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JUDGMENT SHEET
L A H O R E H I G H C O U R T , L A H O R E
JUDICIAL DEPARTMENT

Civil Original Suit No.175411 of 2018

MCB Bank Limited **V/S** *Tanveer Spinning and Weaving Mills and others*

J U D G M E N T

Date of hearing	**16.01.2023**
Plaintiff(s) by	M/s Adil Umar Bandial, Sajjad Ali, Kh. Fahad Ahmad, Asad Farzand and Muhammad Waqas, Advocates.
Defendant(s) by	Mr. Muhammad Imran Malik, ASC with Akif Majeed and Hassan Ismail, Advocates.

"To constitute a customer, there must be some recognisable course or habits of dealing with nature of regular banking business... It has been thought difficult to reconcile the idea of a single transaction with that of a customer that the word predicate, even grammatically, some minimum of custom and antithetic to an isolated act." According to this view in order to constitute a customer of a bank two conditions are to be fulfilled

(a) He must have an account with the bank – i.e. savings account, current account, or fixed deposit account

(b) The transactions between the banker and the customer should be of banking nature, be in the form of regular banking nature. i.e., a person who approaches the bank for operating safe deposit Lockers for purchasing Travellers cheque is not a customer of the banks in search transactions do not come under the orbit of Banking transactions.

(c) frequency of transactions is not quite necessary though anticipated"

(Sir John R. Paget, British Jurist and Banking Expert/Author of Paget's Law of Banking)[1]

JAWAD HASSAN, J. This judgment will decide the suit filed under Section 9 of the Financial Institution (Recovery of Finances) Ordinance, 2001 (the ***"Ordinance"***) pending since 2018 whereby an amount of Rs.487,104,728.44/- along with mark-up at three months KIBOR plus twenty percent per annum alongwith cost of funds till date of realization (the ***"suit amount"***) is claimed by the MCB Bank Limited (the ***"Plaintiff Bank"***) being a financial

[1] *First published in 1904, Paget's Law of Banking has established itself as the leading practitioner text on banking law, combining meticulous accuracy and depth with a clear approach to this complex area. In 2018, the 15th edition has been updated and expanded to provide a thoroughly modern approach to the subject matter, while remaining unique in providing a comprehensive, clear and accurate statement of the law of banking, with a particular emphasis on the principles which underpin the case law".*

institution in terms of Section 2(a) of the *"Ordinance"* from Tanveer Spinning & Weaving Mills (Private) Limited (the ***"Defendant Company"***) and its directors and guarantors, the Defendants No.2 to 4 (the ***"Defendants"***). The Summit Bank Limited and The Bank of Punjab were impleaded as *pro-forma* Defendants No.5 and 6 (the ***"Proforma Defendants"***). The *"Defendants"* filed leave to defend (PLA No.205720 of 2018) the suit under Section 10 of the *"Ordinance"* whereby they have prayed to grant them unconditional leave to appear and defend the instant suit.

2. Pertinently, this Court will only look into the contents of suit alongwith documents attached therewith which include papers books six in numbers, (pages ranging from 1 to 1586) and the *"PLA"* filed by the *"Defendants"* (pages ranging from 1 to 139) and nothing outside the record, would be taken into consideration while deciding the lis in hand. Importantly, this Court will take into consideration its earlier judgment passed in *"NATIONAL BANK OF PAKISTAN Versus KOHINOOR SPINNING MILLS LIMITED etc"* **(2021 CLD 1112)** whereby terms 'default', 'fulfilment' and 'obligation' used under Section 9 of the *"Ordinance"* have been interpreted and elaborated and the guidelines regarding rescheduling/restructuring of loans facilities given by the Hon'ble Supreme Court of Pakistan in *"Messrs DADABHOY CEMENT INDUSTRIES LTD. and 6 others Versus NATIONAL DEVELOPMENT FINANCE CORPORATION, KARACHI"* **(PLD 2002 Supreme Court 500)**.

A. BACKGROUND OF THE CASE

3. The relationship between the parties arose in year 2004 when the *"Defendant Company"* initially availed Project Finance Facility from the *"Proforma Defendants"* on markup basis, which, by the passage of time, renewed, rescheduled, restructured. The said finance facility was secured through execution of following documents in favour of the *"Plaintiff Bank"* which are:

i. *Demand Promissory Note executed by the Customer alongwith Defendants No.2 and 3 in favour of PICIC/Plaintiff Bank in the amount*

of Rs.338,071,752/- (Rupees Three Hundred Thirty Eight Million Seventy One Thousand Seven Hundred and Fifty Two only).

ii. *Letter of Continuity dated 21.02.2004 executed by the Customer alongwith Defendants No.2 and 3 in favour of PICIC/Plaintiff Bank in the amount of Rs.338,071,752/- (Rupees Three Hundred Thirty Eight Million Seventy One Thousand Seven Hundred and Fifty Two only).*

iii. *Deed of Floating Charge dated 23.02.2004 executed by the Customer in favour of PICIC/Plaintiff Bank, creating a continuing floating charge on the undertaking and goodwill of the Company, and all its properties, assets and rights whatsoever and wheresoever, both present and future.*

iv. *Letter of Hypothecation dated 23.02.2004 executed by the Customer in favour of PICIC/Plaintiff Bank creating a charge in the amount of Rs.338,071,752/- (Rupees Three Hundred Thirty Eight Million Seventy One Thousand Seven Hundred and Fifty Two only) in respect of all present and future current/moveable/operating fixed assets including plant, machinery, spare parts, accessories, electrical equipment and all other moveable property and assets described in Schedule/Annexure attached thereto and other machinery that may be imported or acquired by the Customer.*

v. *Equitable mortgage created by the Customer by deposit of the deeds creating a charge in the amount of Rs.338,071,752/- (Rupees Three Hundred Thirty Eight Million Seventy One Thousand Seven Hundred and Fifty Two only) in respect of property/land admeasuring seventy three (73) kanals and seventeen (17) marlas bearing Khewat No.5, Khatooni No.175, 171, 224, Murabba No.440, Killa No.4/8-18, 5/8-11, 7/6-7, 8/8-18, 9/8-18, 10/8-18, 11/8-18, 12/7-16, 13/1/2-11, 20/1/4-2 (Qitta 10 units) situated at Tehsil Feroze Wattawan, District Sheikhupura, together with the building, factory, workshop and superstructure thereon alongwith plant, machinery, spare parts, accessories, electrical equipment, utilities, easement appurtenant thereto, evidenced by the Memorandum of Deposit of Title Deed dated 23.02.2004, in respect of the said immoveable property and moveable properties detailed in Schedule-II and Annexure attached therewith;*

