

**IN THE HIGH COURT OF SINDH AT KARACHI**

**Present:  
Mr. Justice Muhammad Shafi Siddiqui**

Suit No. B-39 of 2021

The Bank of Punjab  
Versus  
M/s Hascol Petroleum Limited

Date of Hearing: 10.11.2022, 11.11.2022 and 07.12.2022

Plaintiff: Through Mr. Bahzad Haider Advocate.

Defendant: Through Ms. Alizeh Bashir Advocate.

**J U D G M E N T**

Muhammad Shafi Siddiqui, J.- Brief facts, (as borne out of documents not disputed) are that defendant, engaged in business of marketing and sale of oil products, initially availed two financial facilities i.e. (i) one Letter of Credit for Rs.1,500,000,000/- and the other (ii) Running Finance for Rs.500,000,000/- and in pursuance of Offer Letter No.1 executed certain documents, which offer letter stipulates the creation of first paripassu charge over the assets of defendant. The defendant however failed to arrange no objection certificates of other creditors/lenders and consequently a ranking charge was created followed by an undertaking dated 12.04.2018 to upgrade the ranking charge to first pari passu charge. The defendant also confirmed that plaintiff had disbursed and/or made available finance facility to the tune of Rs.3,000,000,000/-. Defendant subsequently on 26.04.2018 arranged NOCs from other creditors and executed First Supplemental Letter of Hypothecation, which was filed with SECP who on 30.4.2018 acknowledged the filing of Form 16.

2. In terms of Offer Letter No.1 the validity period of the finance facility was up to 31.07.2018, however, vide Addendum Facility Offer

Letter, such validity was extended, as requested by the defendant followed by execution of Agreement for Financing on markup basis dated 07.08.2018. It was in respect of running finance facility of Rs.500 Million. It followed by further extension up to 29.9.2018 and then up to 29.10.2018 as earlier on 27.08.2018 defendant once again approached plaintiff bank requesting to increase/renew existing finance facilities after having it resolved via Board Resolution. Consequently on 26.10.2018 through Facility Offer Letter (Offer Letter No.2) the financial facilities were renewed/enhanced i.e. Facility No.1 of Letter of Credit from 2,500,000,000/- to Rs.4,000,000,000/- and facility No.2 for Rs.500,000,000/-. Certain documents were executed in respect thereof.

3. On 12.10.2018 a joint/aggregate charge of Rs.83,410,005,000/- was created in terms of Hypothecation Agreement-Current Assets entered into between plaintiff, defendant and all other lenders with plaintiff's share as Rs.3,666,667,000/-, which was registered with SECP vide certificate dated 16.10.2018; in the said agreement the value of goods are shown to be Rs.79,587,954,496/-.

4. The validity period of Offer Letter No.2 was extended till 30.11.2019 followed by an agreement for finance on markup basis dated 14.10.2019 in respect of finance facility of Rs.500 million.

5. It appears that the defendant noted shortage of pledged stock and thus asked to charge other/more assets to cover up the same followed by creation of charge in favour of plaintiff to the tune of Rs.1,470,000,000/-.

6. Thereafter vide Offer Letter No.3 dated 06.05.2020, the financial facilities were reincarnated (i) Facility No.1 i.e. Letter of Credit from Rs.4,000,000,000/- to Rs.2,500,000,000/- whereas (ii) Facility No.2 i.e. Running finances for Rs.500,000,000/-. This followed by execution of necessary documents. Thereafter vide Addendum Facility Offer Letter

dated 17.09.2020 validity period was extended till 29.09.2020 followed by execution of Agreement for finance on markup in respect of running finance facility of Rs.500 million.

7. The defendant defaulted in Letters of Credit owing to which plaintiff had to make payments, description and details of which are shown in paragraph 33 of the plaint and so also defaulted in payment of running finance facility. A sharp decline in stock of charged assets/hypothecated goods was noted by the plaintiff, which is in violation of Section 20 of Financial Institutions (Recovery of Finances) Ordinance, 2001. Plaintiff alleged that the defendant is avoiding to provide stock reports and has defaulted around Rs.58 Billion of banking sector (lenders of defendants). SECP has also initiated certain proceedings on such lapses/defaults on the part of the defendant. Since plaintiff alleged that its outstanding liabilities are not properly secured, and that total outstanding against the defendant exceeds Rs.2,192,841,925.01, it has approached this Court by filing this suit for recovery under Financial Institutions (Recovery of Finances) Ordinance, 2001 along with applications for attachments.

