* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

% ***Reserved on: 23rd March, 2026***
Pronounced on: 29th June, 2026

\+ **RFA 293/2020**

STANDARD CHARTERED BANK
(Through Its Authorized Representative)
7A DLF Building,
DLF Cyber City
Gurgaon – 122022, Haryana ……Appellant
Through: Mr. Amol Sharma, Advocate.

versus

M/S CHITRA UTSAV VIDEO PVT. LTD.
(Through Its Authorized Representative)
D-41, South Extension Part – II,
New Delhi – 110049
(Col. D.P. Khanna, Ar/Legal Advisor) ……Respondent
Through: None

CORAM:
HON'BLE MS. JUSTICE NEENA BANSAL KRISHNA

J U D G M E N T

NEENA BANSAL KRISHNA, J.

1. The present Regular *First Appeal under Section 96 of the Code of Civil Procedure, 1908* (hereinafter referred to as 'CPC'), has been filed on behalf of the Appellant/Defendant, Standard Chartered Bank, against the Judgment and Decree dated 31.07.2020 of the learned Additional District Judge-04, New Delhi whereby the Suit for Recovery of filed by the

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Respondent/Plaintiff, M/s Chitra Utsav Video Pvt. Ltd., has been decreed along with *pendente lite* interest @ 9% per annum from the date of institution of the Suit till the date of Decree and *future interest* @ 6% per annum from the date of Decree till the date of payment.

2. The Plaintiff M/s Chitra Utsav Video Pvt. Ltd., filed *CS No. 207886/2016, for Recovery of Rs. 16,50,000/- along with pendente lite and future interest*.

3. ***The brief facts, as stated in the Plaint*** are that the Respondent/Plaintiff is a Private Limited Company incorporated under the provisions of the Companies Act, 1956 and is engaged in the business of film producing, recording and video software generation.

4. The Respondent/Plaintiff is the owner of a multi-storeyed commercial building bearing Institutional Plot No. 84, Sector-32, Gurugram, Haryana, having a leasable area of 83,470 sq. ft. The said property had been leased out to three tenants, namely, M/s Amway Enterprises India Pvt. Ltd., M/s Reckitt Benckiser Ltd. and M/s Kohinoor Specialty Foods India Pvt. Ltd.

5. The Respondent/Plaintiff had earlier availed a loan facility from M/s Syndicate Bank against his aforesaid property, a part whereof remained outstanding. While the Respondent/Plaintiff was in negotiation with the Appellant/Defendant, it approached the Respondent/Plaintiff with an offer of a *Lease Rental Discounting* facility of Rs. 270 million, on terms stated to be more competitive than those offered by Syndicate Bank.

6. The proposed loan was a credit facility extended against the future stream of monthly lease rentals receivable from the tenants of the said commercial property.

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7. The Appellant/Defendant Bank, on 23.05.2012, issued an Indicative Term Sheet, offering to process the proposal for a Lease Rental Discounting term loan of Rs. 270 million, on the broad parameters set out therein, including interest at Base Rate plus 3.00% per annum, tenure up to 108 months, and a Processing Fee of 1.00% of the total facility sanctioned, plus applicable service tax.

8. On the same date, i.e. 23.05.2012, the Respondent/Plaintiff handed over to the Appellant/Defendant Bank, *a Cheque bearing No. 792889 dated 23.05.2012, drawn on Oriental Bank of Commerce, for a sum of Rs. 13,50,000/-, along with a covering Letter*.

9. The Covering Letter dated 23.05.2012 described the payment as a *Mobilisation Fee*, and recorded that the said fee would be adjustable towards the facility amount upon sanction thereof, and that, in the event the Appellant/Defendant Bank did not approve the transaction, the said fee would be refunded after deducting the actual expenses incurred by the Bank towards Property Valuation, Legal Opinion, and other relevant direct expenses connected with the appraisal of the proposal. The cheque was duly encashed by the Appellant/Defendant Bank.

10. The Appellant/Defendant Bank, *vide* its e-mail dated 13.07.2012, thereafter, forwarded to the Respondent/Plaintiff the detailed Terms and Conditions of the said facility, the indicative quantum whereof, had by then been reduced from Rs. 270 million to Rs. 255 million.

11. The Appellant/Defendant Bank thereafter, issued the Facility Letter dated 20.07.2012, *sanctioning the Lease Rental Discounting facility to the extent of Rs. 255 million, subject to the terms and conditions set out therein.*

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12. The Facility Letter dated 20.07.2012, *inter alia*, required the creation of a *Debt Service Reserve Account* (DSRA) of Rs. 1,36,01,655/- in the form of a lien-marked Fixed Deposit Receipt with the Appellant/Defendant Bank, i.e. a contingency reserve set apart against the borrower's potential default in payment of monthly instalments.