vi. *Irrevocable General Power of Attorney executed by the Defendant No. 2, on behalf of the Customer in favour of PICIC/Plaintiff Bank in respect of aforementioned property/plot, evidenced by the Irrevocable General Power of Attorney dated 23.02.2004, duly registered with the Sub Registrar, Sheikhupura as Document No.157, Book No.4 and Volume No.229 on 24.02.2004;*

vii. *Affidavits dated 23.02.2004 executed by the Defendant No.2 on behalf of the Customer regarding submission of the aforementioned Deed of Floating Charge, Letter of Hypothecation and Memorandum of Deposit of Title Deeds;*

viii. *Directors Guarantee For Mortgage Expenses dated 23.02.2004 executed by the Defendants No.2 and 3 in favour of PICIC/Plaintiff Bank for creation of a legal mortgage on the aforementioned property/land;*

ix. *Side Letter regarding Contracts for the purchase of machinery dated 23.02.2004 executed by the Customer in favour of PICIC/Plaintiff Bank;*

x. *Undertaking against transfer of shareholding/management of the Customer dated 23.02.2004 executed by the Defendants No.2 and 3 in favour of PICIC/Plaintiff Bank;*

xi. *Undertaking to advance loan to Customer dated 23.02.2004 executed by the Defendants No.2 and 3 in favour of PICIC/Plaintiff Bank; and 12.12 Directors Personal Guarantee for raising of paid up capital of the Customer dated 01.04.2004 executed by the Defendants No.2 and 3.*

4. The aforesaid facility had been availed and had continuously been renewed/restructured from time to time through various sub-facilities. On conversion of the *"Proforma Defendants"* into the *"Plaintiff Bank"* the *"Defendant Company"* made requests and representations for its renewal/restructure and ultimately the said facility including sub-facilities were renewed/restructured through execution of agreements dated 15.06.2009 and 02.11.2010 respectively. Due to non-fulfilling financial obligations and default in repayments under the renewed/restructured finance facilities, the *"Plaintiff Bank"* claimed to recover an amount of Rs.487,104,728.44/- in respect of following finance facilities with breakup as follows:

Finance Facilities	Principal Amount Outstanding (Rs.)	Markup Amount Outstanding (Rs.)	Total
Term Loan	183,669,851	172,737,022.36	356,406,873.36
Running Finance	64,890,841.67	21,582,739.06	86,473,580.73
Cash Finance	5,005,054.65	9,129,140.53	14,134,195.18
LTF-EOP	28,183,170	1,376,700.78	29,559,870.78
Auto Loan	475,032	55,176.39	530,208.39
Total	**282,223,949.32**	**240,880,779.12**	**487,104,728.44**

B. LEAVE TO DEFEND

5. To refute the claim of the "*Plaintiff Bank"*, the *"Defendant Company"* filed petition under Section 10 of the "*Ordinance"* for the grant of unconditional leave to defend the suit (***"PLA"***). The *"Defendant Company"* denied the liabilities alleged by the *"Plaintiff Bank"* by asserting that there were a number of questions of law and facts involved which could not be resolved without recording of evidence of the *"Defendants"* and that the *"Plaintiff Bank"* has failed to produce the requisite/mandatory certified statement of accounts.

C. SUBMISSIONS OF LEARNED COUNSEL FOR THE PLAINTIFF

6. Mr. Adil Umar Bandial counsel for the *"Plaintiff Bank" inter alia* stated that the "*Defendant Company"* approached the *"Proforma*

Defendants" in year 2004 seeking grant of finance facility for the establishment of a spinning unit at Feroze Wattuwan, District Sheikhupura pursuant to Board Resolution dated 19.02.2004 and resultantly, a finance facility agreement was executed on markup basis on 21.02.2004 for an amount of Rs.199 million which was sanctioned and disbursed through letter of disbursement dated 25.02.2004 after executing Demand Promissory Note, Letter of Continuity, Deed of Floating Charge, Letter of Hypothecation, Equitable Mortgage, Irrevocable General Power of Attorney, affidavits, Directors Guarantee for Mortgage Expenses, Side Letter, undertaking against transfer of shareholding/management, undertaking to advance loan and directors personal guarantee; that on *"Defendant Company"* request through Board Resolution dated 01.06.2009, the availed subject facility including sub-facilities were subsequently restructured and renewed/rescheduled through agreements dated 15.06.2009 and 02.11.2010 and whereby Term Loan Facility, LTF-EOP, Running Finance (RF), Cash Finance (CF) and Auto Loan were admitted by the *"Defendant Company"* but the *"Defendant Company"* in breach of the terms and conditions stated in above said agreements failed and/or neglected to repay outstanding obligations as and when the same fell due despite various demands and reminders; that failure of the *"Defendant Company"* to repay outstanding liabilities since a long period tantamounts to refusal to pay the same. It has been further stated that the *"Defendants"* have defaulted and have continued to default on their obligations and as a result of the same, a sum of Rs.487,104,728.44/- with mark-up and cost of funds is due and payable by them.

D. SUBMISSIONS OF LEARNED COUNSEL FOR THE DEFENDANTS

7. Mr. Muhammad Imran Malik, ASC *inter alia* submitted that suit is liable to be dismissed as the same does not comply with the mandatory requirements of Section 9 of the *"Ordinance"* more

specifically sub sections (2) and (3) wherein obligations have been casted upon a financial institution to file with the plaint all the relevant documents as well as to give details regarding the finance alleged to have been disbursed, availed and repaid; that the finance facilities mentioned in the plaint, were never offered by the *"Plaintiff Bank"* neither availed nor any amount in respect thereof ever disbursed to the *"Defendant Company";* that the alleged finance facilities have not been corroborated with documents and in order to conceal the same, the *"Plaintiff Bank"* has not attached any details or documents with respect of such facilities; that it is settled law that any suit filed by a financial institution/bank must be supported by a properly verified statement of account on oath, whereas the statements of accounts filed by the *"Plaintiff Bank"* are not duly verified on oath and they failed to fulfill other requirements of the Bankers Books Evidence Act, 1981 as well, which is a mandatory requirements in terms of Section 9 of the *"Ordinance"*, thus no presumption of truth can be attached to the same, and in view of such glaring defect in the Statement of Account, the suit of the *"Plaintiff Bank"* is liable to be dismissed; that no amount is due and payable by the *"Defendant Company"* to the *"Plaintiff Bank"* with regard to any finance facility and no document affixing any liability upon the *"Defendant Company"* has been appended with the plaint as well as no relationship of banker and customer exists between the parties; that the *"Plaintiff Bank"* has charged illegal amounts coupled with markup and has illegally made adjustment/deduction through fake entries without providing any details thereof; that suit has neither been filed by the *"Plaintiff Bank"* through its competent or authorized officer nor any valid document to that effect has been filed with the plaint rather it was filed by one Tanveer Ahmed who does not hold a valid and legal power of attorney/authorization therefore, the suit is liable to be dismissed on this ground alone. Lastly, learned counsel urged that in view of his arguments; instant suit may be dismissed

being misconceived or the *"Defendants"* may be granted unconditional leave to appear and defend the suit.

