

ORDER SHEET
IN THE HIGH COURT OF SINDH, KARACHI
Suit No.B-65 of 2009

Date Order with signature(s) of Judge(s)

1. For orders in view of Court's order dated 02.12.2010.
2. For Final Disposal

13.02.2014.

Mr. Naveed-ul-Haq, Advocate for the Plaintiff.
None present for the Defendants.

This suit is filed by the Plaintiff for the recovery of finances advanced to the Defendant No.1 and Defendants No.2 & 3 are guarantors as detailed in para-5 which reads as follow:-

- i) FOR PRE-SHIPMENT FINANCING [ERF]-PART-I SBP/OWN)
(RENEWAL)

Limit Rs.15.0 M ERF-1 SBP (formerly FAPC-I)

Purpose: To facilitate exports

Mark up Mandatory rate fixed by SBP from time to time
for Refinance from SBP

Own source @ 4.5% + 3 M KIBOR

Floor: N/A

Tenor: 180-days from the date of disbursement.

Prime Security: 1st charge of Rs.25.000M over present & future plant, machinery, land and building located at L-33-C, Block-22 & street 13/6, Block-2, F.B. Area, Karachi;

Collateral: Ranking hypothecation charges over present & future stocks, stocks in trade, raw material, finished & semi finished goods for an amount of Rs.25.000M.

Ist pari passu charge of Rs.30.000M over present and future receivables of the company.

Lien over confirmed export orders/letters of credit and lien over export bills in collection, drawn under confirmed LCs / orders.

Personal Guarantee of Directors of the company.

ii) FOR PRE-SHIPMENT FINANCING (ERF)-Part II SBP/OWN]
[Renewal]

Limit: Rs.35.0 M ERF-1 SBP (formerly FAPC-I)

Purpose: To facilitate exports

Mark up: Mandatory rate fixed by SBP from time to time for Refinance from SBP

Own source @ 4.5% + 3 M KIBOR

Floor: N/A

Tenor: 180-days from the date of disbursement.

Prime Security: Pledge of finished / semi finished terry towels, raw material and allied textile made ups valuing Rs.35.000m with 25% margin duly insured with Bank's mortgage clause Goods should be held under effective control of Bank's Macadam M/s.Harvester Services (Pvt) Ltd. In separate godowns under our lock.

Collateral: Same collaterals as in line # 1 from (1) to (4).

iii) FOR POST SHIPMENT FINANCING [ERF-SBP/OWN] [RENEWAL]

Limit: Rs.20.0 M FAFB-SBP (formerly FAFB)

Purpose: To facilitate financing Usance export Bills.

Mark up: Mandatory rate fixed by SBP from time to time for Refinance from SBP

Own source @ 4.5% +3M KIBOR

Floor: B/A

Maximum Tenor: 180-days from the date of disbursement.

Prime Security: Line over confirmed export orders / letters of credit and lien over export bills in collection, drawn under confirmed LCs / orders.

Collateral: Same collaterals as in line # 1 from (1(to (4).

iv) FOR Advances in Current Account-(RF) [Adjustment Purposes]

Limit: Rs.6.599M FAFB (formerly FAFB)

Purpose: For adjustment purposes.

Mark up 3 months KIBOR + 4.5% payable on quarterly basis.

Floor: 13% P.A

Clean up: 180 days clean up for two consecutive days.

Prime Security: First pari-passu charges over stocks & books debts of Rs.16.0M.

Ranking charge over Receivable of Rs.16.0M.

Collateral: Personal guarantees (joint and several) of all directors of the company.

v) FOR PRE-SHIPMENT FINANCING PART II- [ERF-Part II SBP/OWN] [RENEWAL]

Limit: Rs.10.0M FAFB-SBP (formerly FAFB)

Purpose: To facilitate for exports

Mark up Mandatory rate fixed by SBP from time to time for Refinance from SBP.

Own source @ 4.5% =3M KIBOR

Maximum Tenor: 180-days from the shipment date.

Clean up: NIL

Security: First pari-passu charges over stocks & books debts of Rs.16.0M.

Ranking charge over Receivables of Rs.16.0M.

Personal guarantees (joint and several) of all directors of the company.

After service Defendants have filed their leave to defend application bearing CMA No.9319/2010, it was on face of it barred by

limitation. However, the Defendants were entertained pending their leave to defend application and by consent of the Defendants hypothecated goods were ordered to be sold by order dated 30.9.2008 and 28.1.2010 and the sale proceeds of the hypothecated goods have already been adjusted towards the claim of the Plaintiff. Subsequently this Court by order dated 26.3.2013 directed the parties to submit break up of their accounts. The Plaintiff submitted accounts on 24.5.2013, claiming that after adjustment of sale proceeds of the hypothecated goods, the balance amount payable by the Defendants against the facilities availed by them comes to Rs.67.819 Million.

The Defendants were appearing through different counsel until 18.9.2012 by order dated 02.12.2010 they were specifically directed that their leave to defend application shall be dismissed similarly being not maintainable / time barred. The Defendants were directed to argue on this point on the next date. However, despite direction their counsel kept of avoiding till 02.12.2012 and from 18.9.2012 nobody has attended the Court on behalf of the Defendants to argue the said application and therefore, their leave to defend application remained under office objection and could not be listed even for hearing. On 18.9.2012 when their last counsel withdrew his power, the Defendants were appearing in person and seeking time to engage counsel. Be that as it may, the facts remained that leave to defend application was time barred and by participating in the proceeding and particularly in view of the fact that they have given consent for disposal of hypothecated goods nothing was left for the Defendants to contest. However, they dragged the feet in the Court for about five years. On the last three dates this Court consecutively directed the Defendants, who were appearing in person to

engage a counsel but they kept on seeking time. Today nobody is in attendance, therefore, office objection is allowed leave to defend application stand dismissed and suit is decreed only to the tune of Rs.67.819 Million as per statement of accounts filed by the Plaintiff alongwith cost of funds as prayed in para-b of the prayer.

JUDGE

SM