IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION
SUIT NO. 718 OF 2009

UNION BANK OF INDIA)
a body corporate constituted under the)
banking Companies (Acquisition & transfer of)
Undertakings Act V, 1970 and having its Head)
Office at 239, VidhanBhavan Marg,)
Back Bay Reclamation, Nariman Point,)
Mumbai 400 021 and a Branch office at)
Mumbai Main Office, 239, Vidhan Bhavan)
Marg, Back Bay Reclamation,Nariman Point,)
Mumbai -400 021) ... Plaintiffs

Versus.

1. **HDFC Bank Ltd,**)
a Banking Firm registered under Companies)
Act, 1956 and licensed under Banking)
Regulation Act, 1949 having its Head)
Office at HDFC Bank House, Senapati)
Bapat Marg, Lower Parel, Mumbai-)
400 013.India and Branch at AsmitaAscon)
Acres 1, Opp: Asmita House, Mira Road)
(East), District Thane-411 107.)

2. **M/s. P.K. Financial Services,**)
Represented by Mr. PradipKhanwilkar)

J-5/202, Poonam Sagar Complex, Opp: Sector- 9,)
Mira Road (East), District Thane- 411 107.)

3. **Pradeep A. Khanvilkar,**)
J-5/202, Poonam Sagar Complex,)
Shantipark,Mira Road (East), Thane -)
401 107.)

4. **ShreepadaHarapanalli,**)
Residing at Parimala Mahantesh Road,)
Vidyagiri, Bagalkot- 587 102,Karnataka.)
In his individual capacity as also partner of)
Ashirwad Minerals having their address at)
Mahantesh Road, Vidyagiri, Bagalkot-587 102.)
Karnataka.)

5. **Ms. SandhyaShripad,**)
In her capacity as partner of Ashirwad)
Minerals having their address at Mahantesh)
Road, Vidyagiri, Bagalkot-587 102, Karnataka.) … Defendants

Mr. Nainesh N. Amin for the Plaintiffs.
None for the Defendants.

CORAM: S.J. KATHAWALLA, J.

DATE: 28th February, 2017

ORAL JUDGMENT

1. The above suit has been filed by the Plaintiff against the Defendants to recover a sum of of Rs.10.00 Crores which was fraudulently transferred via RTGS through the account of one M/s. Shree Imports No.10136492 from the Plaintiffs' M.M.O. Branch to the account of Defendant Nos. 2 to 5 held by them with the Defendant No.1, for injunction and other ancillary reliefs.

2. Plaintiff is a body corporate registered under the Banking Companies (Acquisition and Transfer of Undertakings) Act, 1970, having is Head Office at 239, Vidhan Bhavan Marg, Nariman Point, Mumbai - 400 021 and also has its Mumbai Main Office Branch at Nariman Point. Defendant No.1 is a Banking Firm registered under Companies Act, 1956 and licensed under Banking Regulation Act, 1949 and has one of its branches at Asmita Ascon Acres 1, Opp: Asmita House, Mira Road (East), District Thane- 411 107. Defendant No.2 to 5 are constituents of Defendant No.1. Defendant No. 2 is holding a Current Account bearing No. 03582000002465; Defendant No. 3 is having a Saving Bank Account No. 06651000017220; Defendant No.4 is having a S. B. Account No. 07671000003945 and the firm M/s. Ashirwad Minerals, of which the Defendant Nos.4 and 5 are partners, is having a Current Account No. 07672560000079, with Defendant No.1. The amounts which are subject matter of the present suit are said to be fraudulently got deposited and lying in the aforesaid bank accounts of Defendant Nos. 2 to 5 with the Defendant No. 1 at its Mira Road (E) branch.

3. The suit was initially filed by the Plaintiffs against the Defendant Nos.1 and 2 only. Subsequently, pursuant to the order dated 17th August 2009 in Chamber Summons No. 638 of 2009, the Plaintiffs have amended the plaint and impleaded Defendant Nos. 3 to 5.

