

**IN THE HIGH COURT OF SINDH AT KARACHI****Suit No. B-52 of 2015****Habib Metropolitan Bank Ltd. ----- Plaintiff****Versus****M/s DHA Cogen Ltd. ----- Defendant****Date of hearing: 01.11.2017 & 7.11.2017.****Date of judgment 07.11.2017****Plaintiff : Through Mr. Nabeel Kolachi Advocate.****Defendant: Nemo for the Defendant.****J U D G M E N T**

**Muhammad Junaid Ghaffar, J.** This is a Suit under Section 9 of the Financial Institutions (Recovery of Finances) Ordinance, 2001 for Recovery of Rs. 248,498 million as on 31.08.2015.

2. Precisely, the facts are that on the request of the Defendant dated 3.10.2007 a Running Finance Facility of Rs. 150 million and a Documentary Credit Facility on sight basis for Rs. 25 million through sanction letter dated 23.10.2007 was provided. The Defendant executed the charge on the following:-

- “i) D.P. Note for Rs. 25.00 million.
- ii) Agreement for Finance – Fund Base Finance for Rs. 25.00 million.
- iii) D.P. Note for Rs. 15.00 million.
- iv) Agreement for Finance – Fund Base Finance for Rs. 15.00 million.”

3. The Defendant also executed letter of hypothecation over present and future fixed assets for an amount of Rs. 200 million. On 26.10.2007 the Running Finance Facility started and continued till 27.8.2010 whereafter, the Defendant defaulted, hence instant Suit.

4. Summons were issued in this matter through all modes as required under FIO, 2001 through courier / registered post A/D and so also through publication; however, the Defendant failed to file any Leave to Defend Application and thereafter, the matter has been listed for final disposal.

5. Learned Counsel for the Plaintiff has referred to the various documents annexed with the plaint and so also the bank statement and submits that the Defendant through correspondence has admitted the utilization of the Running Finance Facility which continued from 2007 till 2010 and it is not in dispute that the extension in the Finance Facility after 30.6.2008 was at the request of the Defendant. He has referred to the bank statement in this regard.

6. I have heard the learned Counsel for the Plaintiff and perused the record. Since the Defendant has failed to even file any Leave to Defend Application nor any further assistance has been provided the claim as set up on behalf of the Plaintiff is deemed to be admitted whereas, even otherwise, perusal of the material placed on record reflects that admittedly the Defendant had availed the Running Finance Facility. The initial agreement was from 23.10.2007 to 30.6.2008, however, subsequently, at the request of Defendant the facility kept on continued and the Defendant utilized the amount of Running Finance Facility as on the date of default the total amount outstanding is Rs. 149,973,221.47. On perusal of record and Account Statement it appears that the defendant paid an amount of Rs. 60,41,636.00 on 30.6.2009 being mark

up on the Running Finance till 31.12.2008. It also appears that thereafter there is no further renewal of the running finance facility and therefore, the Plaintiff Bank is entitled only to Cost of Funds after 31.12.2008.

7. In view of hereinabove the Suit is decreed for an amount of 149,943,892.47 with Cost of Fund as per prescribed rates of State Bank of Pakistan from 1.1.2009 till realization. Suit stands decreed in the above terms. It further stands decreed for sale of hypothecated assets including moveables and receivables for recovery of the above amount.

ARSHAD/

**J U D G E**