IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION
IN ITS COMMERCIAL DIVISION

COMM SUIT NO. 12 OF 1999

UPL Limited
A Company incorporated under
the Companies Act, 1956 and having
its registered office at 11, GIDC,
Vapi, District Valsad, Gujrat.
And office at Uniphos House, Madhu
Park, 11th Road, Khar (W),
Mumbai- 54. ...**Plaintiff**

Versus

1. Standard Chartered Bank
A Body corporate incorporated under
Royal Charter of England in 1853 and
having its Principal Office at 1,
Aldermanbury Square, London,
EC2V TSB.
2. Standard Chartered Bank
A Body corporate incorporated under
Royal Charter of England in 1853 and
carrying on business in India, inter
alia, at 23-25, M.G. Road, Fort,
Mumbai- 400 001. ...**Defendants**

Mr. Shyam Mehta, Senior Advocate, a/w Mr. Sandeep Parikh, Mr. Prakash Shah, Mr. Durgaprasad Poojari, i/b PDS Legal, for the Plaintiff.

Mr. Aspi Chinoy, Senior Advocate, a/w Mr. Gautam Bhatikar & Ms. Madhavi Doshi, i/b Phoenix Legal, for the Defendants.

CORAM: N. J. JAMADAR, J.
RESERVED ON : 14th January, 2021.
PRONOUNCED ON: 8th June, 2021.

JUDGMENT :

1. This is a suit for damages for negligence in making payment of money under the letter of credit and consequent loss

of business, and interest thereon.

2. The material averments in the plaint can be summarized, in brief, as under:

(a) The plaintiff is a company incorporated under the Companies Act, 1956. It deals in the business of manufacture of pesticides. The plaintiff entered into a contract for purchase of 400 metric tonnes of Yellow Phosphorous for US$ 615200 with Hunan Leader International Trade General Corporation, Changsha, Peoples Republic of China (Hunan). Under the terms of the contract the payment to Hunan was to be made through irrevocable letter of credit.

(b) Defendant no.1 is a body corporate incorporated under the Royal Charter of England, 1853. Defendant no.1 carries on the business of banking in India. On 6th June, 1996, the plaintiff applied to the Mumbai branch of defendant no.1 (defendant no.2) for issue of letter of credit in favour of Hunan for US$ 615200 (the defendant - bank). On 10th June, 1996 the defendant-bank opened a letter of credit, being L/C. NO. 529/960341 for US$ 615200.

(c) Under the terms of the letter of credit, the beneficiary was required to submit following documents:

(i) Five Commercial Invoices in quadruplicate stating description, quantity and value of goods as per plaintiff's purchase order No. BV 100343 dated 17th May,

1996.

(ii) Complete set of not less than three original and non-negotiable copies of clean on board ocean bills of lading (issued by the Carrier or his agent) marked freight paid to the order of the bank with the party to be notified being the plaintiff.

The letter of credit further stipulated that the goods should be shipped by sea worthy vessels, which are not more than 25 years old classified 100 A1 by Lloyds or equivalent classification society. A certificate to that effect from the shipping line or their agents was required to accompany the documents.

The letter of credit was also subject to Uniform Customs and Practice for Documentary Credit 1993 Revision (UCP 500).

(d) On 8th July, 1996 the bank advised the plaintiff that they had received bills of exchange and related documents purported to have been drawn under the said letter of credit. The bank had not offered inspection of those documents to the plaintiff. The plaintiff was, thus, constrained to rely upon the statement of the bank in the advice that there were no discrepancies in those documents. Under UCP 500, it was a bounden duty of the bank to scrutinize the documents for any discrepancy therein and inform the plaintiff thereof. The bank was obligated not to accept the documents if they were found to

be not in conformity with the terms and conditions of the letter of credit.

(e) The bank furnished documents to the plaintiff on or about 19th July, 1996. Vide letter dated 23rd July, 1996, the defendant bank advised the plaintiff that it had debited accounts of the plaintiff to the tune of Rs. 2,22,54,460.66/-.

(f) While the plaintiff was making efforts to ascertain whereabouts of the vessel, on which the cargo was being carried to Mumbai, by making enquiries with the Seller and the Carrier, the plaintiff noticed that there were serious discrepancies in the documents, especially the transport document and the sea worthiness certificate. Eventually, the plaintiff came to know that the Seller and its representatives had produced false documents to Agricultural Bank of China and obtained payment for the bills of exchange from them. The Agricultural Bank of China obtained reimbursement of the amount paid by them to the beneficiary from the New York Branch of the defendant bank, the reimbursement bank specified in the letter of credit. Defendant bank, thus, wrongly made and/or allowed payment to be made under the letter of credit without scrutinizing the documents.

(g) The plaintiff avers that the documents accepted by

the defendant bank had following serious discrepancies:

(i) The transport document was not an ocean bill of lading.

The name of the vessel for the ocean voyage was missing.

(ii) The purported certificate of seaworthiness of the vessel was not a certificate as required by L.C.

The said document merely repeated the letter of credit conditions.

(h) The plaintiff pointed out the discrepancies to the defendant and asserted that the defendant had negligently made the payment of the money under the said letter of credit, vide communications dated 8th August, 1996, 12th August, 1996 and 14th August, 1996.

(i) The defendant bank wrongfully refused to refund the amount, wrongly debited to the account of the plaintiff towards the payment wrongfully made by the defendant under the said letter of credit. Hence the plaintiff was constrained to institute the suit for recovery of the said amount of Rs. 2,22,54,460.66/- wrongly debited to the account of the plaintiff, interest thereon at the rate of 20.5% p.a with quarterly rests and damages, aggregating to the sum of Rs. 5,40,60,117.60/-.

(j) During the pendency of the suit, the plaintiff initiated Arbitration Proceedings against the Hunan. By an award dated 14th January, 2000, the Arbitral Tribunal awarded

aggregate sum of US$ 857603.80 along with interest thereon to the plaintiff. The plaintiff assigned the said award to the Shipper and did receive the sum of US$ 999000 from the Shipper, in consideration of the assignment of the said award, under the terms of the settlement agreement dated 10th December, 2004 between the plaintiff and the Shipper. The plaintiff, thus, amended the plaint and sought a decree in the sum of Rs. 85,32,97,546.62/- comprising of the components of legal costs, economic loss and interest at the rate of 20.5% p.a., with further interest thereon.

3. The defendant appeared in response to the suit summons and resisted the claim by filing the written statement. The suit was stated to be barred by law of limitation as the institution of the suit on 4th August, 1999 was clearly beyond the period of three years from the date of accrual of cause of action i.e. 22nd July, 1996 on which the documents were delivered by the bank to the plaintiff. The tenability of the suit was also assailed on the ground that the plaintiff was estopped from laying any claim against the defendant as the plaintiff had executed Master Counter Indemnities dated 30th December, 1996 and 10th July, 1997, whereby the plaintiff agreed to indemnify the defendant once the account of the plaintiff was debited by the

defendant-bank.

4. The defendant denied that there was any negligence on the part of the defendant in the scrutiny of the documents and in making payment under the letter of credit. The defendant contended that under the cover letter dated 28th June, 1996 the Agricultural Bank of China forwarded the documents under the letter of credit to the defendant at Mumbai and also sent a reimbursement claim directly to the defendant, at the Newyork Branch, requesting reimbursement as per the terms of the letter of credit. The defendant's New York Branch approached the defendant's Mumbai Branch by telex dated 3rd July, 1996 and thereupon defendant's Mumbai Branch vide telex dated 4th July, 1996 confirmed that the claim under dis-restricted letter of credit could be honoured and accordingly funds were remitted to the account of the Agricultural Bank of China. The defendant contends that the documents were received by its Mumbai Branch on 8th July, 1996. Those documents were thoroughly checked and found to be in order and in clear conformity with the letter of credit. The defendant was satisfied that the documents were prima facie in conformity with the terms of the letter of credit and, thus, the defendant bank accepted those documents.

5. The claim of the plaintiff that the documents were discrepant is countered by the defendant bank by asserting that after more than seventeen days of release of the documents to the plaintiff, i.e. on 8th August, 1996, the plaintiff, for the first time, raised a grievance that there were discrepancies in the documents negotiated under the letter of credit. The defendant contended that the plaintiff raised the said grievance only after realizing difficulties in getting delivery of the goods. The defendant bank is not concerned with the underlying contract between the plaintiff and the seller. In fact, under UCP 500, the defendant bank was under obligation to perform its part of the contract.

6. It was denied that there was any negligence in performing its duty as a banker qua the plaintiff. The defendant contested the claim of the plaintiff that there were apparent discrepancies in the bills of lading. It was asserted that the bills of lading recorded that the goods were shipped on board with clean on board notation and, hence, on the face of it, they were required to be construed as ocean bill of lading. Moreover, the name of the vessel was mentioned as "YUE HUA 523". Under UCP 500 the bank was required to verify whether the documents were in conformity with the terms and conditions

of the letter of credit. It was not expected to investigate as to whether the named vessel was not an ocean going vessel or had the sea worthiness, which was apparently certified.

7. By way of additional written statement, the defendant contended that the plaintiff's claim of additional damages, costs and interest, despite receipt of the amount under the Arbitration Award, was wholly untenable. The plaintiff's claim stood fully satisfied. On that count alone, the suit deserved to be dismissed. It was further contended that the composition of the matter by the plaintiff with the Shipper has caused irretrievable prejudice to the defendant. The prosecution of the instant suit, after receiving an amount of US$ 999000 from the Shipper, was stated to be an exercise in unjust enrichment. The amended suit claim and the particulars thereof were specifically denied and contested by the defendant.

8. In the backdrop of the aforesaid rival pleadings, following issues were settled by my learned Predecessor. I have recorded my findings against each of them for the reasons to follow.

	ISSUES	FINDINGS
1.	Whether the plaintiff proves that the suit is filed within limitation?	In the affirmative.