13. The Respondent/Plaintiff, by its e-mails dated 26.07.2012 and 31.07.2012, expressed concern over the said Debt Service Reserve Account requirement, as a consequence whereof, the net amount available under the sanctioned facility stood reduced from Rs. 2,550 lacs, to approximately Rs. 2,414 lacs.

14. Notwithstanding the said concerns, and on the ***verbal assurances*** of the officers of the Appellant/Defendant Bank that the rate of interest would be reduced to a level below 12.50% per annum and the Processing Fee would be waived, the *Facility Letter dated 20.07.2012 was signed and accepted by the Respondent/Plaintiff on 08.08.2012, pursuant to Board Resolution dated 07.08.2012, through Mr. Anil Kumar Khanna, its Authorised Signatory.*

15. The Respondent/Plaintiff, by its e-mail dated 18.08.2012, thereafter raised further concerns relating to the mechanics of the loan, namely, that although the lease rentals were credited to the designated account by the 7th day of each month, the *Equated Monthly Instalment* was to be appropriated only on the 18th day, thereby resulting in an approximately eleven-day float period, during which the borrower continued to incur interest liability.

16. The Respondent/Plaintiff further contended that the re-set of the interest rate after the first year, ought to be linked solely to changes in the Base Rate. The said verbal assurances were, however, never translated into a

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written sanction or any amendment to the Facility Letter dated 20.07.2012, *and the loan amount was, accordingly, never disbursed*.

17. The Respondent/Plaintiff, by its e-mail dated 10.09.2012, conveyed to the Appellant/Defendant Bank that the transaction had not been concluded, and asked the Appellant/Defendant Bank to return the cheque bearing No. 792927 for a sum of Rs. 15,15,180/- given towards the unpaid balance of the fee, and to refund the sum of Rs. 13,50,000/- already paid.

18. The Appellant/Defendant Bank, by its e-mail dated 12.09.2012, declined the request, asserting that as per *Clause 5 of the Facility Letter*, the Processing Fee was non-refundable.

19. A further sum of Rs. 3,00,000/- was thereafter, paid by the Respondent/Plaintiff to the Appellant/Defendant Bank in May, 2013, through its group Company, M/s Saurer Embroidery Systems Pvt. Ltd., thereby making the total payment to the Appellant/Defendant Bank, of Rs. 16,50,000/-.

20. The Respondent/Plaintiff thereafter, addressed Letters dated 02.04.2014 and 26.12.2014 to the Appellant/Defendant Bank, seeking refund of the sum of Rs. 16,50,000/-, to which no response was received.

21. The Respondent/Plaintiff thereafter, sent Legal Notice dated 05.05.2015 to the Appellant/Defendant Bank through Speed Post, seeking the refund the sum of Rs. 16,50,000/- alongwith interest at the rate of 18% per annum within seven days, which Notice also elicited no response.

22. The Respondent/Plaintiff, accordingly, instituted the Suit for a money decree of Rs. 16,50,000/- alongwith interest at the rate of 18% per annum from the date of payment until realisation, and costs.

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23. The Appellant/Defendant Bank contested the Suit by way of ***Written Statement,*** wherein, at the threshold, raised the preliminary objections; firstly, that the Suit was barred by limitation, the cause of action having arisen on 23.05.2012 when the Respondent/Plaintiff paid the sum of Rs. 13,50,000/-.

24. *Secondly,* that the Plaint disclosed no cause of action, the Respondent/Plaintiff being bound by the terms of the duly accepted Facility Letter dated 20.07.2012, under which the Processing Fee was expressly non-refundable.

25. *Thirdly*, that the Respondent/Plaintiff had suppressed material facts, in particular, the acceptance of the Facility Letter dated 20.07.2012 on 08.08.2012 by its own Authorised Signatory, pursuant to its Board Resolution dated 07.08.2012.

26. ***On merits***, the Appellant/Defendant Bank denied that it had approached the Respondent/Plaintiff, and asserted that it was the Respondent/Plaintiff who had approached the Appellant/Defendant Bank for the Lease Rental Discounting facility of Rs. 270 million, in or about the year 2012.

27. It was further asserted that the *Indicative Term Sheet dated 23.05.2012* expressly stipulated a *Processing Fee* of 1.00% of the total facilities sanctioned plus applicable service tax, and not a *Mobilisation Fee* as sought to be characterised by the Respondent/Plaintiff, and the sum of Rs. 13,50,000/- was paid as part payment of the said Processing Fee.

28. The Appellant/Defendant Bank claimed that after conducting its due diligence and obtaining the necessary internal credit approvals, it issued the Facility Letter dated 20.07.2012, sanctioning the Lease Rental Discounting

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facility to the extent of Rs. 255 million, on the terms and conditions set out therein, read with the Master Credit Terms.