4. According to the Plaintiffs, the brief facts of the case are as follows:-

(i) M/s. Manibhadra Trading Company, a Sole Proprietorship of Mr. Tarachand Shah was having Current Account No. 101-36441 with the Plaintiffs. M/s. Accure Impex Pvt. Ltd is also having Current Account No. 10136585 with the Plaintiff which account is operated by Mr. Nitin Ratnakar Padwalkar and Mr. Dhondi Ram S. Mohite. M/s. Shree Imports, is a Sole Proprietorship of Mr. Santosh S. Bhosale and is having Current Account with the Plaintiffs being No. 101-364492. The aforesaid three accounts are held with the Plaintiffs Mumbai Main Branch.

(ii) Mr. Nikesh T. Shah and Mr. Santosh S. Bhosale, in collusion and connivance with the Plaintiffs' employees, have played a fraud upon the Plaintiffs by generating fictitious accounting entry in the Plaintiffs books by showing deposits, withdrawal and remittance of cash to the tune of Rs.10,92,41,000/- of which Rs.10.00 Crores were transferred to the account No. 03582000002465 of Defendant No.2 with the Defendant No.1. The Defendant No.2, in turn, transferred various amounts out of the said Rs.10.00 Crores deposited from his account to the account of Defendant Nos. 3 to 5.

(iii) On 5th February 2009, four pay- in- slips for deposit of cash in the account of M/s. Manibhadra Trading Company and two pay-in-slips for depositing of cash in the account of M/s. Accure Impex Pvt. Ltd. totaling to Rs.10,92,41,000/- were made by Mr. Nikesh T. Shah on behalf of M/s. Manibhadra Trading

Company and Mr. Santosh S. Bhosale on behalf of M/s. Accure Impex Pvt. Ltd respectively without actually depositing any cash under the said 6 pay-in-slips. Mr. N. R. Vichare, cashier of the Plaintiffs, acting in collusion with Mr. Nikesh Shah and Mr. Santosh S. Bhosale, put the stamp of " Cash -Received" and his initials without actually receiving the cash and released the cash received voucher for onward processing. Mr. Ashok R. Zende, Assistant Manager of the Plaintiffs then posted and authorized the credits of the money under the aforesaid pay-in-slips into the account of M/s. Manibhadra Trading Company and M/s. Accure Impex Pvt. Ltd. On the same day, Mr. Nikesh T. Shah tendered 3 cash cheques bearing No. 56704 for Rs.87,39,000.00, No. 506705 for Rs.8,02,000.00 and No. 506706 for Rs.1,15,000.00 from the account of M/s. Shree Imports totaling to Rs.96,56,000.00 of which actual cash of Rs.5,00,000.00 by Mr. Nikesh T. Shah and the balance was adjusted and set off against the fictitious receipts represented by the above pay-in-slips. Thereafter a sum of Rs.10,87,35,000.00 was sought to be transferred from the account of M/s.Manibhadra Trading Company to the account of M/s. Shree Imports vide cheque No.926005 dated 16th December 2008. The said fictitious accounting entry was entered into the computer system by the Plaintiffs' computer terminal operator Mr. V. Shinde. Mr. Ashok Zende , the Plaintiffs' Assistant Manager thereafter posted and authorized the credit of the above amounts into the account of M/s. Manibhadra Trading Company and M/s. Accure Impex Pvt. Ltd and thereafter to the account of M/s. Shree Imports. On the same day, a sum of Rs.10.00 Crores was transferred via RTGS (Real Time Gain Settlement) from the account of M/s. Shree Imports to Account No.03582000002465 of Defendant No.2 with the Defendant No.1 on the basis of the fictitious RTGS application for transfer of funds to the Debit Account - M/s. Shree Imports. In the evening when the physical cash was verified by the Plaintiffs' Head Cashier, Mr. K.S.Kadam, it was realized that the amounts under the aforesaid 6 pay-in-slips were not actually received by the Plaintiffs' Receipt Cashier Mr. N.R. Vichare and the physical cash was, therefore, not closed on 5th February 2009 as the Plaintiffs concerned employees were being assured by Mr. Nikesh T. Shah and Mr. Tarachand Shah that they would be depositing the said amount which ultimately was never deposited. Mr. N. R. Vichare has admitted his role in the said fraud in writing. Mr. Nikesh T. Shah and Mr. Santosh Bhosale have admitted the aforesaid fraud perpetuated by them on the Plaintiffs in their letter dated 5th February 2009.