2.	Whether the plaintiff proves that it was the defendant/s duty to scrutinize the documents to ensure that the documents submitted were in conformity with the conditions and requirements of the Letter of Credit as stated in paragraphs 4, 5 and 11 of the plaint?	In the affirmative.
3.	Whether the plaintiff proves that there were discrepancies in the documents received by the defendants as stated inter alia in paragraph 9 of the plaint?	In the affirmative.
4.	Whether the plaintiff proves that the defendants acted negligently in debiting the plaintiff's account under the Letter of Credit and wrongly debited the same, as stated inter alia in paragraphs 8 to 12 of the plaint?	In the affirmative.
5.	Whether the plaintiff proves that the defendant wrongly accepted the documents despite clear discrepancies and that therefore the defendant has wrongly deprived the plaintiff of its funds to the extent of the debit, as stated in para 11 of the plaint?	In the affirmative.
6.	Whether the defendant proves that the plaintiff has no valid cause of action against the defendant, as stated in para 2 of the written statement?	In the negative.
7.	Whether the defendant proves that the documents were thoroughly checked and were in clear conformity with the Letter of Credit, as stated in para 2(h) of the written statement?	In the negative.

8.	Whether the defendant proves that the plaintiff is estopped from raising the pleas raised in the plaint, as stated in paras 2(1) and 14 of the written statement?	In the negative.
9.	Whether the plaintiff proves that the plaintiff is entitled to recover the sum of Rs.5,40,60,117.60 along with further interest at 20.5% p.a. from the defendant, as per the particulars of claim annexed at Ex.1 to the plaint?	Partly in the affirmative to the extent indicted in the final order.

: REASONS :

In order to substantiate the averments in the plaint, Mr. Arun Chandrasen Ashar (PW-1), the Director (Finance) of the plaintiff has sworn an affidavit in lieu of examination-in-chief. A number of documents were also tendered on behalf of the plaintiff in support of its claim. The defendant has also tendered certain documents in the rebuttal. The defendant has, however, not examined any witness to bolster up its defence.

9. In the very nature of the transaction, the fate of the suit hinges upon construction of the documents, especially, the Letter of Credit (Exhibit-P2) dated 10th June, 1996, the Bill of Lading (Exhibit-P8) dated 27th June, 1996, the certificate issued by the China Merchant Shipping and Enterprises Company Limited (Exhibit-P9) and the

correspondence exchanged between the parties prior to and in the wake of the controversy. Reference to the relevant documents would be made at appropriate places.

10. To start with, it may be apposite to note the uncontroverted facts. The jural relationship between the plaintiff and the defendant is not much in dispute. Nor the nature of the transaction is in contest. Indisputably, the plaintiff entered into a sales contract for purchase of 400 MT of yellow phosphorus 99.9% with Hunan for the price of US$ 615200 as evidenced by the sales contract (Exhibit-P1). In accordance with the said contract, the price was to be paid by an irrevocable letter of credit in sellers favour at sight. It is incontestible that the plaintiff applied to the defendant Bank to issue a Letter of Credit and the defendant issued the Letter of Credit (Exhibit-P2) on 10th June, 1996. There is not much controversy over the terms and conditions incorporated in the said letter of credit. Indisputably, apart from the special terms and conditions incorporated in the said letter of credit, it was subject to Uniform Customs and Practice for Documentary Credits, 1993 Revision (UCP 500). The parties are not at issue over the fact that defendant no.2 received the bill of exchange and requisite documents under the aforesaid Letter of Credit on

8th July, 1996 including the combined transport Bill of Lading (Exhibit-P8) and the shippers certificate (Exhibit-P9). The defendant Bank, indisputably, sent the advice (Exhibit-P3) to the plaintiff on 8th July, 1996 about the receipt of the aforesaid bills raised by the beneficiary. Though there is a controversy over the exact date on which the said documents were furnished to the plaintiff, yet, the customer advise dated 18th July, 1996 evidences the fact that the documents were enclosed thereunder and an import loan was created against the plaintiff's account. The account of the plaintiff was debited by two advises dated 23rd July, 1996 with the loan of Rs.11,087,179.79 and interest thereon of Rs.40,050.54/-at the rate of 26.37% from 18th July, 1996 to 23rd July, 1996, each.

11. Indubitably, the controversy arose with the communication dated 8th August, 1996 (Exhibit-P4) addressed by the plaintiff to the defendant Bank alleging that there were serious discrepancies in the original documents negotiated under the letter of credit and the payments were unjustifiably made thereunder to the beneficiary. Two more communications dated 12th August, 1996 (Exhibit-P5) and 14th August, 1996 (Exhibit-P6) followed. There is not much controversy over the fact that on 13th August, 1996 Hunan, the seller, addressed a

communication (Exhibit-D2-2), wherein the circumstances in which the goods could not be shipped and yet the original documents were tendered for payment thereunder were sought to be explained. Thereupon the plaintiff addressed the letter dated 22nd August, 1996 (Exhibit-D2-1) holding the Bank accountable for the loss caused to the plaintiff on account of the alleged negligence in scrutinizing the documents and the Bank was called upon to refund the sum of Rs.2,22,54,460.66 along with interest at the rate of 22% p.a.

12. It is incontrovertible that the plaintiff had instituted the proceedings against the Shipper before the High Court of Hongkong Special Administrative Region for damages and arbitration proceedings against Hunan, the seller. Eventually on 14th January, 2000 an award was passed in favour of the plaintiff in the said arbitration proceedings and the plaintiff was awarded a sum of US$ 651200, the payment debited to the account of the plaintiff, US$192403.80 towards interest thereon and US$ 50,000, towards legal cost. The plaintiff entered into a Settlement Agreement (Exhibit-P11) with the Shipper whereunder the award passed in the aforesaid arbitration proceedings was assigned in favour of the Shipper against receipt of the sum of US$ 9,99,000. Evidently, the claim of the

plaintiff against the defendant subsists for the amount, to which the plaintiff claims to be entitled to, after adjusting the aforesaid sum of US$ 999000 received from the Shipper.

13. In the backdrop of the aforesaid admitted facts, the controversy revolves around the question as to whether the defendant Bank has honoured its contract with the seller under the letter of credit by discharging its duty as a banker in a reasonable manner. Did the defendant Bank exercise the care expected of it in honouring the documents negotiated by the seller, is at the hub of the controversy. Before adverting to deal with this contentious issue, it may be appropriate to deal with the issue of limitation.

14. **Issue no.1:**

The defendant contended that the suit was barred by limitation as it was instituted beyond three years of the delivery of the documents in question to the plaintiff. Since the documents were delivered on 22nd July, 1996 the institution of the suit on 4th August, 1999 was stated to be clearly barred by law of limitation. The challenge does not seems to be well grounded in facts. The contention of the defendant that the suit was instituted on 4th August, 1999 is factually incorrect. As is evident from the endorsements on the plaint, the suit was

instituted on 21st July 1999. As indicated above, the account of the plaintiff was debited by the defendant Bank vide customer advice dated 23rd July, 1996. The institution of the suit on 21st July, 1999, is, thus, within the period of limitation from the date of the accrual of the cause of action. Issue no.1 is thus answered in the affirmative.

15. Issue nos.2 to 7:

All these issues revolve around the pivotal question as to whether the defendant Bank had exercised reasonable care in scrutinizing the documents tendered by the beneficiary of the letter of credit and was justified in making the payment thereunder. It may not be possible to determine these issues in watertight compartments and, therefore, it would be expedient to decide all these issues by a common reasoning, with distinct observations wherever warranted.

16. In the light of the nature of the transaction, the line of enquiry would be: what were the terms of contract between the plaintiff and the defendant, as evidenced by the letter of credit? What is the nature of duty of a banker in a contract of this nature and, especially, the standard of care in the scrutiny of documents? What is the duty cast on a Banker under UCP 500, to which the letter of credit was made expressly subject to?

Lastly, whether, in the facts of the case at hand, the defendant Bank had scrutinized the documents tendered for payment with the amount of care and caution excepted of it, in the circumstances of the case.

17. It would be advantageous to immediately notice the material terms of the letter of credit (Exhibit-P2). It was an irrevocable of letter of credit. By amendment dated 15th June, 1996, it was made unconfirmed and unrestricted for negotiation instead of negotiation to be restricted to the Standard Chartered Bank, Shanghai Branch. The documents required were:

(i) Signed commercial invoice in quadruplicate stating description, quantity and value of the goods as per applicant's purchaser order no. BV100343, dated 17th May 1996.

(ii) Compete set of not less than 3 original non-negotiable copies of clean on board ocean bills of lading (issued by the carrier or their agent) to the order of Standard Chartered Bank.

(iii) Goods to be shipped by sea worthy vessels which are not more than 25 years old classed 100 A1 by Lloyds or equivalent classification society. A certificate to that

effect from shipping line or their agents must accompany documents.

The letter of credit was subject to Uniform Customs and Practice (1993 Revision) ICC, Publication No.500, except so far as otherwise expressly stated.

18. It would be contextually relevant to note, at this stage itself, the discrepancies, as alleged by the plaintiff in the documents tendered by the beneficiary. The combined transport bill of lading (Exhibit-P8), on the one hand, indicated that the goods were shipped on board, YUE HUA 523, designated as pre-carrier, and, on the other hand, the ocean vessel was not named. It further indicated that the goods were shipped on port at HUANGPU, the port of loading and Bombay Port was designated as the port of discharge. The certificate of the shipper (Exhibit-P9), was apparently undated. It was unsigned as well. The material part of the certificate read as under:

> "This is to certify:
>
> Goods to be shipped by sea worthy vessels which are not more than 25 years old classed 100 A1 by Lloyds or equivalent classification society"

19. The challenge to the documents is two fold. One, the bill of lading (Exhibit-P8) was not a clean on board ocean bill of lading. Two, there was no certificate of the shipper to the effect that the goods were shipped on seaworthy vessel of specified class. Conjointly, these discrepancies implied that the goods were not at all shipped and thus the defendant Bank committed gross negligence in making payment on the strength of the aforesaid documents.