29. Clause 5 of the Facility Letter expressly stipulated that the Processing Fee of 1.00% plus applicable service tax on the sanctioned limit, was to be paid upfront on acceptance of the Facility Letter, and was non-refundable. The Facility Letter was duly signed and accepted by the Respondent/Plaintiff on 08.08.2012, through Mr. Anil Kumar Khanna, pursuant to Board Resolution dated 07.08.2012.

30. The Appellant/Defendant Bank further pleaded that of the total Processing Fee crystallised on acceptance of the Facility Letter Rs. 25,50,000/- plus service tax of Rs. 3,15,180/-, *aggregating to Rs. 28,65,180/-*the Respondent/Plaintiff had paid only Rs. 13,50,000/- on 23.05.2012, and a further sum of Rs. 3,00,000/- in May, 2013, through its group Company M/s Saurer Embroidery Systems Pvt. Ltd., aggregating Rs. 16,50,000/-, out of which Rs. 1,81,505/- was service tax remitted to the exchequer, and the *net amount realised and retained by the Appellant/Defendant Bank was Rs. 14,68,494.13/-*.

31. It was further contended that the Respondent/Plaintiff had issued a further cheque bearing No. 792927 towards the balance Processing Fee of Rs. 15,15,180/-, with a specific request that the same be not presented for encashment, and that a separate cheque of Rs. 1,00,000/- issued towards the opening of the current account, which was dishonoured, on presentment.

32. The Appellant/Defendant Bank asserted that the loan documents had been duly executed and the loan amount was ready for disbursement by the end of August, 2012, but the disbursement could not be effected on account of the failure of the Respondent/Plaintiff to comply with the Conditions

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Precedent set out in the Facility Letter dated 20.07.2012; in particular, the three letters required from Syndicate Bank, namely, the confirmation of outstanding balance, the confirmation that the said facility was standard in their records, and the No Dues Certificate.

33. The Appellant/Defendant Bank, accordingly, denied any liability to refund the sum of Rs. 16,50,000/- or any part thereof, the Processing Fee being non-refundable under Clause 5 of the Facility Letter duly accepted by the Respondent/Plaintiff, and *prayed that the Suit be dismissed with costs.*

34. The Respondent/Plaintiff in its ***Replication***, reiterated the averments made in the Plaint and denied the case set up by the Appellant/Defendant Bank.

35. The Respondent/Plaintiff additionally pleaded that the terms of the *Mobilisation Fee* Letter dated 23.05.2012 stood admitted by conduct, the Appellant/Defendant Bank having encashed the cheque given with a covering Letter, without any demur or counter-correspondence.

36. The Respondent/Plaintiff further pleaded that the Master Credit Terms forming part of the substantive contract, itself contained no stipulation regarding the Processing Fee; that the acceptance of the Facility Letter on 08.08.2012 was given in *good faith* before the *hidden lacunae* therein became discernible; and that the levy of a Processing Fee of 1% upfront, with no non-refundability stipulation in the Indicative Term Sheet, amounted to an *unfair trade practice*.

37. On the pleadings of the parties, the learned Trial Court framed the following ***Issues vide Order dated 30.01.2017***:

(i) Whether the suit of the plaintiff is barred by limitation? OPD

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(ii) Whether the plaintiff failed to comply with the terms and conditions of the facility letter dated 20.07.2012 and did not provide the requisite documents for disbursement of facility document? OPD

(iii) Whether amount paid towards processing fee of plaintiff was not refundable? OPD

(iv) Whether the plaintiff is entitled for recovery of suit amount? OPP

(v) Whether the plaintiff is entitled to payment of interest, as prayed? OPP

(vi) Relief.

38. The Respondent/Plaintiff examined **PW-1**, Col. D.P. Khanna who tendered his evidence by way of affidavit Ex. PW1/A, and was duly cross-examined.

39. PW-1 proved the Certificate of Incorporation Ex. CW1/1, the Board Resolution dated 26.05.2015 Ex. CW1/2, the e-mail correspondence Ex. CW1/6 to Ex. CW1/13 and the Section 65-B Certificate Ex. CW1/18. The Indicative Term Sheet dated 23.05.2012, the Letter dated 23.05.2012 along with Cheque No. 792889, and the Facility Letter dated 20.07.2012 along with the Master Credit Terms were tendered respectively as Mark CW1/3, Mark CW1/4 (Colly) and Mark CW1/5 (Colly), but stood de-exhibited *vide* Order dated 07.12.2018 for want of the originals. The Letters dated 02.04.2014 and 26.12.2014, the Legal Notice dated 05.05.2015 and the Postal Receipt dated 05.05.2015 were similarly tendered as Mark CW1/14, Mark CW1/15, Mark CW1/16 and Mark CW1/17 respectively, but stood de-exhibited for want of the originals.