E. REPLY BY LEARNED COUNSEL FOR THE PLAINTIFF

8. While exercising the right of rebuttal, Mr. Adil Umar Bandial counsel for the *"Plaintiff Bank"*, reiterated the contents of plaint as well as replication to the *"PLA"* and has urged that the *"Defendants"* have admitted the execution of finance facilities and security documents as is evident from the agreement dated 15.06.2009 and it is a well settled law that the admitted facts need not to be proved, therefore, upon admission of the execution of the finance and security documents, the *"PLA"* cannot be granted on this score alone and the same is liable to be dismissed. Learned counsel argued that the *"Defendants"* have concealed and twisted the material facts and have failed to prove any element of forged/fake entries without any cogent evidence and the *"PLA"* is hit by the principle of approbation and reprobation which is not permissible under the law. That the suit has validly been filed through Special Power of Attorney holder, authorized through Power of Attorney, placed on file as Annex-D/1 to D/2 (Pages 249 to 252 of the plaint); that the "*Defendant Company"* was a private limited company and the *"Defendants"* were its directors, mortgagors and guarantors. Copies of Certificate of Incorporation and Form-29 are Annex-F to F/1 (Page 253 to 263); that the relationship of the "*Defendant Company"* and the *"Defendants"*, as of customers started in the year-2004 when they initially availed finance facility from the *"Plaintiff Bank"* and got mortgaged their properties which have been renewed/rescheduled from time to time and lastly in the year 2009, vide request dated 01.06.2009 for rescheduling/renewal of existing finance facilities viz. project financing, running finance, cash finance and letter of guarantee etc. that the claim of the *"Plaintiff Bank"* is genuine, supported by the documents executed by the *"Defendants"* and Statement of Accounts

had been duly signed and certified by the competent persons; all the entries relating to availing of the finance facility and repayments had been duly reflected in the statement of accounts and outstanding balance has also been shown in the said statement; lastly he pleaded that the suit may be decreed as prayed for in favour of the *Plaintiff* and against the *"Defendants"* jointly and severally with costs and cost of funds till realization of the decretal amount.

9. I have heard the arguments of the learned counsel for the parties and perused the record.

F. MOOT POINTS

10. Before proceeding further, it would be advantageous to frame the following moot questions:

> *1. Whether the finance facility was availed by the "Defendant Company"?*
> *2. Whether the "Plaintiff Bank" and the "Defendant Company" has relationship as a financial institution and a customer?*
> *3. Whether the "Plaintiff Bank" is illegally claiming an amount of the Running Finance Facility?*
> *4. Whether the Plaintiff Bank is illegally claiming an amount of the Cash Finance Facility?*
> *5. Whether the Plaintiff Bank is illegally claiming an amount of LTF-EOP?*
> *6. Whether the Defendant Company is liable to make payment of the Auto Loan?*
> *7. Whether the suit has been filed by an unauthorized person?*

Moot Point No.1

> *Whether the finance facility was availed by the "Defendant Company"?*

11. The counsel for the *"Defendant Company"* argued that this finance facility was neither availed nor the amount claimed by the *"Plaintiff Bank"* was proved to be disbursed and that too no letter of credit for the subject facility has been produced by the *"Plaintiff Bank"*. The response of learned counsel for the *"Plaintiff Bank"* is

that the said facility was initially availed by the *"Defendant Company"* in year 2004 and the same was subsequently restructured/rescheduled through Restructuring Agreement dated 15.06.2009 and admitted by the *"Defendant Company"* and that too the transaction of letter of credit only mentions to show banker-customer relationship hence, letter of credit or sanction advices prior to 2009 are not legally required.

11. Record reveals that the *"Defendant Company"* availed the subject facility on mark-up basis on 21.02.2004, and subsequently on the request of the *"Defendant Company"* made on 01.06.2009 for rescheduling/renewal of existing financing facility (Annex-CV Page 1140 of Paper Book 5) coupled with Board Resolution (Annex-CV/2 Page 1141 of Paper Book 5), the subject facility was renewed/rescheduled/restructured and was admitted by the *"Defendant Company"* in Restructuring Agreement, relevant acknowledgment and restructuring reads as:

> ***"Acknowledgment***
> *The Customer hereby acknowledges and confirms that:*
>
> *(i) the entire Sale Price under each of the Finance Agreements has been disbursed to the Customer and the following sums are the principal amounts outstanding as part of the outstanding Purchase Price payable by the Customer in terms of the respective Finance Agreements:*
>
> | | |
> |---|---|
> | *TF Facility 1* | *Rs.167,058,110* |
> | *TF Facility 2* | *Rs.8,640,910* |
> | *TF Facility 3* | *Rs.10,270,831* |
>
> *(ii) the Bank is not obliged to make any further disbursement in respect of any of the TF Facilities;*
>
> *(iii) the payments of the Purchase Price so far made by the Customer in respect of the TF Facilities have been correctly applied and the outstanding amounts have been calculated in accordance with the terms of the respective Finance Agreements*

Restructuring

That the Customer hereby agrees and undertakes to repay its outstanding liabilities with mark-up in the manner and on the dates given below with the consideration that the existing volume of supply of energy and production; and marketing environment will continue:-

(i) The aggregate outstanding amount of the Sale Price component of the TF Facilities amounting to Rs.186,000,000 shall be paid as follows:

(a) a sum of Rs.100,000 shall be paid on the 15th of every month commencing from July 15, 2009 until August 15, 2010;

(b) the balance amount shall be paid in 30 equal quarterly installments commencing from June 15, 2011. Such installments shall be payable on March 15, June 15, September 15 and October 15 each year. The final installment shall be paid on September 15, 2018

(ii) Mark-up for the period commencing from January 1, 2010 shall be paid in arrears on quarterly basis calculated by applying the Applicable Rate on the outstanding balance of the amount payable under sub-clause (i) above. Mark-up shall be paid on March 15, June 15, September 15 and December 15 each year.