20. In the aforesaid context, I have heard Mr. Shyam Mehta, the learned Senior Counsel for the petitioner and Mr. Aspi Chinoy, the learned Senior Counsel for the defendant at considerable length.

21. Mr. Mehta, the learned Senior Counsel would urge that the undisputed facts lead to an inference that the defendant Bank made payment on 4th July, 1996 through its New York Branch, much before the original documents were received by the Mumbai Branch of the defendant Bank. Premised on this foundation, Mr. Mehta would urge that the claim of the defendant Bank that it had scrutinized the documents and found them in conformity with the conditions stipulated under the letter of credit is wholly unsustainable.

22. Taking the Court through the UCP 500, especially Articles 13 and 14 thereof, which, *inter alia,* prescribed the standard for examination of the documents and the duty in case of discrepant documents, respectively, Mr. Mehta urged, with a degree of vehemence, that the defendant Bank, in the case at hand, miserably failed in its duty to ascertain whether the documents tendered by the beneficiary, on their face, appeared to be in compliance with the terms and conditions of the credit. Amplifying the submission, Mr. Mehta would urge that the absence of reasonable care which the Bank was obligated to exercise while scrutinizing the documents in question is explicitly evident from the bare perusal of the documents. By no stretch of imagination, according to Mr. Mehta, the Bill of Lading (Exhibit-P8) can be said to be a clean on board ocean bill of lading. The omission to name the ocean vessel must have rang alarm bells. To add to this, the endorsement "goods to be shipped by sea worthy vessels which are not more than 25 years old classified 100 A1 by Lloyds or equivalent classification society", did not satisfy the elementary requirement of certification.

23. Thus, according to Mr. Mehta, the defendant Bank having released the payment, even before the receipt of the documents,

can not be heard to say that it complied with the obligation under the letter of credit and UCP 500. Even otherwise, the bare perusal of the documents; bill of lading (Exhibit-P8) and the certificate (Exhibit-P9) would lead to no other inference than that of the defendant Bank not having discharged its obligation scrupulously and carefully.

24. Per contra, Mr. Chinoy, the learned Senior Counsel stoutly submitted that the very institution of the suit is tainted with malafide. The plaintiff is guilty of suppression of facts. The plaintiff has not approached the Court with clean hands. In the circumstances, the plaintiff is not entitled to any relief. Taking the Court through the cross-examination of Mr. Ashar (PW-1), especially the point of time at which the plaintiff became aware of the fact that the goods were not shipped, it was urged that the plaintiff has made an endeavour to allege that the documents were discrepant only after realising that the goods were not shipped. The delay of about 17 days in making the claim, after receipt of the original documents, in the circumstances of the case, was stated to be fatal to the plaintiff's claim. Mr. Chinoy canvassed a submission that the defendant Bank was not concerned with, much less responsible for, the non-receipt of the goods contracted for by the plaintiff.

It was not at all concerned with the underlying transaction between the plaintiff and the seller. The Bank would be justified in making the payment if it was satisfied that the documents, on their face, appeared to be in accordance with the terms and conditions of the credit. On this touchstone, according to Mr. Chinoy, in the facts of the instant case, the defendant Bank was fully justified in releasing the payment as the documents in question satisfied the conditions stipulated in the letter of credit.

25. Before adverting to deal with the aforesaid submissions, it may be appropriate to keep in view the nature of the transaction and the jural relationship created by a letter of credit. A letter of credit is a device introduced in a mercantile contract to ensure that payment for goods, services or performance is secured. Invariably, the Banker, on the instructions of the buyer, issues the letter of credit and undertakes to pay the seller on satisfaction that the seller has discharged the obligation as set out in the conditions incorporated in the letter of credit. It subsumes two contracts. First, between the banker and the buyer. And second, between the banker and the seller. The latter contract is separate from an independent of the underlying contract between the buyer and the seller. It is thus

expressed that in honouring the letter of credit the Bank deals with the documents and not the underlying contract between the buyer and the seller.

26. In the case of ***M/s. Tarapore & Co., Madras vs. M/s. V. O. Tractors Export Moscow and another***[1]**,** on which reliance was placed on behalf of the plaintiff, the concept of an irrevocable letter of credit was explained with reference to Halsbury's Laws of England and Chalmers, in the following words:

> "**12**. The scope of an irrevocable letter of credit is explained thus in Halsbury's Laws of England (Vol. 34 paragraph 319 at p. 185):
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> > "It is often made a condition of a mercantile contract that the buyer shall pay for the goods by means of a confirmed credit, and it is then the duty of the buyer to procure his bank, known as the issuing or originating bank, to issue an irrevocable credit in favour of the seller by which the bank undertakes to the seller, either directly or through another bank in the seller's country known as the correspondent or negotiating bank, to accept drafts drawn upon it for the price of the goods, against tender by the seller of the shipping documents. The contractual relationship between the issuing bank and the buyer is defined by the terms of the agreement between them under which the letter opening the credit is issued; and as between the seller and the bank, the issue of the credit duly notified to the seller creates a new contractual nexus and renders the bank directly liable to the seller to pay the purchase price or to accept the bills of exchange upon tender of the documents. The contract thus created between the seller and the bank is separate from, although ancillary to, the original contract between the buyer and the seller, by reason of the bank's undertaking to the seller, which is absolute. Thus the bank is not entitled to rely upon terms of the contract between the buyer and the seller which might permit the buyer to reject the goods and to refuse payment therefor; and, conversely, the buyer is not entitled to an injunction restraining the

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1 1969(1) Supreme Court Cases 233.

seller from dealing with the letter of credit if the goods are defective."

13. Chalmers on "Bills of Exchange" explains the legal position in these words:

> "The modern commercial credit serves to interpose between a buyer and seller a third person of unquestioned solvency, almost invariably a banker of international repute; the banker on the instructions of the buyer issues the letter of credit and thereby undertakes to act as paymaster upon the seller performing the conditions set out in it. A letter of credit may be in any one of a number of specified forms and contains the undertaking of the banker to honour all bills of exchange drawn thereunder. It can hardly be over-emphasised that the banker is not bound or entitled to honour such bills of exchange unless they, and such accompanying documents as may be required thereunder, are in exact compliance with the terms of the credit. Such documents must be scrutinised with meticulous care, the maxim *de minimis non cural lex* cannot be invoked where payment is made by letter of credit. If the seller has complied with the terms of the letter of credit, however, there is an absolute obligation upon the banker to pay irrespective of any disputes there may be between the buyer and the seller as to whether the goods are up to contract or not."

14. Similar are the views expressed in "Practice and Law of Banking" by H.P. Sheldon; "the Law of Banker's Commercial Credits" by H.C. Gutteridge; "the Law Relating to Commercial Letters of Credit" by A.G. Davis: "the Law Relating to Bankers' Letters of Credit" by B.C. Mitra and in several other text-books read to us by Mr. Mohan Kumaramangalam, learned Counsel for the Russian Firm. The legal position as set out above was not controverted by Mr. M. C. Setalvad, learned Counsel for the Indian Firm. So far as the Bank of India is concerned it admitted its liability to honour the letter of credit and expressed its willingness to abide by its terms. It took the same position before the High Court."

(emphasis supplied)

27. The aforesaid pronouncement was followed by the Supreme Court in the case of ***United Commercial Bank vs. Bank of India and others[2],*** wherein the following observations were made.

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2 (1981)2 Supreme Court Cases 766.

> "28. The nature of the contractual obligations flowing from a banker's letter of irrevocable credit and more particularly, the rights of the seller as the accredited party or beneficiary of the credit, against the issuing and drawee bank was dealt with by this Court in *Tarapore and Co. Madras v. Tractors Export, Moscow and Anr. (1969)1 SCC 233).* It was held that the opening of a confirmed letter of credit constitutes a bargain between the banker and the seller of the goods which imposes on the banker an absolute obligation to pay. It was, however, pointed out relying on a passage in "CHALMERS' BILLS OF EXCHANGE" that it can hardly be overemphasised that 'the banker is not bound or entitled to honour the bills of exchange drawn by the seller unless they, and such accompanying documents as may be required thereunder, are in exact compliance with the terms of the credit'. Such documents must be scrutinised with meticulous care. If the seller has complied with the terms of the letter of credit, however, there is an absolute obligation upon the banker to pay irrespective of any disputes there may be between the buyer and the seller as to whether the goods are up to contract or not. The Court relied upon the two decisions in *Hamzeh Malas & Sons v. British Imex Industries Ltd. (1958) QB 127* and *Urguhart Lindsay & Co. Ltd. v. Eastern Bank Ltd. (1922) 1 KB 318* and observed at page 930 of the Report (SCC p.241), that the refusal of the bank to honour the bills of exchange drawn by the seller on presentation of the proper documents constituted a repudiation of the contract as a whole, and the sellers were entitled to damages arising from such a breach."
>
> (emphasis supplied)

28. There is no qualm over the proposition that in mercantile credit transactions, the parties, especially, the Banks deal with the documents and not the goods or services to which the documents relate. The question of liability invariably turns upon the standard of care in the scrutiny of the documents which the Bank is expected to exhibit before the payment is released.

29. Mr. Chinoy would urge that the Banker is expected to examine the documents as they appear on their face. It is no

part of the duty of the Banker to embark upon an enquiry as to whether the documents tendered represent the true state of affairs. Neither the Banker is competent nor equipped to investigate as to whether the goods were, in fact, shipped. If on the face of the documents, it appears that, they are in conformity with the terms and conditions, which the parties had agreed to, the Banker can be said to have discharged its obligation. In opposition to this, Mr. Mehta joined the issue by asserting that the Banker owes a duty to scrutinize the documents carefully and is obligated to take reasonable care in ascertaining that the documents tendered satisfy the stipulations under the letter of credit.