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40. The Appellant/Defendant Bank examined **DW-1** Mr. Lovish Sharma, Relationship Manager, who tendered his evidence by way of affidavit Ex. DW-1/A. He proved the Authorisation Letter dated 06.11.2019 Ex. D-1, the Facility Letter dated 20.07.2012 duly signed and accepted by the Respondent/Plaintiff Ex. D-2, the Board Resolution of the Respondent/Plaintiff Company dated 07.08.2012 Ex. D-3, and the e-mail correspondence Ex. D-4 (Colly), inclusive of the e-mail dated 12.09.2012.

41. The **learned District Judge**, in the impugned Judgment and Decree dated 31.07.2020, observed that the sum of Rs. 13,50,000/- had been paid by the Respondent/Plaintiff on 23.05.2012 itself, that is to say, prior to the issuance of the Facility Letter dated 20.07.2012 and the non-refundability stipulation contained therein, and that the antecedent Letter dated 23.05.2012, Mark CW1/4 (Colly), characterising the said payment as a *Mobilisation Fee* on terms of adjustability and refundability, which was not challenged by the defendant. Although the learned Trial Court returned a finding that the Respondent/Plaintiff had failed to comply with the Conditions Precedent under the Facility Letter dated 20.07.2012 in not supplying the letters required by the Syndicate Bank, *it nevertheless held that the Suit was within limitation in view of the further payment of Rs. 3,00,000/- made in May, 2013, and that the Processing Fee was refundable.*

42. The **learned District Judge** relied upon *In re: Kuttadan Velayudhan*, 2001 SCC OnLine Ker 14, the Reserve Bank of India Fair Practices Code Circulars dated 05.05.2003, 06.03.2007 and 22.01.2015; *DLF Limited v. Punjab National Bank*, W.P.(C) 8520/2010, decided on 27.05.2011, and M/s Athena Energy Ventures Pvt. Ltd. v. Andhra Bank, W.P.(C) 3527/2014, and concluded that concluded that the Loan Application of the

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Respondent/Plaintiff, had been *rejected* and the loan amount had not been disbursed, ***and the Processing Fee was refundable***.

43. ***The Suit was, accordingly, decreed for a sum of Rs. 16,50,000/- alongwith*** **pendente lite** ***interest @ 9% per annum from the date of institution of the Suit till the date of Decree, and future interest @ 6% per annum from the date of Decree till the date of payment.***

44. *Aggrieved by the impugned Judgment and Decree dated 31.07.2020, the* ***present First Appeal*** *has been preferred.*

45. The ***grounds of challenge*** are that the impugned Judgment suffers from a patent internal contradiction; the learned Trial Court having held that the Respondent/Plaintiff failed to comply with the Conditions Precedent under the Facility Letter dated 20.07.2012, but yet decreed the Suit for refund of the Processing Fee. The parties were governed by the Facility Letter dated 20.07.2012, Ex. D-2, admittedly accepted on 08.08.2012 pursuant to Board Resolution dated 07.08.2012, Ex. D-3; Clause 5 whereof made the Processing Fee non-refundable; and that the further sum of Rs. 3,00,000/- paid in May, 2013 unequivocally affirmed the contract.

46. It is further contended that the Indicative Term Sheet dated 23.05.2012 was, by its own terms, only indicative, and the *Respondent/Plaintiff, having accepted the Facility Letter*, cannot fall back on the antecedent Letter dated 23.05.2012, Mark CW1/4 (Colly), the same being neither exhibited nor proved in accordance with law.

47. The Reserve Bank of India Fair Practices Code Circulars relied upon by the Plaintiff, do not bar a non-refundable Processing Fee but only mandate disclosure in case of *non-acceptance*. The Loan Application was never *rejected*, but was accepted, the facility was sanctioned, and

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disbursement was ready by 29.08.2012, but was held up solely on account of the admitted non-supply of the letters required from Syndicate Bank. Moreover, the Circular dated 22.01.2015 also post-dates the cause of action. Reliance has been placed on *Bharathi Knitting Company v. DHL Worldwide Express Courier Division of Airfreight Ltd.*, (1996) 4 SCC 704.

48. The Appellant/Defendant Bank has filed ***Written Submissions*** reiterating the Grounds of Appeal. The Respondent appeared in the matter till the year 2024, but failed to appear thereafter despite ample opportunities and was consequently proceeded ex parte.

Submissions heard and the record perused.

