 83 as per purchase order and those goods supplied to defendant no. 2 are not in accordance with purchase order and same do not have requisite back up of 20-22 hours.

10. After completion of pleadings following issues were framed on 06.01.2020:-

- (i) Whether plaintiff is entitled to recover a sum of Rs. 16,45,300/- with interest as prayed for ? OPP
- (ii) Whether the suit of plaintiff is not maintainable in the present form ? OPD1 & 2.
- (iii) Relief, if any.

11. Arguments addressed at Bar by Mr. Prasoon Kumar, 1d. Counsel for plaintiff as well as Ms. Mahima Rathore, 1d. Counsel for defendant no. 1 and Ms. Poonam, 1d. Counsel for defendant no. 2, were heard at length. Record perused. One witness each was examined by plaintiff, defendant no. 1 and defendant no.2.

12. Issuewise finding of the Court is as under :-

13. **Issue no. 1 - Whether plaintiff is entitled to recover a sum of Rs.**

16,45,300/- with interest as prayed for ?

14. Burden of proof of this issue was on plaintiff. PW 1 Abhishek Mittal deposed that he has been authorised through Power of Attorney/authorisation dated 28.07.2022 to depose before the Court. Copy of power of attorney/authorisation was proved as Ex. PW-1/1. However, a mere look at the authorisation letter Ex. PW-1/1 would reveal that this authorisation is in favour of Deepak Kumar Jha not in favour of PW 1 Abhishek Mittal. It is, therefore, obvious that document authorising PW 1 to depose on behalf of plaintiff was not proved in accordance with law.

15. Besides, authorisation Ex. PW-1/1 bears the dated 24.11.2018 and not 28.07.2022 as stated by PW 1 in his evidence by way of affidavit. It is, therefore, crystal clear that PW 1 Abhishek Mittal had no authority in his favour to testify before the Court on behalf of plaintiff. Resultantly, the deposition of PW 1 cannot be read and taken into consideration to determine as to whether plaintiff has discharged the burden of proof *viz-a-viz* issue no. 1. Hence, the entire case of plaintiff is wiped out on account of

absence of authorisation in favour of PW 1 Abhishek Mittal to depose on behalf of plaintiff as PW 1 was the sole witness examined by plaintiff.

16. Even if the testimony of PW 1 Abhishek Mittal is taken into consideration, same does not prove that plaintiff is entitled to decree as would be clear from the subsequent discussion and analysis.

17. PW 1 Abhishek Mittal deposed in para 3 of his evidence affidavit that one solar light was given as sample and on 23.09.2017 defendant no. 2 received 82 number of solar lights vide acknowledgment of transporter's consignment note dated 20.09.2017. However, consignment note dated 20.09.2017 was not proved. The delivery note or delivery challan of transporter does not bear the signatures of defendant, meaning thereby it was not acknowledged by defendant no.2. Therefore, the deposition of PW 1 in para 6 of evidence affidavit was not proved. Similarly, Bill Covering Schedule Ex PW-1/8 is only the photocopy. No official from Kotak Mahindra Bank who issued this bill was examined to prove the document Ex. PW-1/8. Hence, it is concluded that Bill Covering Schedule Ex. PW-18 was not proved in accordance with law. Letter dated 20.12.2017 stated to have been written by plaintiff thereby sending original receipt of material to Kotak Mahindra Bank was also not proved in evidence. No exhibit mark was put on the said letter.

18. PW 1 Abhishek Mittal in para 14 of his evidence affidavit deposed that documents required for Letter of Credit as per defendant no. 2 i.e. purchase order, delivery challan and test certificate, were submitted through

banker of plaintiff. Again, plaintiff has not proved on record any document showing that aforesaid documents were submitted through banker of plaintiff. No official from banker of plaintiff was examined in this regard. Mere oral testimony of PW 1 Abhishek Mittal to this effect will not prove that purchase order, delivery challan and test certificate were submitted through banker of plaintiff.

19. The main defence of defendant no. 1 & 2 is that defendant no. 1 refused to release the amount of Letter of Credit as documents submitted by plaintiff were not in accordance with terms of Letter of Credit. It is clear from a bare perusal of purchase order Ex. PW-1/2 that order was for supply of 83 number of batteries. However, delivery copy of transporter mentions 82 number of solar lights. Therefore, the documents filed by plaintiff itself support the contention of defendant no. 2 that plaintiff supplied 82 number of solar lights and not 83 number of lights as per purchase order.

20. Case of plaintiff is that one solar light was sent to defendant no. 2 as sample. However, there is no record or document to prove furnishing one sample light by plaintiff to defendant no. 2. Further, the purchase order was for Ah Lithium ION Battery (Samsung) with backup 20-22 hours. However, in the In-house report Ex. PW-1/5 the battery type is described as Lifepo4.