30. To appreciate aforesaid submissions and since the letter of credit in question is expressly made subject to UCP 500, it may be advantageous to note that UCP 500 are binding on all parties thereto unless otherwise expressly stipulated in the Credit. Article 4 provides that in credit operations all parties concerned deal with documents, and not in goods, services and/or other performances to which the documents may relate. Article 9 incorporates liability of issuing and confirming banks to the effect that an irrevocable credit constitutes a definite undertaking of the issuing bank, provided that the stipulated

documents are presented to the nominated bank or to the issuing bank and and the terms and conditions of the credit are complied with. Article 13 prescribes standard for examination of documents. It provides that Banks must examine all documents stipulated in the Credit with reasonable care, to ascertain whether or not they appear, on their face to be in compliance with the terms and conditions of the Credit. Compliance of the stipulated documents, on their face with the tems and conditions of the Credit shall be determined by international standard banking practice as reflected in those Articles. Documents which appear on their face to be inconsistent with one another will be considered as not appearing on their face to be in compliance with the terms and conditions of the Credit. Article 14(b), in terms, provides that upon receipt of the documents the Issuing Bank and or Confirming Bank if any, or a Nominated Bank acting on their behalf, must determine on the basis of the documents alone whether or not they appear on their face to be in compliance with the terms and conditions of the Credit. If the documents appear on their face not to be in compliance with the terms and conditions of the Credit such Banks may refuse to take up the documents. Clause (c) of Article 14 further mandates that if the

Issuing Bank determines that the documents appear on their face not to be in compliance with the terms and conditions of the Credit, it may in its sole judgment approach the applicant for a waiver of the discrepancy(ies).

31. Lastly Article 15 incorporates, "Disclaimer on Effectiveness of Documents." It thus provides that Banks assume no liability or responsibility for the form, sufficiency, accuracy, genuineness, falsification or legal effect of any document(s), or for the general and/or particular conditions stipulated in the documents(s) or superimposed thereon.

32. From a conjoint reading of the aforesaid Articles it becomes abundantly clear that while dealing with the documentary Credit, the focal point of attention is the document and not the underlying contract. On one hand, in case of irrevocable letter of credit, the Bank is under an obligation to honour its commitment to pay. On the other hand, there is a duty, contractual in nature, qua the buyer to satisfy itself that the seller has tendered the stipulated documents and those documents are in conformity with the terms and conditions of credit. And a duty under the UCP 500 to make the scrutiny of such documents with reasonable care. There can be no duality of opinion that the Bank has to determine the issue on the basis

of documents alone. It has no means to embark upon an enquiry to ascertain the truthfulness of the facts borne out by the documents. However, there is an equally compelling duty to ascertain with reasonable care that the documents tendered do satisfy the requirements stipulated under the letter of credit. The fact that the Articles in UCP 500 refer to such examination of documents on their face does not dispense with meticulous examination of the documents to satisfy that they are in order. The UCP 500 thus expressly provides that if the documents on their face appear to be discrepant or inconsistent with the conditions of credit the banker is under obligation to refuse to take up the documents.

33. The liability thus hinges upon the nature of the duty and the standard of care of the banker in the matter of the examination of the documents. Mr. Chinoy, the learned Counsel for the defendant would urge that if the documents, on their face, were found to be in order, the banker cannot be fastened with any liability for the ultimate failure of consideration.

34. A strong reliance was placed on a judgment of the Supreme Court in the case of ***Federal Bank Ltd. vs. V. M. Jog Engineering Ltd. and others***[3]***.*** In the said case, the Supreme

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3 (2001)1 Supreme Court Cases 663.

Court, in the context of the allegations that the documents tendered on behalf of the beneficiary were not genuine, after adverting to the UCPDC (1983) and judicial pronouncements holding the field, *inter alia,* observed as under:

> "**40**. ..... It is, therefore, clear that under Article 11 (d), it is sufficient if the negotiating bank is satisfied that the documents which *appear on their face* to be in accordance with the terms and conditions of the credit. If the negotiating bank then pays, the Issuing Bank is bound to reimburse the negotiating bank.
>
> **41**. We have to refer to another important Article, i.e. Article 15, which concerns the "*reasonable care"* with which documents have to be examined. This Article has relevance on the question of "fraud". It refers to the safeguards to be taken by the Bank. It states :
>
> > "**15**: Bank must examine all documents with *reasonable care* to ascertain that they *appear on their face* to be in accordance with the terms and conditions of the credit. Documents which appear on their face to be inconsistent With one another will be considered as riot appearing on their face to be in accordance with the terms and conditions of the credit".
>
> Once the Bank takes such *reasonable care* as above stated, Article 16 states that the Bank will have to be reimbursed by the party giving such authority. Clause (b) of Article 16 states that refusal by the Issuing Bank to pay must be "on the documents alone" as appear on their face to be inconsistent with the terms and conditions of the credit.
>
> **42.** At common law, the position is no different. The principle of reasonable care has been applied by Lord Dipiock in *Gian Singh & Co, Ltd. v. Banqae de L' lndochine, (1974) 1 WLR 1234*, The Bank has to examine with reasonable care to ascertain if they appear on their face to be in accordance with the terms arid letters of credit. In that case, the reference was made to Article 7 of the UCP (1962). It was observed that the said Article did no more than restate the duty of the bank at *common law*. It was further held that in the ordinary course, *visual inspection* of the actual documents presented is all that is called for, (p, 1252). In *Basse and Selve v.Bank of Australia, (1904) 20 TLR431* the defendant bank was instructed to negotiate the drafts of a shipper in Sydney against a certificate of Dr. Helms for 100 tons of cobalt-ore

analysis not less than 5% pretoxide. The shipper shipped worthless ore which was described in the bill of loading as "P.M. 2680 bags containing 100 tons of Cobalt ore". The sample initially submitted did not refer to the bill of lading goods. But later, the shipper marked the sample in the same way as the goods were described in the Bill of lading quantity and obtained a second, certificate showing [satisfactory tests of "a sample of Cobalt ore marked P.M. 2680 bags representing 100 tons". The Bank this time accepted the shipper's drafts and was held to be entitled to recover from the plaintiffs. The Certificate on its face was regular and came within the meaning of the mandate. Bigham, J. said:

> "Once they were in touch with the right man, the defendants' only remaining duty was to see that the documents which be brought purported on their face to be documents described In the mandate. It was no part of their duty to verify the genuineness of the documents".

All that is therefore necessary is to examine with reasonable if the documents on their face conformed to the terms and conditions of the L/C.

43. One other important Article that is important on the question of *"reasonable care"* of the Bank in examining the documents is Article 17. It reads :

> "**17** : Banks assume no liability or responsibility for the form, sufficiency, accuracy, genuineness, falsification or legal effect of any document, or for the general and/or particular conditions stipulated in the documents or superimposed thereon; nor do they assume any liability or responsibility for the description, quantity, weight, quality, condition packing, delivery, value or existence of the goods represented by any document, or for the good faith or acts and/or omissions, solvency, performance or standing of the consignor, the carriers, or the insurers of the goods or any other person whomsoever".

This shows that the Bank does not if it is not clear from the face of the documents - owe any liability or responsibility for the falsity of the documents. (However, we shall presently deal with, question of fraud separately)."

(emphasis supplied)

35. Reliance was also placed on a judgment of the Privy Council in the case of ***Commercial Banking Co. of Sydney Ltd.***

vs. Jalsard PTY. Ltd.[4] In the said case, the respondent (the buyer) had contracted to purchase a quantity of battery-operated Chirstmas lights from a seller in Taiwan, to be shipped to Sydney in two consignments. The buyer requested the appellant (the bank) to issue a letter of credit to authorize the seller to draw upon the bank's correspondent in Taiwan for a sum to cover invoice costs f.o.b. of the two shipments. Post amendment a condition was added that the document should be accompanied by a Certificate of Inspection.

36. Accordingly, the certificates of inspection in relation to the two shipments were issued by two firms of surveyors in Taiwan. It was certified that the surveyors had supervised the packing of the boxes for checking the quantity and condition of the contents. On arrival in Sydney the goods were found to be of defective quality and substantially unsaleable. The defects were not discoverable by visual inspection but only by physical testing.

37. In the backdrop of the aforesaid facts, in an action against the Bank the buyer claimed damages for breach of contract in accepting documents tendered by the seller which did not comply with the terms of the letter of credit, contending that

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4 (1972)3 WLR 566.

"Certificate of Inspection" meant a document certifying the condition and quality of the goods inspected, i.e. that the goods were of acceptable standard and conformed to the requirements of the contract under which they were sold. The Supreme Court held that the documents did not comply with the requirements of the credit and awarded damages to the buyer. On appeal by the bank to the Judicial Committee, the appeal was allowed. The Judicial Committee held as under:

> "Certificate of Inspection" is a term capable of converting documents which contain a wide variety of information as to the nature and the results of the inspection which had been undertaken. The minimum requirement implicit in the ordinary meaning of the words is that the goods the subject matter of the inspection have been inspected, at any rate visually, by the person issuing the certificate. If it is intended that a particular method of inspection should be adopted or that particular information as to the result of the inspection should be recorded, this, in their Lordships' view, would not be implicit in the words, "Certificate of Inspection" by themselves, but would need to be expressly stated.
>
> It is a well-established principle in relation to commercial credits that if the instructions given by the customer to the issuing banker as to the documents to be tendered by the beneficiary are ambiguous or are capable of covering more than one kind of document, the banker is not in default if he acts upon a reasonable meaning of the ambiguous expression or accepts any kind of document which fairly falls within the wide description used: see *Midland Bank Ltd. vs. Seymour [1955] 2 Lloyd's Rep.147.*
>
> There is good reason for this. By issuing the credit, the banker does not only enter into a contractual obligation to his own customer, the buyer, to honour the seller's drafts if they are accompanied by the specified documents. By confirming the credit to the seller through his corespondent at the place of shipment he assumes a contractual obligation to the seller that his drafts on the correspondent bank will be accepted if accompanied by the specified documents, and a contractual obligation to reimburse it for accepting the seller's drafts. The banker is not concerned as to whether the

> documents for which the buyer has stipulated serve any useful commercial purpose or as to why the customer called for tender of a document of a particular description. Both the issuing banker and his corespondent bank have to make quick decisions as to whether a document which has been tendered by the seller to one or other of the parties to the transaction if the decision is wrong. Delay in deciding may in itself result in a breach of his contractual obligations to the buyer or to the seller. This is the reason for the rule that where the banker's instructions from his customer are ambiguous or unclear he commits no breach of his contract with the buyer if he has construed them in a reasonable sense, even though upon the closer consideration which can be given to questions of construction in an action in a court of law, it is possible to say that some other meaning is to be preferred.
>
> Their Lordships are of opinion that the documents tendered by the two surveyors in the instant case clearly fall within the generic description "Certificate of Inspection." They record that the goods themselves, as well as the packages, were inspected. This, in the Board's view, would itself be sufficient to comply with the requirements of the credit. In addition, they contain an express statement as to the condition of the cases and an implied statement that the goods contained in the cases were in apparent good condition so far as could be seen in the course of supervising the packing of them."