8. On service of notice, defendant has contested the claim of plaintiff by filing application for a leave to defend the suit under Financial Institutions (Recovery of Finances) Ordinance, 2001. Defendant claimed that no finance in terms of provisions of Financial Institutions (Recovery of Finances) Ordinance, 2001 was ever extended to it by the plaintiff but not denied the execution of documents referred. It is pleaded by the defendant that plaintiff has not complied with the provisions of section 9 of Financial Institutions (Recovery of Finances) Ordinance, 2001 and the statements of accounts filed with the plaint are not in compliance of law laid down by Courts. It is urged that the documents filed in support of Letters of Credit do not substantiate

plaintiff's claim. Furthermore, permission from creditors of the defendant are neither obtained at the time of filing the suit nor have they been impleaded. Defendant has also pleaded that the suit is filed by incompetent person and hence liable to be dismissed. It is pleaded that appropriate descriptions of the financial facilities, claimed to have been availed by the defendant, are not provided. It is pleaded that the statement of accounts do not show disbursement of any amount to the defendant whereas the Letters of Credit have no nexus with any of the facilities. It is claimed that the statement of accounts are not certified in terms of Bankers' Books Evidence Act, 1891.

9. I have heard the learned counsel for parties and perused material available on record.

10. Initial part of this order i.e. Para 1 to 7 reflect facts based on documents not denied. Primary arguments of the defendant that could require response from this Court is of the requirement of Section 9 of Financial Institutions (Recovery of Finances) Ordinance, 2001 as claimed to have not been complied by plaintiff however, at the same time it also require scrutiny of leave application under Section 10 of *ibid* Ordinance. Second limb of argument is of the authority of the person who filed this suit for recovery on behalf of the Bank. These are the points raised during arguments by defendant.

11. Let us now see if plaintiff has complied with the requirement of Section 9(3) of Financial Institutions (Recovery of Finances) Ordinance, 2001. Before that, for the convenience sake, *ibid* section is reproduced as under:

**9. Procedure of Banking Courts.- (1) ...**

(2) ...

(3) *The plaint, in the case of a suit for recovery instituted by a financial institution, shall specifically state\_\_*

*(a) the amount of finance availed by the defendant from the financial institution;*

*(b) the amounts paid by the defendant to the financial institution and the dates of payment; and*

*(c) the amount of finance and other amounts relating to the finance payable by the defendant to the financial institution upto the date of institution of the suit.*

12. Para 44 and onward of plaint provide complete compliance of ibid provisions whereas statement of account is also certified as per Section 2(8) of the Bankers' Books Evidence Act, 1891. Compliance of Section 10(4) however is purposely avoided by the defendant just for the sake of denial. There is no information at all about finance availed and amount deposited by defendant despite no substantial denial of documents appended with plaint. In fact it was a complete ignorance as if a stranger is filing a reply.

13. The breakup of the facilities is as under:-

**Letters of Credit  
(Particulars under section 9(3) of FIO 2001)**

a.	The amount of finance availed by the defendant from the plaintiff bank (Amounts and dates as reflected in Annexure P/107 to P/118)	Rs.1,500,000,000/-
b.		
b.1	The amount in respect of the principal paid by the defendant to the plaintiff bank (Amounts and dates as reflected in Annexure P/107 to P/118)	Rs.0/-
b.2	The amount in respect of the markup paid by the defendant to the plaintiff bank (Amounts and dates as reflected in Annexure P/107 to P/118)	Rs.0/-
c.		
c.1	The amount of principal relating to the finance payable by the defendant to the plaintiff bank up to 15.09.2021 (Amounts and dates as reflected in Annexure P/107 to P/118)	Rs.1,500,000,000/-
c.2	The amounts of markup still payable by the defendant towards the plaintiff bank upto 15.09.2021 (Amounts and dates as reflected in Annexure P/107 to P/118)	Rs.152,368,411/-
c.3	Total amount payable by the defendant to the plaintiff bank (c.1+c.2) (Amounts and dates as reflected in Annexure P/107 to P/118)	Rs.1,652,368,411/-

**Running Finance  
(Particulars under section 9(3) of FIO 2001)**

a.	The amount of finance availed by the defendant from the plaintiff bank being total withdrawals. (Amounts and dates as reflected in Annexure P/119 to P/120)	Rs.14,767,529,405.37
b.		
b.1	The amount in respect of the principal paid by the defendant to the plaintiff bank being total deposits. (Amounts and dates as reflected in Annexure P/119 to P/120)	Rs.14,267,800,760.48
b.2	The amount in respect of the markup paid by the defendant to the plaintiff bank (Amounts and dates as reflected in Annexure P/119 to P/120)	Rs.151,808,663.82
c.		
c.1	The amount of principal relating to the finance payable by the defendant to the plaintiff bank up to 09.09.2021 (Amounts and dates as reflected in Annexure P/119 to P/120)	Rs.499,728,644.89
c.2	The amounts of markup still payable by the defendant towards the plaintiff bank upto 16.09.2021 (Amounts and dates as reflected in Annexure P/119 to P/120)	Rs.40,744,869.12
c.3	Total amount payable by the defendant to the plaintiff bank (c.1+c.2) (Amounts and dates as reflected in Annexure P/119 to P/120)	Rs.540,473,514.01
	Total payable amount	Rs.2,192,841,925.01