49. The dispute, in its essence, is that the Appellant/Defendant Bank issued the Indicative Term Sheet dated 23.05.2012, contemplating a Lease Rental Discounting facility of Rs. 270 million. The Respondent/Plaintiff, on the same date, handed over Cheque No. 792889 for a sum of Rs. 13,50,000/- along with its covering Letter dated 23.05.2012, Mark CW1/4 (Colly), describing the said payment as a *Mobilisation Fee*, on terms of adjustability and refundability.

50. The Appellant/Defendant Bank, on completion of its due diligence, issued the *Facility Letter dated 20.07.2012, Ex. D-2*, sanctioning the facility for Rs. 255 million, *Clause 5 whereof made the Processing Fee non-refundable.* The said Facility Letter was admittedly signed and accepted by the Respondent/Plaintiff on 08.08.2012 pursuant to its Board Resolution dated 07.08.2012, Ex. D-3, through its Authorised Signatory Mr. Anil Kumar Khanna.

51. Pertinently, despite the admitted acceptance of the Facility Letter and the execution of the loan documents, the loan amount could not be disbursed *as the Respondent/Plaintiff failed to obtain and furnish the letters from*

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Syndicate Bank, which constituted *conditions precedent*, under the Facility Letter.

52. The Respondent/Plaintiff, by its e-mail dated 10.09.2012, Ex. CW1/12, sought refund of the Processing Fee already paid. The Appellant/Defendant Bank, declined the said request, relying upon Clause 5 of the Facility Letter, by its e-mail dated 12.09.2012, Ex. CW1/13.

53. A further sum of Rs. 3,00,000/- was thereafter, admittedly paid by the Respondent/Plaintiff in May, 2013 through M/s Saurer Embroidery Systems Pvt. Ltd., aggregating the total payment to Rs. 16,50,000/-, the recovery whereof has been decreed by the learned Trial Court *vide* the impugned Judgment.

54. The **principal questions that arise for consideration, are:**

(i) whether the Respondent/Plaintiff, having admittedly accepted the Facility Letter dated 20.07.2012, is bound by Clause 5 thereof making the Processing Fee non-refundable, notwithstanding the antecedent Letter dated 23.05.2012, Mark CW1/4 (Colly); and

(ii) whether the Respondent/Plaintiff, on its own admitted failure to comply with the Conditions Precedent under the Facility Letter dated 20.07.2012, can in any event claim refund of the Processing Fee.

I. Whether the Respondent/Plaintiff is bound by Clause 5 of the Facility Letter:

(a) Effect is the Facility Letter dated 20.07.2012, Ex. D-2:

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55. the Facility Letter dated 20.07.2012, Ex. D-2, was placed before the Board of Directors of the Respondent/Plaintiff Company, which passed the Board Resolution dated 07.08.2012, Ex. D-3, specifically resolving to avail the credit facilities of Rs. 255 million in terms of the Facility Letter and authorising Mr. Anil Kumar Khanna to execute and accept the requisite documents on behalf of the Company.

56. The Respondent/Plaintiff, accordingly, signed and accepted the said Facility Letter on 08.08.2012, a fact admitted by **PW-1** in his cross-examination dated 18.03.2019, wherein he expressly stated:

> *"the sanction letter clearly mentions that the process fee will be non-refundable."*

57. **Admittedly**, the said acceptance was given after the Respondent/Plaintiff had already raised, *vide* its e-mails dated 26.07.2012, Ex. CW1/6, and 31.07.2012, Ex. CW1/7, its concerns over the Debt Service Reserve Account requirement. The significant aspect***, therefore, is that the acceptance of the Facility Letter on 08.08.2012 was an acceptance with full knowledge of every term contained therein, including Clause 5 making the Processing Fee non-refundable.***

58. Pertinently, the Facility Letter itself stipulated a ***Lapse Clause of 30 banking days***, on the expiry whereof the offer was to stand withdrawn. Nothing prevented the Respondent/Plaintiff from declining to accept the said Facility Letter if any term contained therein was not acceptable to it; the Respondent/Plaintiff, instead, after due deliberation in its Board of Directors, accepted it on 08.08.2012.

59. The Respondent/Plaintiff, in its Replication, has sought to explain the said acceptance as one given in *"good faith"* and before the *"hidden*

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lacunae" in the Facility Letter, became discernible. *The said plea is not borne out by the record.*

60. The very terms of the Facility Letter now sought to be questioned, namely, the Debt Service Reserve Account requirement, the eleven-day float in the calculation of interest, and the absence of a stipulation confining the re-set of the interest rate to changes in the Base Rate, were expressly disclosed in the Facility Letter, Ex. D-2, itself and were also the subject matter of the Respondent/Plaintiff's own e-mails dated 26.07.2012, Ex. CW1/6, and 31.07.2012, Ex. CW1/7, which preceded the acceptance dated 08.08.2012. There is, accordingly, no question of any "*hidden lacuna*" or of an acceptance in *"good faith*" as sought to be projected by the Respondent/Plaintiff.