38. Mr. Mehta, the learned Counsel for the plaintiff, in contrast, placed reliance on the judgment of the Supreme Court in the case of ***United Commercial Bank*** (supra) wherein the Supreme Court extensively dealt with the nature of the duty cast on the Bank in honouring the documents. After adverting to a number of judgments, the Supreme Court, culled out the legal position to the effect that in the mater of commercial letters of credit the documents tendered by the seller must comply with the terms of the letter of credit, and that the Banker owes a duty to the buyer to ensure that the buyer's

instructions relative to the documents against which the letter of credit is to be honoured are complied with.

39. It may be advantageous to reproduce the observations in paragraph nos.32 to 40, which are instructive.

> "**32**. Banker's commercial credits are almost without exception everywhere made subject to the code entitled the `Uniform Customs and Practices for Documentary Credits', by which the General Provisions and Definitions and the Articles following are to "apply to all documentary credit and binding upon all parties thereto unless expressly agreed". A banker issuing or confirming an irrevocable credit usually undertakes to honour drafts negotiated, or to reimburse in respect of drafts paid, by the paying or negotiating intermediate banker and the credit is thus in the hands of the beneficiary binding against the banker. The credit contract is independent of the sales contract on which it is based, unless the sales contract is in some measure incorporated. Unless documents tendered under a credit are in accordance with those for which the credit calls and which are embodied in the terms of the paying or negotiating bank, the beneficiary cannot claim against the paying bank and it is the paying bank's duty to refuse payment.
>
> **33**. General Provision (c) of the Uniform Customs states that :
>
> > (c) Credits, by their nature, are separate transactions from the sales or other contracts on which they may be based and banks are in no way concerned with or bound by such contracts.
>
> and Article 8 emphasises this in providing that :
>
> > (a) In documentary credit operations all parties concerned deal in documents and not in goods.
>
> **34.** The authorities are uniform to the effect that a letter of credit constitutes the sole contract with the banker, and the bank issuing the letter of credit has no concern with any question that may arise between the seller and the purchaser of the goods, for the purchase price of which the letter of credit was issued. There is also no lack of judicial authority which lay down the necessity of strict compliance both by the seller with the letter of credit and by the banker with his customer's instructions. In English, *Scottish and Australian Bank Ltd. v. Bank of South Africa Bailhache, J.* said :

> It is elementary to say that a person who ships in reliance on a letter of credit must do so in exact compliance with its terms. It is also elementary to say that a bank is not bound or indeed entitled to honour drafts presented to it under a letter of credit unless those drafts with the accompanying documents are in strict accord with the credit as opened.

35. As Lord Sumner said in Equitable Trust Co. of New York v. Dawson Partners Ltd., approving the dictum of Bailhache J.:

> It is both common ground and common sense that in such a transaction the accepting bank can only claim indemnity if the conditions on which it is authorised to accept are in the matter of the accompanying documents strictly observed. There is no room for documents which are almost the same, or which will do just as well. Business could not proceed securely on any other lines.

36. In *Rayner v. Hambros Bank Ltd.* the credit called for documents covering a shipment of "Coromandel groundnuts"; the invoice tendered was for Coromandel groundnuts, but the bill of lading evidenced a shipment of machine-shelled groundnut kernels'; country of origin : British India, and Hambros Bank refused to pay on the ground that the letter of credit called for an invoice and bill of lading both covering a shipment of `Coromandel groundnuts' whereas the bill of lading did not describe the goods in those terms, their attitude being upheld by the Court of Appeal.

37. Mackinnon, L.J. after quoting Bailhache, J., in English, Scottish and Australian Bank Ltd. v. Bank of South Africa (supra) and Lord Summer in Equtiable Trust Co. of New York v. Dawson Partners Ltd. (supra) laying down that a person who ships in reliance on a letter of credit must do so in exact compliance with its terms, observed :

> The defendant bank were told by their Danish principals to issue a letter of credit under which they were to accept documents-an invoice and bills of lading-covering "Coromandel groundnuts in bags". They were offered bills of lading covering "machine-shelled groundnut "kernels". The country of origin was stated to be British India. The words in that bill of lading clearly are not the same as those required by the letter of credit. The whole case of the plaintiffs is, in the words of Lord Sumner, that "they are almost the same, or they will do just as well". The bank, if they had accepted that proposition, would have done so at their own risk. I think on pure principle that the bank were entitled to refuse to accept this sight draft on the ground that the documents tendered, to bill of lading

> in particular, did not comply precisely with the terms of the letter of credit which they had issued.

The learned Judge dealing with that part of the judgment of Atkinson, J., in which he said that "a sale of Coromandel groundnuts is universally understood to be a sale of machine-shelled kernels", said:

> When Atkinson, J., says that it is "universally under stood" he means that these gentlemen from Mincing Lane have told him: "We dealers in Mincing Lane all under stand these things. We understand that 'Coromandel groundnuts' are machine-shelled kernels, and we understand when we see 'C.R.S.' that means 'Coromandels'. I think that is a perfectly impossible suggestion.. It is quite impossible to suggest that a banker is to be affected with knowledge of the customs and customary terms of every one of the thousands of trades for whose dealings he may issue letters of credit.

38. In *Bank Melli Iran v. Barclays Bank* the documents evidencing a shipment of '100 new, good, Chevrolet trucks' were held not to be a good tender under a credit calling for 'new' trucks. Mc Nair J. held that all the documents tendered and accepted by the defendants were defective and consequently the defendants were not entitled to debit the plaintiff with the amount paid against these documents, although the defendants succeeded on the ground that the plaintiffs had by their conduct ratified the defendant's action in accepting the documents. The dicta in American cases are to the same effect. In *Lamborn v. Lake Shore Banking Co. Smith J.* said:

> A party who is entitled to draw against a letter of credit must strictly observe the terms and conditions under which the credit is to become available, and, if he does not, and the bank refuses to honour his draft, he has no cause of action against the bank.

Again, Hiscock, C. J. in *Laudisi v. American Exchange National Bank* said:

> The bank has the power and subject to the limitations which are given and imposed by (the customer's) authority. If it keeps within the powers conferred it is protected in the payment of the draft. If it transgresses those limitations, it pays at its peril.

39. The relevant authorities uniformly lay down in dealing with commercial letters of credit that the documents tendered by the seller must comply with the terms of the letter of credit, and that the banker owes a duty to the buyer to ensure that the buyer's instructions relative to the documents against which the letter of credit is to be honoured are complied with. The rights of a banker are

described in Halsbury's Laws of England, 4th Edn., vol.3, para 141 at p. 106 :

> Unless documents tendered under a credit are in accordance with those for which the credit calls and which are embodied in the promise of the paying or negotiating banker, the beneficiary cannot claim against the paying banker, and it is the paying banker's duty to refuse payment. The documents must be those called for, and not documents which are almost the same or which will do just as well. The banker is not called upon to know or interpret trade customs and terms. It has been held that where mandate is ambiguous and a paying banker acts in a reasonable way in pursuance of it, he may be protected. But this general rule cannot be stretched so far as to protect a banker who pays against documents describing goods in terms which are similar to, but not exactly the same as, those stipulated in the credit.

The description of the goods in the relative bill of lading must be the same as the description in the letter of credit, that is, the goods themselves must in each case be described in identical terms, even though the goods differently described in the two documents are, in fact, the same. It is the description of the goods that is all important. The reason for this requirement is stated in Davis' Law Relating to Commercial Letters of Credit, 2nd Edn. p. 76:

> It is not only the buyer who faces the risk of dishonesty or sharp practice on the part of the seller. For, in many instances, the banker looks to the goods for reimbursement of the whole or part of the amount he pays under the letter of credit. It is equally to his interests to ensure that such documents are called for by the letter of credit as will result in goods of the contract description being ultimately delivered. The buyer is not compelled to enter into the sales contract nor is the banker compelled to issue the letter of credit. If either of these contracts is entered into then it is for the buyer and the banker respectively to safeguard themselves by the terms of the contract. Otherwise they must be prepared to bear any ensuing loss.
>
> But the liability thus imposed on the issuing banker carries with it a corresponding right that the seller shall, on his part, comply with the terms of the letter of credit and the seller's obligations have been construed as strictly as those of the banker.