(iii) An amount of Rs.22,377,313 on account of the mark-up accrued until the period ending June 30, 2009 shall be payable in 20 equal quarterly installments commencing after the full payment of the amounts payable under sub-clause (i) above and the first installment shall be payable on December 15, 2018. Provided however that if the Customer makes payment of the amounts payable under sub-clause (i) and (ii) above in full and in a timely manner, then the Bank may waive this amount.

(iv) The mark-up accrued at the Applicable Rate for the period commencing on July 1, 2009 and ending on December 31, 2009, shall be payable in 20 equal quarterly installments commencing after the full payment of the amounts payable under sub-clause (i) above and first installment shall be payable on December, 2018".

Emphasis supplied

Plain reading of above makes it quite clear that the *"Defendant Company"*, acknowledged restructuring of three facilities into one facility i.e. Term Loan Facility and agreed to pay the entire sale price with undertaking to repay outstanding liabilities with markup in the manner, mode, and time limit given therein.

12. A bare perusal of above said agreement shows that the *"Defendant Company"* after executing restructuring agreement executed an agreement for financing on markup basis on 08.08.2009 (Page 1166, Paper Book 5) indeed after execution of various documents duly signed and executed by the *"Defendant Company"* and the *"Defendants"* i.e. demand promissory note, letter of continuity, confirmation and undertaking, letter of pledge and personal guarantees (all dated 08.08.2009) by the *"Defendants",* who are the signatory of the above said documents which under Section 118 of the Negotiable Instruments Act, 1881, have attached itself the presumption of truth vis-a-vis consideration, date, time of acceptance and transfer, order of endorsement, stamping and as to holder in due course of Negotiable Instrument but the same also attract a special rule of evidence as held by the Hon'ble Supreme Court of Pakistan in the case of *"MUHAMMAD ARSHAD and another Versus CITIBANK N.A., LAHORE"***(2006 SCMR 1347).** Hence stance of the *"Defendant Company"* taken in the "PLA" that subject facility has never been availed and also it has raised objections regarding the statement of accounts being not in conformity with the requirements of the *"Ordinance"* as well as Bankers' Book Evidence Act, 1891, is not sustainable in law because the *"Defendant Company"* has not filed a single document in support of its stance which could show that the *"Defendants"* have ever objected to the entries in the statement of accounts and/or raised objections in respect of subject finance facilities during the course of business thus, the stance/objection of the *"Defendant Company"* without any proof is nothing but devoid of

merit. On the contrary, the *"Plaintiff Bank"* has attached with the plaint, all the agreements, security documents, promissory notes etc. and statement of account with regard to subject facility showing disbursement of amount of Rs.185,969,851/- (Page 1363 of Paper Book 6) and the amount of markup Rs.172,373,022.36 (Page 1364, Paper Book 6) which substantiates the stance of the *"Plaintiff Bank"* in the subject facility.

Moot Point No.2

> *Whether the "Plaintiff Bank" and the "Defendant Company" has relationship as a financial institution and a customer?*

13. A ground of non-existence of relationship between the parties is agitated by learned counsel for the *"Defendants"* but the said ground is not valid in as much as the *"Defendants"* in their leave to defend, at the one hand, have straightaway denied the relationship with the *"Plaintiff Bank"* and execution of documents thereof, but on the other hand, they have disputed certain entries of the statement of accounts with regard to finance facilities viz. Term Loan Facility, Running Finance Facility, Cash Finance Facility, LTF-EOP, and Auto Loan availed by them after execution of documents etc.

14. It would be noteworthy to observe that renewal/restructuring of finance facilities and execution of agreements and other documents in respect thereof, have also been admitted by the *"Defendant Company"* in agreements dated 15.06.2009 and 02.11.2010. The only thing by way of defence that was brought forward was that the *"Plaintiff Bank"* is not entitled to capitalize on mark-up and that the *"Plaintiff Bank"* has raised nothing but amounts towards excess mark-up and excess deductions.

15. It is observed that availing of Term Loan Facility was admitted by the *"Defendant Company"* in Restructuring Agreement dated 15.06.2009, relevant portion thereof was reproduced above.

16. Similarly, renewal/restructuring/rescheduling of Running Finance, Cash Finance, LTE-EOP and Auto Loan facilities were admitted by the *"Defendant Company"* in Clause-19 of Agreement for Financing on Mark-up basis dated 02.11.2010 which reads that *"the terms and conditions contained in the Facility Offer Letter dated 02.11.2010 form an integral part of this Agreement. However, if there is any conflict between the terms of the Facility Offer Letter and this Agreement, the terms contained in this Agreement shall prevail"*.

17. Hence, in view of the above, relationship between the "*Plaintiff Bank"* and the "*Defendant Company"* is proved as of a financial institution and a customer in terms of Section 2(a) & 2(c) of the *"Ordinance"*; the course of their relationship was regulated based on the facility of finances availed by the "*Defendant Company"*; and extended/rescheduled/restructured by the "*Plaintiff Bank"* thus squarely comes within the purview of definition provided under Section 2(d) of the "*Ordinance"*.

Moot Point No.3

Whether the "Plaintiff Bank" is illegally claiming an amount of the Running Finance Facility?

18. It is argued by learned counsel for the *"Defendants"* that the *"Defendant Company"* is not liable to make payment of Rs.84,473,580.73 as claimed by the *"Plaintiff Bank"* under the said facility as neither independent statement of account relating to this facility is brought on record nor the said facility is availed by the *"Defendant Company"*. While using the right of rebuttal, learned counsel for the *"Plaintiff Bank"* stated that Pledge Finance Facility and RF Facility were restructured and clubbed together into one Facility having sub limits of advances in current account to the amount of Rs.55,000,000/- and same was admitted by the *"Defendant Company"* in agreement for financing on mark-up basis dated 02.11.2010. He further stated that under the applicable banking laws, it is a common practice to consider current account statement as RF

statement of account was debited to settle the liability of Cash Credit Pledge/Cash Finance account statement and more so the *"Defendant Company"* has never raised such objection during continuance of banker-customer relationship. It is observed that the *"Defendant Company"* in *"PLA"* has admitted the subject facility in ground (m) by stating the amount due on 01.08.2009 as Rs.54,617,439.23 and the amounts availed which is also evident from facility letter dated 02.11.2010 which reads as:

"FACILITY OFFER LETTER

November 02, 2010
Mian Azhar Saleem
Group Chief Executive,
M/s Tanveer Spinning & Weaving Mills (Pvt) Ltd
Lahore Cantt.