21. Plaintiff has not clarified as to whether Lifepo4 means Samsung Battery or not. Same report does not mention that battery being tested has output of 20-22 hours as per purchase order. Although, PW 1 Abhishek Mittal deposed in cross examination that at serial number 31 in test report,

Lifepo4 is written which is lithium battery, however, PW 1 Abhishek Mittal has not furnished any justifiable basis to depose that lifepo4 means lithium battery. The test report was also not signed by any of the representative of defendant no. 2. Therefore, defendant no. 1 was right in refusing to release the amount of Letter of Credit in favour of plaintiff as goods were not supplied by plaintiff as per Letter of Credit.

22. Mr. Prasoon Kumar, ld. Counsel for plaintiff, relied upon ***Hindustan Steel Workers Construction Ltd. Vs. G.S. Atwal & Co. (Engineers) (P) Ltd, (1995) 6 SCC 76***. It was held in this case that Letter of Credit is independent and unqualified by the contract of sale or underlying transactions. However, in the present case, plaintiff has failed to furnish the documents i.e. signed invoice copy in duplicate, copy of purchase order, delivery challan and test certificate, as per Letter of Credit itself and hence, aforesaid judgment will not help the plaintiff.

23. Plaintiff in the plaint or in evidence has not clarified as to whether M/s. Devang Solar is a proprietorship firm, partnership firm or a company. Therefore, plaintiff suffers from the vice of lack of material particulars. It has also come in cross examination of PW 1 Abhishek Mittal that Letter of Credit was renewed. The fact that Letter of Credit was renewed was not mentioned in the entire plaint. Therefore, plaintiff has not disclosed relevant facts in the plaint. Further, plaintiff has not examined the transporter through whom goods are stated to have been delivered to defendant.

24. It is, therefore, obvious that plaintiff has miserably failed to prove that plaintiff is entitled to a decree of Rs. 16,45,300/- with interest. Accordingly, issue no. 1 is decided against the plaintiff and in favour of defendants.

25. **Issue no. 2- Whether the suit of plaintiff is not maintainable in the present form ? OPD1 & 2.**

26. Defendant no. 2 has taken specific objection in the written statement that suit of plaintiff in the present form is not maintainable as the alleged authorisation in favour of Deepak Kumar Jha does not empower him to file the present suit. Defendant no. 2 contended that plaint has not been signed, verified and filed by a duly authorised and competent person.

Order 3 rule 1 CPC provides as under :-

“Any appearance, application or act in or to any Court, required or authorized by law to be made or done by a party in such Court, may, except where otherwise expressly provided by any law for the time being in force, be made or done by the party in person, or by his recognized agent, or by a pleader appearing, applying or acting, as the case may be, on his behalf:

Provided that any such appearance shall, if the Court so directs, be made by the party in person.”

27. According to Order 3 Rule 2 (a) CPC *the recognized agent of party by whom such appearance, applications and acts may be made or done*

are person holding power of attorney, authorising them to make and do such appearance, applications and acts on behalf of such parties.

28. As per the averments of plaint, the suit has been filed by plaintiff through its Authorised Representative namely Deepak Kumar Jha. Perusal of record would reveal that there is no Power of Attorney on record in favour of said Deepak Kumar Jha as required under Order 3 (2) (a) CPC. Plaintiff is relying on the authorisation Ex. PW-1/1 whereby Sneha Mittal, proprietor of plaintiff has authorised Deepak Kumar Jha do to various acts. Firstly, the said authorisation does not authorise Deepak Kumar Jha to institute and file the suit. Secondly, this document was not proved in the testimony of PW 1 Abhishek Mittal who deposed that he has been duly authorised through Power of Attorney/authorisation dated 28.07.2022 Ex. PW-1/1. Therefore, while exhibiting the document as Ex. PW-1/1, PW 1 Abhishek Mittal was referring to the authorisation in his favour and not in favour of Deepak Kumar Jha. In any case, PW 1 Abhishek Mittal was not competent to prove the authorisation letter Ex. PW-1/1 as he has not signed the said document. Thus, defendant no. 2 was right in submitting that the suit has not been instituted, signed and verified by a duly authorised person.

29. Besides, defendant no. 2 has also taken an objection regarding territorial jurisdiction of this Court to entertain and decide the present the suit. However, no issue in this regard was framed. Be that as it may, the fact remains that one of the defendants i.e. defendant no. 2 does not reside or work for gain within the territorial jurisdiction of this Court. Neither defendant no. 2 has consented to the suit being instituted before this Court

nor plaintiff has sought the leave of Court in this required as required under Section 20 CPC.

30. Accordingly, issue no. 2 is decided in favour of defendants and against the plaintiff.

31. Issue no. 3 – Relief, if any.

32. In view of findings on issue no. 1 & 2, the suit filed by plaintiff is dismissed. Parties to bear to their own cost.

Decree sheet be prepared accordingly.

File be consigned to **Record Room**.

Announced in the open court
on 17.09.2025.

(Sandeep Yadav)
District Judge (Commercial)-03
South, Saket Courts, New Delhi.