We have already referred to the statement of law in Halsbury's Laws of England which found a place in Paget's Law of Banking, 8th Edn. p.648, and we may at the risk of repetition reproduce the same, to the effect:

> Unless documents tendered under a credit are in accordance with those for which the credit calls and which are embodied in the promise of the intermediary or issuing banker, the beneficiary cannot claim against him; and it is the banker's duty to refuse payment. The documents must be those called for and not documents which are almost the same or which seem to do just as well.
>
> **40**. It the light of these principles, the rule is well established that a bank issuing or confirming a letter of credit is not concerned with the underlying contract between the buyer and seller. Duties of a bank under a letter of credit are created by the document itself, but in any case it has the power and is subject to the limitations which are given or imposed by it, in the absence of the appropriate provisions in the letter of credit.
>
> (emphasis supplied)

40. The aforesaid exposition of law would indicate that the Bankers duty to examine the documents tendered so as to ascertain whether they are in conformity with the instructions of the buyer and in accordance with the terms and conditions of the letter of credit is contractual yet solemn. The fact that the Bank only deals with the documents does not imply that it is absolved of the obligation to satisfy itself that the documents tendered conform to the conditions and instructions. In fact, this satisfaction alone provides it the legitimacy to part with the payment. It is true that the Bank is neither expected nor equipped to assume the role of an investigator in ascertaining the genuineness of the documents and truthfulness thereof. However, where on the face of the documents, it becomes abundantly clear that the documents do not satisfy the

stipulations, the Bank is under an obligation not to make payment.

41. Reverting to the facts of the case, on the aforesaid touchstone, the submission on behalf of the plaintiff that in the case at hand, the Bank had parted with money even before the documents were received, cannot be said to be unfounded. From the perusal of the contentions in the written statement it becomes explicitly clear that on 3rd July, 1996 itself, the defendant's New York Branch approached its Mumbai Branch and sought instructions as to whether the former could honour the claim for reimbursement received from Agricultural Bank of China. On 4th July, 1996, the defendant's Mumbai Branch informed by telex that claim under the dis-restricted letter of credit could be honoured and, accordingly, funds were remitted to the account of Agricultural Bank of China. It is further contended that the Mumbai Branch of the defendant received the documents, vide covering letter dated 28th June, 1996, from Agricultural Bank of China, on 8th July, 1996 (Para 2(g) and (h) of the written statement). An inference thus becomes inescapable that the payment under letter of credit was sanctioned and released on 4th July, 1996 itself though the documents were received by the Mumbai Branch of the

defendant Bank on 8th July, 1996. Evidently, the documents were not scrutinized before the payment was released. This was in clear breach of the duty of the Banker under the letter of credit. This factor dismantles the edifice of the defence of the defendant Bank that it had scrutinized the documents and found them in order.

42. The aforesaid finding, in a sense, renders further inquiry as to whether the documents were examined with reasonable care unwarranted. However, I deem it in the fitness of things to deal with this defence of the defendant Bank uninfluenced by the aforesaid finding.

43. As indicated above, Mr. Chinoy assailed the tenability of the claim on the ground that there was inordinate delay in making the grievance that the documents were discrepant. Attention of the Court was invited to the letter dated 8th August, 1996 (Exhibit-P4), whereby, for the first time, the plaintiff alleged that the documents were discrepant. Mr. Chinoy laid emphasis on the fact that in the said letter the only grievance was that the certificate issued by the shipper was not in order.

44. On a reading of the letter dated 8th August 1996 (Exhibit-P4), as a whole, I find it difficult to accede to the submission of Mr. Chinoy to the extent desired by the defendant. It is true

that in paragraph 2 of the said letter, the plaintiff made an endeaviour to pinpoint the discrepancy with reference to the certificate of the shipper. However, the letter makes it clear that the documents were not in accordance with the terms of the letter of credit and there were other discrepancies in the documents which the plaintiff would discuss.

45. On the aspect of delay, Mr. Chinoy invited attention of the Court to the manner in which Mr. Ashar (PW-1) fared in the cross-examination. It was elicited that the original documents were definitely received and checked by the plaintiff before 23rd July, 1996 when the plaintiff's account was debited by the defendant Bank. Mr. Ashar expressed his inability to account for the delay in addressing the letter pointing out the alleged discrepancies, dated 8th August, 1996 (Exhibit-P4). Emphasis was also laid on an answer elicited to another question, as to when did the plaintiff first come to know about the documents submitted by the seller to be false (Question no.78). Mr. Ashar (PW-1) asserted that when the plaintiff contacted the beneficiaries in July, 1996 they were informed that the beneficiaries had not shipped the goods. To a pointed question as to on what basis did the plaintiff come to the conclusion that the documents submitted by the seller were false, Mr. Ashar

(PW-1) replied that there was no mention of ocean vessel's name in the bill of lading as per the LC term and secondly the beneficiary informed the plaintiff that they have not shipped the goods. He went on to further concede that the plaintiff did correspond with China Merchant Shipping and Enterprises Company Limited to find out about the name of the ocean vessel.

46. Mr. Chinoy thus urged that despite the plaintiff having been fully aware, in the month of July 1996 itself, that the goods were not shipped by the beneficiary, the plaintiff approached the Court with a bold case that the letter dated 8th August, 1996 (Exhibit-P4) was addressed as they were unable to get any information about the arrival of the vessels; their agents etc.

47. I am afraid to agree with the submission on behalf of the defendant that the plaintiff diserves to be non-suited on the aforesaid count, even if the defence is taken at par. Evidently, it is incontrovertible that the goods were not shipped by the seller. In fact, the absence of information as regards the vessel on which the goods were boarded stoked the inquiry on the part of the plaintiff. Even if it is assumed that the plaintiff became aware of the fact that the goods were not shipped before it

addressed the communication dated 8th August, 1996 (Exhibit-P4) it does not detract materially from the plaintiff's claim as the said fact does not absolve the Bank of its liability to scrutinize the documents so as ascertain whether they were in conformity with the conditions of the letter of credit. Likewise, the time-lag of a fortnight in addressing communication to the Banker that the documents, which were honoured by the Banker, were discrepant, in the circumstances of the case, cannot be said to be such as to disentitle the plaintiff from laying the claim.

48. Mr. Chinoy next urged that the document in question was a combined transport of bill of lading. It is governed by Article 26 of the UCP 500. In case of a combined transport bill of lading, it was not obligatory to name the ocean vessel on which the goods were shipped. The reliance placed on behalf of the plaintiff on the stipulation prescribed in Article 23, which deals with marine / ocean bill of lading, according to Mr. Chinoy is wholly misplaced. In case of a combined transport of bill of lading, the Bank was within its rights in honouring the documents though the ocean vessel was not named.

49. Article 23 which deals with marine / ocean bill of lading, *inter alia,* provides that;

(a) If a credit calls for a bill of lading covering a port-to-port shipment, banks will, unless otherwise stipulated in credit, accept a document, however named, which;

(i) Appears on its face to indicate the name of the carrier and to have been signed or otherwise authenticated by the carrier or a named agent for or on behalf of the carrier,

or the master or a named agent for or on behalf of the master. ……. and

(ii) Indicates that the goods have been loaded on board, or shipped on a named vessel. ……. and

(iii) Indicates the port of loading and the port of dicharge stipulated in the credit, notwithstanding that it: …….

(iv) …..

(v) …..

(vi) ….. and

(vii) in all other respects meets the stipulations of the Credit."

50. Article 26 which deals with multimodal transport document, *inter alia,* provides that,

(a) If a Credit calls for a transport document covering at least two different modes of transport (multimodal transport), banks will, unless otherwise stipulated in the Credit, accept a document, however names, which:

(i) appears on its face to indicate the name of the carrier or multimodal transport operator and to have been signed or otherwise authenticated by:

* the carrier or multimodal transport operator or a named agent for or on behalf of the carrier or multimodal transport operator.

Or

* the master or a named agent for or on behalf of the master.

……. and,

(ii) indicates that the goods have been dispatched, taken in charge or loaded on board. …….. and,

(iii) (a) indicates the place of taking in charge stipulated in the Credit which may be different from the port, airport or place of loading, and the place of final destination stipulated in the Credit which may be different from the port, airport or place of discharge,

and/or

(b) contains the indication "intended" or similar qualification in relation to the vessel and/or port of loading and/or port of discharge,

and,

(iv) …… and

(v) …… and

(vi) …… and

(vii) in all other respects meet the stipulations of the Credit.

51. Comparing and contrasting the stipulations in sub-clause (ii) of Clause (a) of Article 23 and Article 26, it becomes evident that in the case of the multimodal transport document it is sufficient if the document indicates that the goods have been dispatched, taken in charge or loaded on board, whereas in case of marine / ocean bill of lading the document should indicate that goods have been loaded on board or shipped on a named vessel. In the case of multimodal transport document, there is no requirement of naming the vessel on which the goods have been shipped. In the very nature of the multi-modal transport document, which envisages at least two different modes of

transport, the name of particular vessel is not insisted upon. Instead, the document should indicate that goods have been dispatched, taken in charge or loaded on board and the name of the carrier of the multimodal transport operator is specified.

52. In the case at hand, it is imperative to note that the letter of credit expressly provided that the seller should furnish complete set of not less than three original non-negotiable copies of clean on board ocean bills of ladings (issued by the carrier or their agents) to the order of the defendant. The stipulation in the letter of credit was thus abundantly clear. The parties had not agreed that the payment was to be released on furnishing of a combined or multimodal transport bill of lading. The submission on behalf of the defendant, if viewed in the context of the stipulations in the letter of credit, runs counter to the express condition thereof and thus does not advance the cause of the defendant. It may be urged that for the very reason that the combined transport of bill of lading (Exhibit-P8) did not satisfy the primary requirement that the seller shall submit clean on board ocean bill of lading, the defendant Bank was under no obligation to release the payment.

53. The combined transport bill of lading (Exhibit-P8), on the face of it, reveals that the goods were not shipped on an ocean

vessel. The goods were shown to have been shipped, clean on board YUE HUA 523 at HUANGPU port of loading. YUE HUA 523 was designated as pre-carrier. The fact that YUE HUA 523 was not an ocean vessel was evident from the said designation. Conversely, the ocean vessel was not named. The aforesaid discrepancies were thus evident on a bare perusal of the combined transport bill of lading (Exhibit-P8), on its face. No further inquiry was warranted.