Dear Sir,

RE: **BANKING FACILITIES**

We, NIB Bank Limited having as our place of business at 14-A Old Race Course Road, Lahore ("Bank") refer to your request dated July 08, 2010 for banking facility/facilities. The Bank is pleased to inform you that the Bank has approved the following facilities in favour of M/s Tanveer Spinning & Weaving Mills (Pvt) Ltd (hereinafter known as the "Customer"), which are to be utilized strictly in accordance with the terms and conditions mentioned hereunder:

1. FACILITIES

i.a---
i.b---
i.c---
i.d

(a)	Name of Facility	Advances in Current Account:- Running Finance
(b)	Amount	PKR.55,000,000/- (Rupees Fifty Five Million Only).
(c)	Purpose	To finance working capital requirement of the client.
(d)	Markup	(i) 3 month KIBOR (ask side) + 100 BPS. (ii) Mark-up would be calculated as the average of last seven (7) days' KIBOR ask side prevailing during the last quarter plus the spread of 100 Basis Points to be reset on a quarterly basis, on the balance outstanding from day to day or as per the rules and regulations promulgated by the State Bank of Pakistan (SBP). (iii) Mark up payment to be paid by the Customer on a quarterly basis.
(e)	Security	1st Charge of Rs.90.0 million on current account assets of the Company".

19. Record attached by the *"Plaintiff Bank"* reveals that the *"Defendant Company"* availed the subject facility in year 2004 which

was renewed from time to time and amount under subject facility was requested to be enhanced by the "*Defendant Company"* on 08.07.2010 (Page 1197 Paper Book 5) through Board Resolution (Page 1198 of Paper Book 5) and subsequently agreement dated 21.09.2010 was executed between the parties (Page 1199, Paper Book 5). Moreover, the *"Defendant Company"* in the *"PLA"* has only mentioned the amounts due and availed after 01.08.2009 whereas they have not mentioned the amounts availed since initiation of availing the said facility. On the contrary, the *"Plaintiff Bank"* has annexed the statement of accounts of the subject facility (Pages 1365 to 1524 of Paper Book 6) showing debit and credit entries till 05.04.2012.

Moot Point No.4

Whether the Plaintiff Bank is illegally claiming an amount of the Cash Finance Facility?

20. The counsel for the *"Defendants"* argued that the *"Defendant Company"* is not liable to make payment of Rs.14,134,195.18 as claimed by the *"Plaintiff Bank"* because this facility was not availed by the *"Defendant Company"*. The response of learned counsel for the *"Plaintiff Bank"* is that the *"Defendant Company"* availed total amount of Rs.13,69,684,374/- under this facility since year 2004 to 2010 and the same is reflected in the statement of account at pages 1528 to 1551 while an amount of Rs.13,64,679,319.35 has been repaid therefore, an amount of Rs.5,00,054.65 is outstanding. It is observed that the *"Defendant Company"* in *"PLA"* has admitted the subject facility in ground (I) by stating an amount of Rs.87,97,500.00 on 27.01.2010 and the amounts repaid from 12.02.2010 10.07.2014 but perusal of record reveals that this facility was availed by the *"Defendant Company"* in year 2004 and the same was restructured subsequently and lastly it was restructured through agreement of finance on markup basis dated 02.11.2010 for an amount of Rs.200 million as is evident from facility letter dated 02.11.2010 which reads as:

"FACILITY OFFER LETTER

November 02, 2010
Mian Azhar Saleem
Group Chief Executive,
M/s Tanveer Spinning & Weaving Mills (Pvt) Ltd
Lahore Cantt.

Dear Sir,

RE: **BANKING FACILITIES**

We, NIB Bank Limited having as our place of business at 14-A Old Race Course Road, Lahore ("Bank") refer to your request dated July 08, 2010 for banking facility/facilities. The Bank is pleased to inform you that the Bank has approved the following facilities in favour of M/s Tanveer Spinning & Weaving Mills (Pvt) Ltd (hereinafter known as the "Customer"), which are to be utilized strictly in accordance with the terms and conditions mentioned hereunder:

1. FACILITIES

i.a---
i.b---
i.c---

(a)	Name of Facility	Advances in Current Account:- Cash Finance
(b)	Amount	PKR.200,000,000/- (Rupees Two Hundred Million Only).
(c)	Purpose	For purchase of raw cotton (local)
(d)	Markup	(i) 3 month KIBOR (ask side) + 100 BPS. (ii) Mark-up would be calculated as the average of last seven (7) days' KIBOR ask side prevailing during the last quarter plus the spread of 100 Basis Points to be reset on a quarterly basis, on the balance outstanding from day to day or as per the rules and regulations promulgated by the State Bank of Pakistan (SBP). (iii) Mark up payment to be paid by the Customer on a quarterly basis.
(e)	Security	Pledge of Raw Cotton Bales Maintaining 10% Margin under Lock and Key and control of Bank's Appointed Muccadum, duly Insured.

21. It is noted that the *"Defendant Company"* has mentioned the details of amounts availed and deducted after 27.01.2010 whereas they have not mentioned the amounts availed since initiation of availing the said facility. The *"Plaintiff Bank"* has annexed the statement of accounts of the subject facility (Pages 1528 to 1551 of Paper Book 6) showing debit and credit entries till 10.07.2014 which shows that an amount of Rs.5,005,054.65 is outstanding against the *"Defendant Company"* as principal amount.

Moot Point No.5

Whether the Plaintiff Bank is illegally claiming an amount of LTF-EOP?

22. The counsel for the "Defendant Company" argued that the *"Plaintiff Bank"* is illegally claiming an amount of 87,992,026.00 under this facility while neither from record the availing and sanctioning of said amount in favour of the *"Defendant Company"* is proved nor statement of account corroborates the same. He also stated that the *"Plaintiff Bank"* has deducted an excess amount of Rs.27,590,945.00. While the response of learned counsel for the *"Plaintiff Bank"* is that the *"Defendant Company"* initially availed two facilities, first was for an amount of Rs.47,193,942/- and second was for an amount Rs.40,798,084/- and accumulated amounts of both comes to Rs.87,992,026/-. He pointed out that after making certain repayments by the *"Defendant Company"*, an amount of Rs.29,559,870.78 as principal and markup is still outstanding and statement of accounts attached with the plaint substantiated the same. It is observed that the *"Defendant Company"* in "PLA" has admitted the subject facility in ground (c) by stating an amount of Rs.47,193,942.00 and amounts of repayment from 27.02.2007 to 05.07.2011. This facility was also restructured one and admitted through agreement for finance on mark-up basis dated 02.11.2010 by admitting the liability in the following manner.