14. Apollo Textile case<sup>1</sup> provides consequence of non-compliance of Section 10(4) of Financial Institutions (Recovery of Finances) Ordinance, 2001 as under:-

*“17. Non impleadment under subsections (3) and (4) of section 10 and section 9(3) ibid of accounts in terms of the said provisions, entails legal consequences under subsections (1), (6) and (11) of section 10 of the Ordinance, 2001. These provisions read as under:-*

*....*

*18. The Financial Institutions (Recovery of Finances) Ordinance, 2001 is a special law. It provides a special procedure for the banking suits. The provisions of the Ordinance, 2001 under section 4 thereof override all other laws. The provisions contained in the said Sections require strict compliance. Non-compliance therewith attract as above referred, consequences of rejection of leave petition along with decree etc. etc...*

<sup>1</sup> PLD 2012 SC 268 (Apollo Textile Mills Ltd. v. Soneri Bank Ltd.)

....

19. *In this case, the application for leave to defend the suit filed by the petitioners did not fulfil the requirements of section 10(3), (4) and (5) of the Financial Institutions (Recovery of Finances) Ordinance XLVI of 2001. It was admittedly not in conformity with the said mandatory provisions. No cause or the reason for inability to comply with said requirements was shown.... The petitioners/defendants thus attracted the prescribed legal consequences of:--*

*(i) Rejection of their leave petition under section 10(6);*

*(ii) Non-entitlement under section 10(1) to defend the suit for not obtaining leave to defend the suit in terms provided for in section 10;*

*(iii) The allegations of fact in the plaint were deemed under section 10(1) to have been admitted by them; and*

*(iv) A judgment and decree against them and in favour of the plaintiff bank under section 10(1) and (11) *ibid.*”*

15. With regard to candid admission on the part of the defendant, the execution of documents referred above including a request letter for grant of loan, sanction letters, finance agreements and creation of charge documents are of much significance. Admissions are categorical in terms of paragraphs 5, 6, 7, 8, 14, 15 and 18 of Leave application and thus have its consequences.

16. The statement of account is duly verified under Bankers' Book Evidence Act 1891 available at page 997 and 1035 and the entries therein have not been consciously and lawfully disputed by the defendant.

17. For the purposes of authority of person(s) filing plaint on the strength of Power of Attorney, at the outset the question of indoor doctrine of management, that concerns with the authorization has never been considered as substantial question of law (2017 CLD 342)<sup>2</sup>. The authorization flows from the Power of Attorney and is recognized in terms of Section 9 of Financial Institutions (Recovery of Finances)

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<sup>2</sup> 2017 CLD 342 (Dewan Automotive Engineering Ltd. v. Soneri Bank Limited)

Ordinance, 2001 (2016 CLD 1874)<sup>3</sup> and on account of this principle of Indoor Management, it is only the principal who can object to it (2011 CLD 461)<sup>4</sup>.

18. Defendants have neither denied execution of agreement nor challenged the authority of Mr. Jawed Khan to execute the agreement with it on behalf of the bank. It is thus not a question of law that could form substantial question out of the pleadings in consideration of law of Financial Institutions (Recovery of Finances) Ordinance, 2001 and execution of documents in particular. Thus the defendants availed two facilities i.e. Letter of Credit and Running Facility as under:-

### **1. Letter of Credit**

S. No.	LC No.	Page of relevant document	Page of relevant statement of account	Amount
1	285LCFU193180002	685	P/115 - Page 1013 to 1015	318,552,183.68
2	285LCFU93040003	691	P/111 - Page 1005 to 1007	168,651,318.26
3	285LCFU193030001	699	P/113 - Page 1009 to 1011	215,659,566.73
4	285LCFU192870003	705	P/117 - Page 1017	450,000,000.00
5	285LCFU193040002	711	P/109 - Page 1001 to 1003	168,577,060.33
6	285LCFU193040004	717	P/107 - Page 997 to 999	178,559,871.00
<b>Total principal + markup outstanding</b>				<b>1,652,368,411.00</b>

### **2. Running finances of Rs.500 Million**

Total principal + markup outstanding in terms of finance agreement dated 17.09.2020 available at page 663 with statement of account available as Annexure P/99 at page 1021 to 1037	540,473,514.01
<b>Total payable (LC + Running finance)</b>	<b>2,192,841,925.01</b>

19. The leave application as such is dismissed and the suit is decreed in the above terms for an amount of Rs.2,192,841,925.01 as prayed along with cost of funds in terms of Section 3 of Financial Institutions (Recovery of Finances) Ordinance, 2001. Other pending applications also stand disposed of accordingly.

Dated: 06.02.2023

**J U D G E**

<sup>3</sup> 2016 CLD 1874 (Ehsan-ul-Haq v. MCB Bank Limited)

<sup>4</sup> 2011 CLD 461 (KASB Bank Limited v. Mirza Ghulam Mujtaba)