54. The situation is further exacerbated by the fact that the certificate of the shipper (Exhibit-P9), which according to terms of the letter of credit was indispensable, did not certify that the goods were shipped on a particular vessel, much less a sea worthy vessel classified 100 A1 by Lloyd's. It cannot be said that the stipulation that "goods to be shipped by the sea worthy the vessels which are not more than 25 years old classed 100 A1 by Lloyd's or equivalent classification society" was sans any purpose. A certification to the effect that the goods were so shipped on a sea worthy vessel would have ensured two things. One, the shipment of the goods on board. Two, the safety of the goods as they were boarded on a sea worthy vessel of a specified class. Mr. Mehta, the learned Senior Counsel was thus justified in advancing a criticism that the document (Exhibit-P9) cannot

be clothed with the character of a certificate. Indeed, the document does not certify anything.

55. Mr. Chinoy, the learned Senior Counsel, attempted to salvage the position by placing reliance upon the judgment of the Privy Council in the case of ***Commercial Banking Co. of Sydney*** (supra). The endeavour does not deserve acceptance. In the said case, the surveyors had certified that they had inspected the containers. In the case at hand, the document in question (Exhibit-P9), as indicated above, certifies nothing. In contrast, it incorporates the condition of the letter of credit. It would be illogical to hold that the condition that, "certificate to this effect from shipping line or their agents must company document" would stand satisfied if a certificate incorporating the very condition verbatim is issued. The very purpose of insisting upon such certification is defeated if the shipper does not name the vessel and further certify that it is of the specified class.

56. The conspectus of aforesaid consideration is that even if the officers of the defendant Bank are provided some allowance for the inadvertence in the scrutiny of the combined transport bill of lading (Exhibit-P8), yet no such dispensation is conceivable in the case of Shipper's certificate (Exhibit-P9). The

said document (Exhibit-P9) was of such a nature that no prudent person exercising ordinary care would have accepted and construed it to be a certificate under the terms of the letter of credit, since it certifies nothing. Cumulatively, the combined transport bill of lading (Exhibit-P8) and the certificate (Exhibit-P9) were of such a nature that they hardly satisfied the requirements envisaged by the letter of credit and UCP 500. The discrepancies in the aforesaid documents were so glaring that no Banker would have accepted and honoured those documents.

57. In the backdrop of the admission in the written statement that the defendant Bank had released the payment on 4th July, 1996, much before the receipt of the documents on 8th July, 1996, the aforesaid lapse in the scrutiny of the documents on the part of the Bank can only be explained on the premise that the Bank had not at all examined and scrutinised the documents before releasing the payment. Post dispute, the defendant Bank has made an unsustainable endeavour to establish that the documents were in order. However, no evidence was led by the defendant Bank to substantiate the said defence. This assumes significance in the context of the admission in the written statement that the payment was

released even before the receipt of the documents. Resultantly, I am impelled to held that the defendant did not discharge its duty to examine the documents with a reasonable care, before making payment thereunder. Issue nos.2, 3, 4, 5 are thus required to be answered in the affirmative and Issue nos.6 and 7 are required to be answered against the defendant.

58. Issue no.8:

The defendant contended that the master counter indemnities dated 30th December, 1996 and 10th July, 1997 constituted an estoppel against the plaintiff and the latter was precluded from asserting the claim once the defendant Bank made the payment under letter of credit. The fact, that the plaintiff had executed the indemnity on 30th December, 1996 and 10th July, 1997, was not contested. However, the question of estoppel turns upon the nature of the indemnities.

59. Both the indemnities are in almost identical terms. The following clauses are relevant and bear upon the controversy.

> "In consideration of your issuing or establishing from time to time at our request such documentary credits ("credits") as you may think fit we hereby agree that the following agreements terms and conditions shall apply to all such credits.
>
> (d) We undertake to indemnify you against all issues costs damages expenses claims and demand which you may incur sustain by reason or your issuing or establishing any such credit and to provide you with funds with which to meet all payments made by you or by a nominated bank and all drafts

drawn or accepted by you or by a nominated bank, together with all interest, commission charges, disbursements and expenses of whatsoever nature due to or incurred or defrayed by you and/or your offices and by a nominated bank in relation to any such credit.

(e) We authorise you to bit any of our accounts with you with all monies for which you may be or become liable to pay under or by virtue of any credit issued or established hereunder at such time or times as your liability in respect thereof shall be incurred whether or not prior to receipt by you of advice of payment or at your discretion, at any time thereafter and we confirm that you shall not be under any obligation to give us notice of such debit either before or after the same is made.

(f) We agree that you or your officers or a nominated bank or any person firm or company who shall make any payment or accept any bill of exchange in consequence of any such credit shall only be bound to examine with reasonable care the drafts and documents issued under any such credit to ascertain that they appear on their face to be in accordance with the terms and conditions of the credit and that in particular but without in any way limiting the foregoing neither you nor any such officer, person firm or company nor a nominated bank shall be responsible for:

(i) .....

(ii) .....

(iii) .....

(iv) .....

(v) .....

(p) On no account shall any claim be made against the Bank after the draft has been accepted or paid by us."

60. From a bare perusal of the aforesaid stipulations, it becomes evident that under Clause (d) the plaintiff had undertaken to indemnify the Bank against the costs, damages, expenses, claims and demands in respect of the issue of the credit and make available the funds to meet all the payments made thereunder along with interest, charges and commissions etc. In Clause (e) the plaintiff authorised the defendant Bank to

debit any of its accounts with the Bank with all moneys for which the Bank was required to pay for the said credit facility. Clause (f) reiterated that the plaintiff acknowledged that the Bank's liability was only to examine with reasonable care the drafts and documents issued under any such credit to ascertain that they appeared on their face to be in accordance with the terms and conditions of the credit and not hold the Bank responsible for the underlying contract, genuineness and validity of the documents etc. Clause (p) precluded the plaintiff from laying any claim against the Bank after the draft has been accepted or paid by the plaintiff.

61. The aforesaid conditions, which appear in the nature of indemnity, primarily constitute the undertaking on the part of the plaintiff that once the Bank lawfully makes the payment under the letter of credit, the plaintiff would reimburse the Bank along with the incidental costs, charges, interest and damages, if any, without any demur. These indemnities thus reinforce the contract between the buyer and the Bank that once the Bank makes the payment, in accordance with the terms and conditions of the letter of credit, the buyer would make good the same. However, these stipulations operate only when the Banker lawfully makes the payment. It is imperative

to note that even in Clause (f) of the indemnity, extracted above, the duty to examine the documents with reasonable care is spelled out. Where the evidence indicates that the Banker was negligent in making the payment in as much as the documents tendered did not conform with the terms and conditions of the letter of credit and were, *ex facie,* discrepant, the aforesaid indemnities do not insulate the Bank. In other words, where the evidence establishes that the payment was wrongfully made by the Bank, the latter is not entitled to fall back upon the aforesaid indemnities. Hence, I am persuaded to answer issue no.8 in the negative.

62. **Issue no.9:**

This propels me to the aspect of reliefs. Indisputably, the account of the plaintiff was debited with Rs.2,22,54,460/- on 23rd July, 1996. Indubitably, as indicated above, the plaintiff entered into a composition with the shipper and received a sum of Rs.4,36,25,839/- (Rupee equivalent of US$999000) on 1st February, 2005. In the aforesaid context, the question of the entitlement of plaintiff warrants determination.

63. Mr. Chinoy, the learned Counsel for the defendant, submitted that since the plaintiff had not issued a notice to pay interest on the said amount, from the date of the debit to the

date of the institution of the suit, as envisaged by Section 3 of the Interest Act, 1978, the plaintiff is not entitled to claim pre-suit interest. As regards the interest pendente lite, Mr. Chinoy would urge that the prayer for interest at the rate of 20.5% p.a. is wholly unjustifiable. Conversely, there is no prayer for award of the interest at a reasonable rate. A strenuous submission was made on behalf of the defendant that, in any event, the interest pendente lite on the said debited amount cannot exceed the Bank rate. Inviting the attention of the Court to the structure of interest rates provided by the Reserve Bank of India in Handbook of the Indian Economy, it was submitted that in no case the interest can exceed 9% to 10%, in the maximum. Thus computed, according to Mr. Chinoy, the entire claim of the plaintiff would stand satisfied with the receipt of the sum of Rs.4,36,25,839/-, on 1st February, 2005.

64. Mr. Mehta, the learned Counsel for the plaintiff fairly submitted that the plaintiff does not press the revised statement of claim. Instead, the plaintiff seeks the said sum of Rs.2,22,54,460/- plus interest thereon at the rate of 13% p.a. from the date of debit i.e. 23rd July, 1996 to the date of the institution of the suit, which would then constitute 'the principal sum adjudged'. On the said sum, the plaintiff is

entitled to interest pendente lite as well as post decree, at the rate at which the Banks lend money. Mr. Mehta further submitted with tenacity that the defendant Bank having charged interest on the said amount at the rate of 26.37%, cannot be heard to say that the plaintiff is not entitled to claim interest at the rate of 20.5% p.a. Having regard to the nature of the transaction, according to Mr. Mehta, the plaintiff cannot be deprived of the interest on the said amount at average lending rate.

65. The entitlement of the plaintiff to claim interest on the said amount which was wrongfully debited to the account of the plaintiff, is required to be considered in two parts. One, interest for the pre-suit period i.e. from 23rd July, 1996 to 21st July, 1999. Two, interest pendente lite and post decree. It is trite that different considerations inform the entitlement to interest for the aforesaid periods. The claim for pre-suit interest depends on the nature of the contract, usage of trade and the provisions of the Interest Act, 1978. Pendente lite interest, on the other hand, is governed by Section 34 of the Code.