"FACILITY OFFER LETTER

November 02, 2010
Mian Azhar Saleem
Group Chief Executive,
M/s Tanveer Spinning & Weaving Mills (Pvt) Ltd
Lahore Cantt.

Dear Sir,

RE: **BANKING FACILITIES**

We, NIB Bank Limited having as our place of business at 14-A Old Race Course Road, Lahore ("Bank") refer to your request dated July 08, 2010 for banking facility/facilities. The Bank is pleased to inform you that the Bank has approved the following facilities in favour of M/s Tanveer Spinning & Weaving Mills (Pvt) Ltd (hereinafter known as the "Customer"), which are to be utilized strictly in accordance with the terms and conditions mentioned hereunder:

1. FACILITIES

5. Facility Number 5

(a)	Name of Facility	LTF-EOP (SBP Source)
(b)	Amount	PKR.45,040,000/- (Rupees Forty Five Million Forty Thousand Only).
(c)	Purpose	Project finance.
(d)	Markup	SBP Rate + 200 BSP i.e. 5.00% + 2.00 % = 7.00 % P.A.
(e)	Repayment	Both Facilities will be paid on quarterly basis as per their respective repayment schedule.
(f)	Tenor	Payable as per existing repayment terms agreed with the company and as communicated to the SBP.
(g)	Final Maturity	(a) May 2012 (b) January 2013
(h)	Securities	1st exclusive charge over imported machinery.
OTF:		Accrued markup Till Dec 09 against RF/CF/TL was approved for deferment/frozen under Restructuring of Facilities During 2009. This accrued markup shall be payable in 5 years after repayment of principal amount of Facility # 4 or may be waived subject to prompt payment servicing of all the facilities and the amount is collateralized be security at facility # 4.
Other Conditions		• Facility 1 (a,b,c and d) are also covered against charge on fixed Assets (same as Line # 4). • For All Lines:- Personal Guarantees of Sponsoring Directors of the Company. • Commitment fee including renewal charge for Rs.100,000/- to be paid by the customer. • Cotton stocks should not carry more than 3 months.

23. It is noted that statement of account of EOP-I facility is available at page 1559 of Paper Book 6, according to which, an amount of Rs.40,798,084.00 was disbursed in favour of the *"Defendant Company"* out of which amounts of Rs.1,854,458.00 were repaid on 27.02.2007, 28.05.2007, 29.08.2007, 27.11.2007, 01.03.2008, 26.05.2008, 27.08.2008, 28.11.2008. Whereas with regard to EOP-II, an amount of Rs.47,193,942.00 was disbursed as reflected in statement of account, page 1561 of Paper Book 6, according to which an amount of 1,887,758.00 was repaid by the *"Defendant Company"* on 30.03.2007, 30.06.2007, 30.09.2007, 30.12.2007, 30.03.2008, 07.07.2008, 14.10.2008, 26.12.2009, 27.04.2010, 30.06.2010, 30.09.2010, 30.12.2012, 01.04.2011 and

05.07.2011 (total repayment Rs.26,428,612.00) while an amount of Rs.20,765,330.00 has been shown as outstanding. It is observed that the *"Defendant Company"* in the "PLA" Ground 2(c) has mentioned certain entries with different dates by mingling the dates and amounts of two facilities under one facility. In this view of the matter, the ground of deducting excess amount agitated by learned counsel for the *"Defendant Company"* is without any supporting documents thus carries no weight.

Moot Point No.6

Whether the Defendant Company is liable to make payment of the Auto Loan?

24. The stance of learned counsel for the *"Defendant Company"* is that determination of payment of the subject facility has already been decided by the Banking Court, Lahore vide judgment dated 08.07.2014 and the *"Defendant Company"* has already deposited an amount of Rs.530,208.39. While learned counsel for the *"Plaintiff Bank"* stated that the aforesaid judgment and decree has been set-aside by learned Division Bench of this Court in R.F.A.No.1099 of 2014 vide order dated 04.02.2016 by remanding the matter to the Banking Court concerned pursuant to which the Banking Court dismissed the suit vide judgment dated 26.03.2016. This facility was also admitted by the *"Defendant Company"* through agreement for finance on mark-up basis dated 02.11.2010 in the following manner:

"FACILITY OFFER LETTER

November 02, 2010
Mian Azhar Saleem
Group Chief Executive,
M/s Tanveer Spinning & Weaving Mills (Pvt) Ltd
Lahore Cantt.

Dear Sir,

RE: **BANKING FACILITIES**

We, NIB Bank Limited having as our place of business at 14-A Old Race Course Road, Lahore ("Bank") refer to your request dated July 08, 2010 for banking facility/facilities. The Bank is pleased to inform you that the Bank has approved the following facilities in favour of M/s Tanveer Spinning & Weaving Mills (Pvt) Ltd (hereinafter known as the

"Customer"), which are to be utilized strictly in accordance with the terms and conditions mentioned hereunder:

1. <u>FACILITIES</u>

3. Term Financing (TL) (Auto Loan)

Amount	PKR.3,627,000/- (Rupees Three Million Six Hundred Twenty Seven Thousand Only)
Purpose	To finance purchase of automobiles.
Pricing	3 month KIBOR + 425 bps payable on quarterly basis.
Tenor	5 years.
Repayment	Monthly

25. A thorough glance of the "PLA" reveals that the "Defendants", though have mentioned the judgment dated 08.07.2014 whereby the Banking Court determined the outstanding liability under the subject facility and making the payment in compliance thereof, yet, they have annexed the order dated 26.03.2016 (page 136 of the *"PLA"*), passed pursuant to directions issued in R.F.A.No.1099 of 2014 on 04.02.2016. The relevant portion is reproduced hereunder:

> *"7. It is not disputed fact by the parties that plaintiff is still defaulter in payment of finance facility availed and subject matter of this case as well as the other facilities availed by it. Even it has not fully paid all outstanding dues against the vehicles in question as is evident from statement of account, according to which outstanding liability of the plaintiff on account of principal is Rs.106,684/- and markup is Rs.10,811.87 total amounting to Rs.117,495.87 pertaining to Vehicle Honda City, and outstanding liability of the plaintiff against vehicle Honda Accord, on account of principal is 368,348/- and markup is Rs.44,364.52 total amounting to Rs.412,715.52 and total liability of both the vehicles becomes Rs.530,208.39. The plaintiff was asked to pay this outstanding liability by this court on 08.07.2014 and it has not assailed that order meaning that he admits above stated liabilities."*

26. From above observation, it is quite obvious that the subject facility has been admitted by the *"Defendant Company"*; the same is also reflected from the statement of accounts (pages 1570 and 1571, Paper Book 6); and no document in this respect has been brought on record. While the "*Plaintiff Bank*" has claimed the same amount

through the suit in hand hence the stance of the "*Defendant Company*" does not carry weight.