(iv) The Plaintiffs' AGM then contacted the Defendant No.1's officer, Miss. Sheril Mendonca over the telephone and appraised her of the fraud and requested her to stop any further transaction or transfer or release the money in the account of Defendant No.1. The Plaintiffs have also addressed 2 letters dated 6th February 2009 and another letter dated 9th February 2009 to the Defendant No.1 and requested them to stop further transfer of the amounts deposited in the account of Defendant No.2. On 9th February 2009, the Plaintiffs have lodged a written complaints with the Superintendent of Police, the Economic Offence Wing and the Central Bureau of Investigation, Mumbai relating to the fraud and fictitious transaction as aforesaid, which was also forwarded to Defendant No.1.

(v) Defendant No.1 vide its letter dated 3rd March 2009, has confirmed that a sum of Rs.9,99,19,000/- out of Rs.10.00 Crores deposited in the account of Defendant No.2 were lying transferred in the accounts of Defendant Nos. 2 to 5. Pursuant to order dated 4th October 2010 passed in Notice of Motion No. 1247 of 2009, the Defendant No.1 has pursuant to the directions of this Court dated 4th October, 2010, deposited a sum of Rs.9,99,19,000/- lying in the different accounts of Defendant Nos. 2 to 5 with the Prothonotary & Senior Master of this Court, which amount has been invested by him in fixed deposits of Nationalised Banks.

5. The Defendant Nos.1 to 5 have been duly served with the Writ of Summons as evidenced from the Affidavit of service filed on record. The Defendant No.1 has filed its Written Statement. The Defendants 2 to 5 have failed to file their Written Statement and the suit is proceedings against the Defendant Nos. 2 to 5 ex-parte.

6. On 6th January 2017, the representative of Defendant No.1 appeared before this Court and made a statement that Defendant No. 1 has no objection if the amount of Rs.9,19,19,000/- deposited by them and invested pursuant to the order dated 4th October 2010 is paid over to the Plaintiffs. In view of the said statement made on behalf of Defendant No.1, the Plaintiffs have made a statement that it is not seeking any reliefs against the Defendant No.1.

7. The Plaintiffs have filed the Affidavit of Evidence of Mr. Kanaiyalal K. Bhatt, Manager and Constituted Attorney of the Plaintiffs (the deponent) which is taken on record and **marked "X"** for identification. In his affidavit the deponent has reiterated the facts set out in the Plaint and hereinabove. Along with his affidavit of evidence, the deponent has also filed a Compilation of Documents which is taken on record.

8. The deponent has deposed on behalf of the Plaintiffs on the basis of the Power of Attorney executed in his favour on 30th December 2011. Under the said Power of Attorney, the deponent is given all the powers on behalf of the Plaintiffs to commence and prosecute the legal proceedings on behalf of the Plaintiffs. Since the original Power of Attorney is required by the deponent to initiate or defend other legal proceedings on behalf of the Plaintiffs, the same is allowed to be retained by the Plaintiff and the photocopy if the same is taken on record and marked as **Exhibit-P-1.**

9. The Plaintiffs have placed on record the photo copies of the Account Opening Form along with the enclosures there under relating to the opening of account of M/s. Manibhadra Trading Company, M/s. AccureImpex Pvt. Ltd and M/s. Shree Imports with the Plaintiffs' M.M.O. Branch, which are taken on record and marked **Exhibits-P-2, P-3 and P-4** respectively; the photo copies of 4 pay-in-slips of M/s. Manibhadra Trading Company and 2 pay-in-slips of M/s. Accure Impex Pvt. Ltd. which are taken on record and marked **Exhibit P-5 (Colly.);** photo copies of 3 cash cheques from the account of M/s. Shree Imports bearing Cheque Nos. 056704, 056705 and 056706; photo copy of Cash Cheque bearing No. 056705 of M/s. Shree Imports which is taken on record and marked **Exhibit P-6;** photo copies of Cach Cheque of M/s. Shree Imports bearing No.056705 which is taken on record and marked **Exhibit P-7;** and photo copies of RTGS application along with Cheque