66. An useful reference, in this context, can be made to a judgment of the Supreme Court in the case of ***State of***

Rajasthan vs. Ferro Concrete Construction Private Limited,[5] on which reliance was placed on behalf of the defendant, wherein the legal position was expounded instructively, as under:

> "**65**. The position regarding award of interest after the Interest Act, 1978 came into force, can be stated thus:
>
> (a) Where a provision has been made in any contract, for interest on any debt or damages, interest shall be paid in accordance with the such contract.
>
> (b) Where payment of interest on any debt or damages is expressly barred by the contract, no interest shall be awarded.
>
> (c) Where there is no express bar in the contract and where there is also no provision for payment of interest then the principles of section 3 of the Interest Act will apply in regard to the pre-suit or pre-reference period and consequently interest will be payable :
>
> (*i*) where the proceedings relate to a debt (ascertained sum) payable by virtue of a written instrument at a certain time, then from the date when the debt is payable to the date of institution of the proceedings;
>
> (*ii*) where the proceedings is for recovery of damages or for recovery of a debt which is not payable at a certain time, then from the date mentioned in a written notice given by the person making a claim to the person liable for the claim that interest will be claimed, to date of institution of proceedings.
>
> (d) payment of interest pendente lite (date of institution of proceedings to date of decree) and future interest (from the date of decree to date of payment) shall not be governed by the provisions of Interest Act, 1978 but by the provisions of section 34 of Code of Civil Procedure 1908 or the provisions of the law governing Arbitration as the case may be."

67. In the light of the aforesaid exposition of law, reverting to the facts of the case, it has to be determined whether the plaintiff is entitled to claim pre-suit interest. First and foremost, the dispute arose out of a banking transaction. Indisputably,

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5 (2009)12 Supreme Court Cases 1.

the defendant Bank had claimed interest on the delayed payment, albeit under the terms of the contract. It is true that there was no stipulation in the contract between the parties that in the event of wrongful payment under letter of credit the Bank would be liable to pay interest to the buyer. Yet, the very nature of the transaction implies that the person whose account is wrongfully debited and consequently deprived of the money, ought to be compensated.

68. In the absence of a contract for payment of interest and also barring a claim for interest, it has to be seen whether the notice claiming interest was addressed as envisaged by Section 3 of the Interest Act, 1973. The letter dated 22nd August, 1996 (Exhibit-D2-1) addressed by the plaintiff to the defendant Bank incorporates the demand of interest at the rate 22% p.a. on the amount of Rs.2,23,20,741.22, with which the account of the plaintiff was debited. In the face of the said demand I am afraid to accede to the submission on behalf of the defendant that no notice as contemplated by Section 3 of the Interest Act, 1978 was issued.

69. In order to lend support to the submission that the plaintiff is entitled to claim pre-suit interest and add the same to the principal sum, with which the account of the plaintiff was

debited, so as to make the said sum as the 'principal sum adjudged' within the meaning of Section 34 of the Code, Mr. Mehta placed reliance on the Constitution Bench judgment of the Supreme Court in the case of ***Central Bank of India vs. Ravindra and others***[6]. In the said case, the Supreme Court considered as to what is the meaning to be assigned to the phrases, "the principal sum adjudged" and "such principal sum", as occurring in Section 34 of the Code, and held as under:

> "**(1)** Subject to a binding stipulation contained in a voluntary contract between the parties and/or an established practice or usage interest on loans and advances may be charged on periodical rests and also capitalised on remaining unpaid. The principal sum actually advanced coupled with the interest on periodical rests so capitalised is capable of being adjudged as principal sum on the date of the suit.
>
> **(2)** The principal sum so adjudged is "such principal sum" within the meaning of Section 34 of the Code of Civil Procedure Code, 1908 on which interest pendente lite and future interest i.e. post-decree interest, at such rate and for such period which the Court may deem fit, may be awarded by the Court."
>
> (emphasis supplied)

70. It would be imperative to note that, while arriving at the aforesaid conclusion, in paragraph 49, the Supreme Court has observed as under:

> "**49**. ..... A creditor can charge interest from his debtor on periodical rests and also capitalise the same so as to make it a part of the principal. Such a course can be justified by stipulation in a contract voluntarily entered into between the

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6 (2002)1 Supreme Court Cases 367.

> parties or by a practice or usage well established in the world to which the parties belong. Such practice is to be found already in vogue in the field of banking business. Such contract or usage or practice can stand abrogated by legislation such as Usury Laws or Debt Relief Laws and so on."
>
> (emphasis supplied)

71. On the aforesaid touchstone, reverting to the facts of the case, especially the nature of the transaction, which arose out of a core banking business, in my considered view, the plaintiff is entitled to claim pre-suit interest and add the same to the principal amount which was debited to the account of the plaintiff so as to constitute the same as principal sum adjudged.

72. The plaintiff has claimed interest on the amount of Rs.2,22,54,460/- at the rate of 13% p.a. from 23rd July, 1996 to 21st July 1999. The structure of interest rate (Table 74) provided in Handbook Of Statistics On The Indian Economy, issued by Reserve Bank of India, for the year 2009 – 2010 indicates the then prevalent lending rates, as under:

Year	Lending rates			
	SBI advance rate	Key lending rates as prescribed by RBI (All commercial banks including SBI)		
		Ceiling rate general	Minimum rate general	Minimum rate selective credit control
1996-97	14.50	-	14.50-15.00	Free
1997-98	14.00	-	14.00	Free
1998-99	12.00-14.00	-	12.00-13.00	Free

1999-00	12.00	-	12.00-12.50	Free
2000-01	11.50	-	11.00-12.00	Free
2001-02	11.50	-	11.00-12.00	Free
2002-03	10.75	-	10.75-11.50	Free
2003-04	10.25	-	10.25-11.00	Free
2004-05	10.25	-	10.25-10.75	Free

73. If the lending rates for the year 1996-1997 to 1999-2000 are taken into account, it becomes evident that the rates were in the range of 15.00% (max.) to 12.00% (min.). Even if we reckon the minimum of the bracket, for the relevant period, the rate of interest would be 12% p.a.. Thus, the plaintiff is entitled to the principal sum of Rs.2,22,54,460/-, with which the account of the plaintiff was wrongfully debited, along with interest at the rate of 12% p.a. from the date of the debit i.e. 23rd July, 1996 to the date of the institution of the suit i.e. 21st July, 1999, which thus constitutes and designated as "the principal sum adjudged".

74. As regards the interest pendente lite, it was urged on behalf of the defendants that, at the highest, the plaintiff would be entitled to interest at deposit rates. The first proviso to Section 34 of the Code, *inter alia,* provides that the rate of further interest, in the absence of the contractual rate, shall not exceed the rate on which moneys are lent or advanced by

nationalised banks in relation to commercial transactions. Thus, the benchmark for the award of interest from the date of the suit ought to be also the lending rate.

75. In the Handbook Of Statistics On The Indian Economy (2018-2019) issued by the Reserve Bank of India, the lending rates for the period 2004 – 2005 to 2019 – 2020 are as follows:

Year	(Per cent per annum)	
	Lending Rates	MCLR (1-year)
2004-05	10.25-11.00	-
2005-06	10.25-12.75	-
2006-07	12.25-14.75	-
2007-08	12.25-15.75	-
2008-09	11.50-16.75	-
2009-10	11.00-15.75	-
2010-11	8.25-9.50	-
2011-12	10.00-10.75	-
2012-13	9.70-10.25	-
2013-14	10.00-10.25	-
2014-15	10.00-10.25	-
2015-16	9.30-9.70	-
2016-17	7.75-8.20	8.00-8.50
2017-18	7.80-7.95	8.15-8.30
2018-19	8.05-8.55	8.45-8.80
2019-20@	7.90-8.40	8.25-8.65

76. In the backdrop of the aforesaid historical trajectory of the movement of the lending rates, the entitlement to interest is required to be determined in two stages. First, the pendente lite

interest on the, "principal sum adjudged" (as computed in paragraph 73 supra) from the date of the suit till 1st February, 2005, the date plaintiff received the sum of Rs.4,36,25,893/- from the shipper. Having regard to the movement of the lending rates from 1999 to 2004 – 2005 it would be just and proper to award simple interest at the rate of 10% p.a. on the principal sum adjudged (as computed in paragraph 73 supra). The principal sum adjudged and the simple interest thereon at the rate of 10% would thus constitute the Total Amount, till 1st February, 2005. Since the plaintiff received a sum of Rs.4,36,25,893/- from the shipper, the said amount of Rs.4,36,25,893/- would be adjusted against and deducted from the aforesaid Total Amount (the principal sum adjudged plus interest accrued thereon at the rate of 10% p.a. from 21st July, 1999 to 1st February, 2005) so as to constitute the shortfall in the receipt, which is designated as the Balance Amount.

77. The entitlement of the plaintiff thus gets crystallized to the aforesaid Balance Amount (Principal sum adjudged + interest @ 10% p.a. till 1st February, 2005 – Rs.4,36,25,893/-). Secondly, the plaintiff would also be entitled to interest on the aforesaid Balance Amount from 2nd February, 2005. Again having regard to the movement of the lending rates, for the years 2005 – 2006

to 2019 – 2020, extracted above, even on a conservative estimate, it would be just and proper to award interest on the said Balance Amount at the rate of 8% p.a. from 2nd February, 2005 till realization.

78. The upshot of the aforesaid consideration and findings on issue nos.1 to 9 is that the suit deserves to be partly decreed. Hence, the following order:

: **O R D E R** :

(i) The suit stands partly decreed with proportionate costs to be paid by the defendants to the plaintiff.

(ii) The defendants do pay to the plaintiff the "Balance Amount" as computed in paragraph no.76 of this judgment along with simple interest at the rate of 8% p.a. from 2nd February, 2005 till realisation.

(iii) Decree be drawn up and sealed expeditiously.

[N. J. JAMADAR, J.]