Moot Point No.7

Whether the suit has been filed by an unauthorized person?

27. So far as the objection of the "*Defendants"* with regard to institution of present suit by an unauthorized/incompetent person, is concerned, this objection has properly been dealt with by this Court in the case of *"The BANK OF PUNJAB Versus Messrs MAGIC RIVER SERVICES and 4 others"***(2016 CLD 171)** by observing that *"Section 9 of the Ordinance empowers three categories of persons to file a suit (a) the brank manager (b) an officer authorized by a power of attorney and (c) an officer who is otherwise authorized by a financial institution"*. Record reveals that the suit in hand was instituted by Tanveer Ahmad, Attorney Holder, Assets Rehabilitation Group, MCB Bank Limited, MCB, House, Jail Road, Lahore. The said attorney holder was authorized through Special Power of Attorney executed in his favour on 15.08.2017 by the President and Chief Executive of the *"Plaintiff Bank"* to institute the suit. The Chairman of the Board of Directors of the "Plaintiff Bank" appointed Mr. Imran Maqbool son of Malik Maqbool Ahmed, as general power of attorney authorizing him to further delegate his powers authorizing him certain powers including the powers to take all requisite steps/actions in relation to the legal proceedings of the *"Plaintiff Bank"* as per clauses 31 and 32 which read as under:

> *"31. To appoint at any time or from time to time any executive(s), officer(s) or any other person(s) to be the Attorney of the Bank for managing the affairs of the Bank and/or conducting the business of the Bank with such powers as deemed appropriate by the Authority.*
> *32. To appoint any substitute or substitutes and delegate to such substitute or substitutes all or any of the powers hereby conferred, provided*

> *that no such appointment(s) shall divest the Attorney himself of any of the powers hereby granted and provided further that the power to appoint substitutes provided for in this paragraph shall not be conferred on any substitute."*

28. In view of above, it is held that the present suit has been instituted by the competent person having requisite authority from the President/CEO of the *"Plaintiff Bank"* under special power of attorney, hence this objection is rejected.

DETERMINATION BY THE COURT

29. There is no cavil to the proposition that Section 9 of the *"Ordinance"* is invoked for non-fulfillment of the obligation with regard to finance by or against any financial institution and the parties to a suit are obligated to specifically mention/plead in the plaint and in the *"PLA"*, the amount of finances availed by a defendant from the financial institution, the amount paid by a defendant to the financial institution and dates of repayment as well as the amount of finance and other amounts relating to the finance facility payable by a defendant to a financial institution up to the date of institution of suit for recovery, thus under Sections 9(3) and 10(4) of the *"Ordinance"*, the *"Plaintiff Bank"* and the *"Defendant"* have identical statutory responsibilities as held by the Hon'ble Supreme Court of Pakistan in *"APOLLO TEXTILE MILLS LTD. and others Versus SONERI BANK LTD."***(PLD 2012 SC 268)**.

30. The terms 'default', 'fulfilment' and 'obligation' used under Section 9 of the *"Ordinance"* has already been interpreted by this Court in the case of *"NATIONAL BANK OF PAKISTAN"* **(2021 CLD 1112)** by holding as under:

> *"By examining the language and words of Section 9(1) of the Ordinance and the words used therein which have been explained above, it is unequivocal that the Plaintiff Bank filed the suit for recovery of loan, which was based on the*

> *statements of accounts attached with the plaint and duly certified under the Bankers' Books Evidence Act, 1891 and the same was not rebutted by the Defendants with cogent reasons either through oral evidence or through documentary evidence. The Defendant Company has not denied availing of finance facilities nor has denied the documentation hence admitted the availing of finance facilities and its documents. The Plaintiff Bank however alleged that the Defendants have committed default in repayment thereof. Though the term willful default is defined under Section 2(g) of the Ordinance, which means deliberate and intentional failure of the customer to repay financial assistance secured from a financial institution yet the requirement under Section 9 is default simpliciter, which is not defined in the Ordinance, however, through the aid of literal interpretation referred above and analogy drawn from the definition of willful default under the Ordinance, a default means failure to fulfill the conditions of a contract to pay the loan, either whole or installments and includes an unfulfilled obligation. The existence of relationship between the parties and availing of finance facility by the Defendants from the Plaintiff Bank is well established through documentary evidence and the defendants failed to establish that they did not have committed any default in fulfillment of their financial obligation towards the Plaintiff Bank. The Plaintiff bank, as such, has established that the Defendants have committed default in fulfillment of their obligation regarding the finance facility availed by them".*

31. It may be noted that renewal, rescheduling, restructuring of a finance facility only ensued upon default, non-payment, delayed payment or inability in payment of outstanding liability by a customer who normally sought such concession upon admission of his liability and in the case in hand, the previous finance facilities availed by the *"Defendant Company"* were finally restructured/renewed due to inability to pay the liability owing to economic conditions prevailing in the country as is evident from request made on 01.06.2009 (Page 1140 Paper Book 5). The learned Division Bench of this Court in *"Syed ABBAS ALI Versus BANK OF PUNJAB through Manager*

and others" **(2015 CLD 1409)** has observed that *"restructuring or renewal was also a facility or accommodation granted by the bank to a customer and was therefore to be recognized as an "obligation" within the meaning of S. 2(e) of the Financial Institutions (Recovery of Finances) Ordinance, 2001"*. It has further been observed that *"financial institutions in case of restructuring or rescheduling of previous finance, were not obliged to bring on record statements of accounts prior to the agreement through which restructuring had been made; as such was an admitted amount duly acknowledged by the customer and no disbursement of amount was involved in the matter as the case being that of restructuring and not that of fresh finance"*.