No.056703, which is taken on record and marked **Exhibit P-8.** The deponent is allowed to tender photo copies of the above documents and the same are marked as Exhibits, since the deponent has stated that the originals of the aforesaid documents have been seized by the CBI in the course of their investigation as evidenced from the seizure memo issued by the CBI on 25th February 2009. The said original seizure memo is taken on record and marked as **Exhibit P-9**. The deponent has also produced the original statement of Mr. N.R. Vichare and two letters dated 5th February 2009 from Nikesh T. Shah and Santosh S. Bhosale which are taken on record and marked **Exhibits P-10 and P-11** respectively; office copies of the 2 letters both dated 6th February 2009 from the Plaintiffs to the Defendant No.1; which are taken on record and marked **Exhibits P-12 and P-13** respectively; letter dated 7th February 2009 from the Plaintiffs to the Defendant No.1 which is taken on record and marked **Exhibit P-14**; the office copy of the police complaint lodged by the Plaintiffs with the Economic Offence Wing dated 9th February 2009 which is taken on record and marked **Exhibit P-15;** the office copies of the Plaintiffs' letters to the Defendant No.1 both dated 9th February 2009 which are taken on record and marked **Exhibits P-16 (Colly.);** the statements of account of M/s. Manibhadra Trading Company, M/s. Accure Impex Pvt. Ltd and M/s. Shree Imports with the Plaintiffs duly certified under the Bankers' Book of Evidence which are taken on record and marked **Exhibit P-17 (colly.);** and the letter dated 3rd March 2009 from the Defendant No.1 to the Plaintiffs inter alia showing the amounts deposited in the various accounts maintained by the Defendant Nos.2 to 5, which is taken on record and marked **Exhibit P-18.**

10. I have heard the Learned Advocate for the Plaintiffs and gone through the averments in the plaint, evidence as well as the exhibits mentioned therein. On perusal of the above exhibits, it is established that Nikesh Shah and Mr.

Santosh S. Bhosale in collusion with the staff members of the Plaintiffs have transferred an amount of Rs. 10,92,41,000/- into the account of Defendant No.2 without actually depositing any amount in the accounts of M/s. Manibhadra Trading Company, M/s. Accure Impex Pvt. Ltd and M/s. Shree Imports and have fraudulently transferred Rs.10.00 crores from the account of M/s. Shree Imports to the account of Defendant No.2 in collusion with some of the Plaintiffs' employees. Mr. N.R. Vichare has admitted his role in the said fraud in writing. Mr. Nikesh T. Shah and Mr. S.S. Bhosale have also admitted the fraud perpetrated by them with the Plaintiffs in writing (Exhibits P-10 and P-11). The Plaintiffs by their letters dated 6th February, 2009 and 9th February, 2009 (Exhibits P-12 and P-13) requested Defendant No. 1 to stop further transfer of the amounts deposited in the account of Defendant No.2. The Plaintiffs have lodged a police complaint as evidenced from Exhibit P-15. Defendant No. 1 vide its letter dated 3rd March, 2009 (Exhibit P-18), confirmed that a sum of Rs. 9,99,19,000/- out of Rs. 10 crores is deposited in the account of Defendant No.2 and the same were lying transferred in the accounts of Defendant Nos. 2 to 5. Pursuant to the order dated 4th October, 2010 passed in Notice of Motion No. 1247 of 2009, Defendant No. 1 as per the directions of this Court dated 4th October, 2010 deposited a sum of Rs. 9,99,19,000/- lying in the different accounts of Defendant Nos. 2 to 5 with the Prothonotary and Senior Master of this Court, which amount has been invested in fixed deposits of Nationalised Banks.. The Defendant No. 1 has submitted that Defendant No. 1 has no objection if the said amount with interest accrued therein, if any, is handed over to the Plaintiffs. The Defendant Nos. 2 to 5 have not filed any Written Statement or contested the suit which prima facie shows that they have no legal right over the monies lying in their accounts. The decree as sought for by the Plaintiff, therefore, deserves to be granted. In view thereof, the following order is passed:

a) The suit is decreed in terms of prayer clause (c) and in terms of prayer clause (f) to the extent of Rs. 9,19,19,000/- together with interest accrued thereon lying deposited / invested with the office of the Prothonotary & Senior Master of this Court, which amount shall be forthwith paid over to the Plaintiffs in satisfaction of the Plaintiffs' claim in the present suit;

b) The Defendant Nos.2 to 5 shall pay to the Plaintiffs the costs of this suit;

c) The suit against the Defendant No.1 stands dismissed for want of prosecution;

d) The Plaintiffs are entitled for refund of the court fees, if any, as per Rules;

e) The suit is accordingly disposed of.

(S.J. KATHAWALLA, J.)