(b) Whether there existed any oral understanding, between the parties:

61. The assertions of the plaintiff about ***oral understanding, is absolutely untenable in view of the admitted documents.***

62. **PW-1**, in his cross-examination dated 20.04.2018, has himself admitted that he *"was not dealing with the bank in regard to the banking facility which is the subject matter of the present suit"*, that is to say, that he had no personal knowledge of any such verbal commitment. The further admission of PW-1 in his cross-examination dated 18.03.2019 that "*the plaintiff has not placed any document to show that the defendant had ever agreed to refund the processing fee*" completes the picture. The Respondent/Plaintiff has examined no other witness, on this aspect.

63. The Respondent/Plaintiff has further claimed *the existence of certain verbal commitments by the officers of the Appellant/Defendant Bank*,

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namely, reduction of the rate of interest to a level below 12.50% per annum *and waiver of the Processing Fee*.

64. This plea of oral assurance is, however, of no assistance to the Respondent/Plaintiff. There is, *firstly*, no evidence corroborating any such verbal commitment; and, *secondly*, it is barred by Sections 91 and 92 of the Indian Evidence Act, 1872.

65. This aspect was considered by the Supreme Court in *Bharathi Knitting Company v. DHL Worldwide Express Courier Division of Airfreight Ltd*., (1996) 4 SCC 704, wherein it is held that *"when a person signs a document which contains certain contractual terms, ... normally parties are bound by such contract; it is for the party to establish exception in a suit. When a party to the contract disputes the binding nature of the signed document, it is for him to prove the terms in the contract or circumstances in which he came to sign the documents."*

66. The said principle was reiterated by the Hon'ble Supreme Court in *Roop Kumar v. Mohan Thedani*, (2003) 6 SCC 595, while explaining the scope and effect of Sections 91 and 92 of the Indian Evidence Act, 1872. It was held that, where the parties have deliberately reduced the terms of their agreement into writing, the document constitutes the final repository of their intention, and oral evidence is not admissible to contradict, vary, add to, or subtract from its terms. in view of the law laid down in *Roop Kumar v. Mohan Thedani (supra)*.

(c) The effect of antecedent Letter dated 23.05.2012, Mark CW1/4 (Colly):

67. The case of the Respondent/Plaintiff, therefore, in substance, rests on the antecedent Letter dated 23.05.2012, Mark CW1/4 (Colly), given with a

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covering letter, whereof Cheque No. 792889 for a sum of Rs. 13,50,000/- was handed over to the Appellant/Defendant Bank. The said Letter describing the said payment as a *Mobilisation Fee* on terms of adjustability and refundability. ***The question that requires consideration is whether the said antecedent Letter, Mark CW1/4 (Colly), can be relied upon to displace the terms of the subsequent Facility Letter dated 20.07.2012, Ex. D-2***.

68. *At the threshold, it must be mentioned that this Letter dated 23.05.2012 was tendered in evidence as Mark CW1/4 (Colly), and the document was not exhibited vide Order dated 07.12.2018, for want of the original*. **This covering Letter was, accordingly, never proved in accordance with law.**

69. Pertinently, this Letter was the foundation of the case of the Respondent/Plaintiff for refund of the Processing Fee, and a finding rendered upon a document that has not been proved, is not tenable in law.

70. Assuming, however, for the sake of arguments, the said Letter Mark CW1/4 (Colly) is considered, the said document is an ***antecedent communication,*** that pre-dates the Facility Letter dated 20.07.2012, Ex. D-2, by nearly two months. The terms of the said Letter, characterising the payment as a refundable *Mobilisation Fee*, are in direct conflict with Clause 5 of the Facility Letter, Ex. D-2, making the Processing Fee non-refundable.

71. The Supreme Court in *Roop Kumar v. Mohan Thedani (supra)* has, in this very context, held that the writing reduced by the parties, is conclusively presumed to be the full and final statement of their intentions, and that no extrinsic material can be brought, to contradict its terms.

72. Pertinently, in the entire chain of e-mail correspondence exchanged between the parties between 13.07.2012 and 08.08.2012, namely, Ex.