32. It is also apparent on the record that the *"Defendant Company"* not only availed finance facility from the "*Plaintiff Bank"* rather the facilities were subjected to renewal many a times. This Court in "*SYED ABBAS ALI Versus BANK OF PUNJAB THROUGH MANAGER and others"* **(2015 CLD 1409)** recognized restructuring or renewal of loan in favor of customer by a financial institution as facility comes within the purview of obligation as defined under Section 2(e) of the *Ordinance*. The Court held that *"by approving rescheduling /restructuring/renewal of the finance facility the bank foregoes its immediate right of recovery and enforcement of securities against the customer which is absorbed through mutual agreed interest or mark-up charges till the agreed date of liquidation. Thus, restructuring or renewal is also a facility or accommodation granted by the bank to a customer. This facility has been recognized as an "obligation" as defined in section 2(e) of the Financial Institutions (Recovery of Finances) Ordinance, 2001."* Furthermore, the performance of any undertaking and fulfilment of a promise relating to repayment of finance is also an obligation within the meaning of the *Ordinance* as was held in "*NIB BANK LIMITED Versus Mirza GHULAM MUJTABA"* **(2015 CLD 1547).** In the said judgment, it was further held that *"Moreover, inter alia performance of an*

*undertaking or fulfillment of a promise relating to repayment of finance or payment of any other amounts regarding finance is an obligation in terms of section 2[c] of F.I.O., 2001."*Similarly, in "*NATIONAL BANK OF PAKISTAN Versus NAJMA SUGAR MILLS LIMITED"***(2015 CLD 1990),** the Court also recognized that performance of undertakings and promises by a customer with Financial Institutions forms part of 'obligation' under the *Ordinance*.

33. The issue with regard to restructuring of loan and finance facilities has also already been dealt with by the Hon'ble Supreme Court of Pakistan in *"Messrs DADABHOY CEMENT INDUSTRIES LTD. and 6 others Versus NATIONAL DEVELOPMENT FINANCE CORPORATION, KARACHI"***(PLD 2002 Supreme Court 500)** by holding that

> *" The argument that the respondent by adding further interest/markup on the amount on which interest / markup had already been paid, played fraud, has no substance, for, this fact was already in the knowledge of the petitioners and they had agreed to pay the same on rescheduling of the outstanding amount, which has been admitted by the petitioners in their Suit No.416 of 1996, as such, they being privy to the rescheduling of the loan, can not turn around to say that further markup was fraudulently charged....."*

34. A careful scanning of the record further establishes that the "*Defendants"* have failed to substantiate their stance taken in the *"PLA"* as they did not file necessary documents which in their opinion supported the substantial questions of law and fact as required under Section 10(9) of the "*Ordinance"*. Also, the "*Defendants"* did not comply with the mandatory requirements of 10(5) of the "*Ordinance"*, and were bound to face consequences for

such non-compliance because as per section 10(6) of the "*Ordinance"*, application for the grant of leave, which does not comply with the requirements of subsections (3), (4) and (5) of Section 10 of *Ordinance*, shall be rejected, unless the "*Defendants"* disclose any sufficient cause for their inability to comply with any such requirement. The provisions of Section 10(5) of "*Ordinance"* are mandatory in nature, as the non-compliance of the said provisions of law entail the penal consequences, as provided under section 10(6) of the "*Ordinance"*. Further, execution of documents filed with plaint is not denied by the *"Defendants"* in the *"PLA"* and thus are not entitled for leave to defend in the instant suit. Since the "*Defendants"* have not discharged their obligations as per the agreements, referred to above, the present suit has rightly been instituted by the *"Plaintiff Bank"*. It is a trite proposition of law that where the Defendant has not complied with the mandatory requirement of law, the *Plaintiff* is entitled to have the suit decreed in his favour as mandated under Section 10(12) of the *"Ordinance"*. Further, upon examination of the documents placed on record, I am of considered view that the defence set up in defendants' application for leave to defend the instant suit is evasive, improbable and no substantial questions of law or facts raised in the leave application and as such liable to be rejected. In *"Messrs AL-MADAN COAL COMPANY (PVT.) LTD. and others Versus REGIONAL DEVELOPMENT FINANCE CORPORATION"* **(2009 CLD 645)** in a similar situation, the august Supreme Court of Pakistan has upheld the decision of the court of first instance by holding that "b*oth the learned Courts after attending to all the crucial aspects of the case, adhering to the contentions raised by the petitioners and upon examination of the documents placed on record legally came to the conclusion that the defence set up in petitioners application for leave to defend the suit was evasive, improbable and no substantial questions of law or facts were raised in the leave application and rightly rejected the same. We are not persuaded to reverse the*

findings of two Courts which are apt to facts of the case and law on the subject."

35. The upshot of above discussion is that the *"Defendants"* have failed to establish any ground for grant of leave to defend. Hence their PLA No.205720 of 2018 is rejected under Section 10 of the *"Ordinance"*. Consequently, it is held that the *"Plaintiff Bank"* has appended with the plaint all the relevant documents as per the requirement of Section 9 of the *Ordinance* and has fully proved its case as well as the commission of willful default by the "*Defendants"* keeping in view the principles for grant of leave to defend enunciated in detail by this Court in *"NATIONAL BANK OF PAKISTAN Versus KOHINOOR SPINNING MILLS LIMITED etc"* **(2021 CLD 1112)** and the guidelines regarding rescheduling/restructuring of loans facilities given by the Hon'ble Supreme Court of Pakistan in *"Messrs DADABHOY CEMENT INDUSTRIES LTD. and 6 others Versus NATIONAL DEVELOPMENT FINANCE CORPORATION, KARACHI"* **(PLD 2002 Supreme Court 500)**. Reliance is also placed on recent judgment cited in *"MUSLIM COMMERCIAL BANK LIMITED Versus CITY STEEL INDUSTRIES LAHORE through Partners and others"* **(2023 CLD 235)**. After having minute examination of the record, framing of moot points emerging from the pleadings and the arguments of learned counsel for the parties and while considering all the grounds taken by the *Defendants* in the *"PLA"*, and also appreciating the contents of plaint under Section 9 of the *Ordinance*, application for grant of loan facility, facility offer letter, agreement for finance, demand promissory note, letter of authority, guarantees, statement of finance account and statement of markup account and other relevant documents, this Court forthwith proceed to pass the decree for a sum of Rs.487,104,728.44 (inclusive of markup) in favour of the "*Plaintiff Bank"* and against the *"Defendants"* jointly and severally, with costs of funds as contemplated under Section 3 of

the "*Ordinance"* in the terms mentioned supra. Decree sheet be drawn up accordingly.

(JAWAD HASSAN)
JUDGE

APPROVED FOR REPORTING

JUDGE

*Usman**