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CW1/8, Ex. CW1/6 and Ex. CW1/7, while the Respondent/Plaintiff deliberated at length over the Debt Service Reserve Account requirement and other terms of the Facility Letter, Ex. D-2, there is not a single reference to the antecedent Letter dated 23.05.2012, Mark CW1/4 (Colly), or to its characterisation of the payment as a refundable *Mobilisation Fee*. **The conclusion is inescapable that the Respondent/Plaintiff itself*, by its own conduct, treated the antecedent Letter as having merged into the subsequent Facility Letter.***

73. The further conduct of the Respondent/Plaintiff fortifies the said conclusion. Despite the impasse reflected in the e-mail dated 10.09.2012, Ex. CW1/12, and the response of the Appellant/Defendant Bank *vide* e-mail dated 12.09.2012, Ex. CW1/13, *the Respondent/Plaintiff thereafter paid a further sum of Rs. 3,00,000/- in May, 2013, through M/s Saurer Embroidery Systems Pvt. Ltd., towards the Processing Fee.* The further payment made, eight months after the alleged collapse of the transaction, is wholly consistent with the Processing Fee crystallised under the accepted Facility Letter dated 20.07.2012, Ex. D-2.

74. The reliance placed by the learned Trial Court on the decision in *In re: Kuttadan Velayudhan*, 2001 SCC OnLine Ker 14, for the proposition that mere signing of a document is not equivalent to its execution where the parties have not acted upon it, is not attracted to the facts of the present case.

75. The parties gave effect to the Facility Letter dated 20.07.2012, Ex. D-2, and acted thereunder in all material particulars. The Board Resolution dated 07.08.2012, Ex. D-3, was passed; the Facility Letter was signed and accepted on 08.08.2012; the loan documents were executed; the

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disbursement was kept ready by 29.08.2012, as recorded in Ex. CW1/11; and a further Processing Fee of Rs. 3,00,000/- was paid in May, 2013.

76. The Facility Letter dated 20.07.2012, Ex. D-2, is the contract that **binds the parties**; Clause 5 thereof, making the Processing Fee non-refundable, binds the Respondent/Plaintiff in equal measure; and the antecedent Letter dated 23.05.2012, Mark CW1/4 (Colly), even if looked at, *cannot displace what the Respondent/Plaintiff itself accepted on 08.08.2012 with full knowledge of its terms and consequences.*

77. *Thus, the findings of the ld. DJ, on this aspect, are liable to be set aside.*

II. Whether the Respondent/Plaintiff, on its admitted failure to comply with the Conditions Precedent, can claim refund of the Processing Fee:

78. The Facility Letter dated 20.07.2012, Ex. D-2, required the Respondent/Plaintiff to procure and furnish to the Appellant/Defendant Bank, prior to disbursement, three letters from Syndicate Bank, namely, *a letter confirming that the outstanding balance against the property did not exceed Rs. 1965 Lakhs, a letter confirming that the said facility was a standard account in their records, and the No Dues Certificate to be issued upon full repayment of the loan availed by the Respondent/Plaintiff from Syndicate Bank.*

79. The said three letters were not optional; they were stipulated as *conditions precedent* for disbursement.

80. Admittedly, the said three Letters were never furnished by the Respondent/Plaintiff to the Appellant/Defendant Bank, as it emerges on

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record. *Firstly*, *PW-1*, in his cross-examination dated 18.03.2019, has himself admitted that:

> *"the plaintiff company has not supplied any statement of outstanding balance as condition precedent for disbursement".*

81. *Secondly*, the Appellant/Defendant Bank, *vide* its e-mail dated 29.08.2012, Ex. CW1/11, recorded that the loan documents had been duly executed and the loan amount was ready for disbursement, but the entire process was *stuck up* on account of the non-availability of the letters from the existing Bank, i.e. Syndicate Bank, and the said e-mail was never denied by the Respondent/Plaintiff.

82. The learned Trial Court itself, decided Issue No. 2 in favour of the Appellant/Defendant Bank, by recording ***that the Respondent/Plaintiff had failed to comply with the Conditions Precedent under the Facility Letter dated 20.07.2012 and did not provide the requisite documents for disbursement***. The said finding under Issue No. 2 has not been assailed in any cross-objections by the Respondent/Plaintiff and has, accordingly, attained finality.

83. The said admitted breach on the part of plaintiff, having been established, its consequence in law, is clear. The disbursement of the loan could not be effected for a reason exclusively attributable to the Respondent/Plaintiff.

84. The Respondent/Plaintiff, having admittedly breached the Conditions Precedent, cannot turn around and seek refund of the Processing Fee paid under a Facility Letter, when the very Conditions Precedent whereof, had been breached. The principle finds clear articulation in the well-settled

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maxim "***commodum ex injuria sua nemo habere debet", i.e.*** a party in breach of its own contractual obligations, cannot be permitted to take advantage of its own wrong.

85. The Respondent/Plaintiff has, in its Replication, sought to attribute the said non-supply to *"constraints and roadblocks"* and to lay the responsibility for the collapse of the transaction at the door of the Appellant/Defendant Bank. The said plea, however, is not borne out by the record. The Conditions Precedent under the Facility Letter were obligations cast upon the Respondent/Plaintiff alone. The blame for the non-procurement cannot, accordingly, be shifted to the Appellant/Defendant Bank.

86. Pertinently, Clause 5 of the Facility Letter makes the Processing Fee payable *"upfront on acceptance of the facility letter"* and *"Non-Refundable"*. The Processing Fee is, in substance, consideration for the work of appraising the proposal and sanctioning the facility.

87. The proposition also finds support from the decision of the Hon'ble Supreme Court in *Bank of India v. Brindavan Agro Industries Pvt. Ltd.*, 2020 INSC 232. In the said case, the borrower had sought substantial credit facilities from the Bank and processing and appraisal charges had been recovered in accordance with the Bank's policy. The Supreme Court found that the borrower was aware of such charges and had even sought concession therein, and *consequently set aside the orders directing refund beyond the amount, which the Bank itself had agreed to refund.*

88. The said decision, though rendered in its own factual context, lends support to the principle that charges incurred by a Bank towards appraisal, processing and sanction of a credit proposal, do not become refundable

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merely because the facility is ultimately not availed or acted upon, by the borrower.

89. In the present case, the Appellant/Defendant Bank conducted its due diligence, obtained its internal credit approvals, sanctioned the facility for Rs. 255 million, executed the loan documents, and was ready to disburse by 29.08.2012 as recorded in Ex. CW1/11. The mere fact that the disbursement of the principal amount could not be effected, for a reason attributable to the Respondent/Plaintiff, does not give rise to any failure of consideration for the Processing Fee.

90. Further, the sum of Rs. 3,00,000/- paid by the Respondent/Plaintiff in May, 2013 through M/s Saurer Embroidery Systems Pvt. Ltd. towards the Processing Fee, is wholly consistent with the aforesaid position. By making the said payment, at a stage when the Conditions Precedent and the non-refundable nature of the Processing Fee were already known to it, the Respondent/Plaintiff unequivocally affirmed the Facility Letter and acknowledged its liability towards the Processing Fee thereunder.

91. The reasoning of the learned Trial Court, in concluding that the Processing Fee was refundable, rests on the ***Reserve Bank of India Fair Practices Code Circulars dated 05.05.2003, 06.03.2007 and 22.01.2015,*** and on the decisions in *DLF Limited v. Punjab National Bank* and *M/s Athena Energy Ventures Pvt. Ltd. v. Andhra Bank.*

92. The substance of the Reserve Bank of India Circulars is that the loan Application Form is required to indicate all information regarding the interest and the charges, including *"the amount of such fees refundable in the case of non-acceptance of application."* The said Circulars are primarily directed towards ensuring transparency and disclosure of the applicable

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charges in the Loan Application process in case of non-acceptance of the Application by the Bank, and not a substantive bar against the levy of a non-refundable Processing Fee where the said fee has been duly disclosed and the Loan Application has been duly accepted.

93. The decisions in *DLF Limited (supra)* and *M/s Athena Energy Ventures Pvt. Ltd. (supra)* operate on the same facts, both having been cases of *non-disclosure* of the charge in question, and are, accordingly, distinguishable on facts.

94. Pertinently, the Loan Application of the Respondent/Plaintiff was not *rejected* by the Appellant/Defendant Bank; it was accepted, the facility was sanctioned for Rs. 255 million *vide* the Facility Letter dated 20.07.2012, Ex. D-2, the loan documents were executed, and the disbursement was made ready by 29.08.2012 as recorded in Letter Ex. CW1/11; the said disbursement having been held up solely on account of the admitted non-supply of the letters required from Syndicate Bank.

95. The very predicate of the Reserve Bank of India Circulars namely, *non-acceptance* of the Loan Application or *non-disclosure* of the charge, is, accordingly, not made out in the present case.

96. The Reserve Bank of India Circular dated 22.01.2015 also, in addition, is of a date long after the entire cause of action between the parties had crystallised in the year 2012, and a subsequent Circular cannot govern a transaction concluded before it came into being.

97. In view of the foregoing discussion, the *second question* must also be answered against the Respondent/Plaintiff. The Respondent/Plaintiff, having admittedly failed to comply with the Conditions Precedent under the Facility

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Letter dated 20.07.2012, Ex. D-2, cannot claim refund of the Processing Fee paid thereunder.

Conclusion:

98. The Appellant/Defendant Bank was, therefore, entitled to retain the said Processing Fee, the same having been duly disclosed and duly accepted. The impugned Judgment and Decree dated 31.07.2020, passed by the learned Additional District Judge-04, New Delhi, is hereby **set aside**, **and the Suit of the Respondent/Plaintiff is dismissed.** Accordingly, **the Appeal is allowed**.

99. Pending Application(s), if any, are disposed of, accordingly.

(NEENA BANSAL KRISHNA)
JUDGE

JUNE 29, 2026/*R*

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