

ORDER SHEET  
IN THE HIGH COURT OF SINDH AT KARACHI

**I. A. Nos.01 & 23 OF 2010**

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Date	Order with signature of Judge
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**8.9.2015**

Mr. Asim Mansoor Khan, Advocate for Appellant in I.A. No.01of 2010.

Mr. Kamran Mirza, Advocate holding brief for Mr. Khawaja Naveed Ahmed, Advocate for appellant in I.A.No.23 of 2010 And for Respondent No.2 in I.A. No. 01 of 2010

Mr. Aijaz Ahmed Shirazi, Advocate for Respondent No.1 in both the Appeals.

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Through the aforesaid appeals, the appellants have impugned Judgment dated 10.11.2009 and decree dated 23.11.2009 passed by the Banking Court No. IV, at Karachi in Suit No.138 of 2000. The appellant in I.A. No.01 of 2010 is the principal borrower, whereas in I. A. No.23 of 2010 the appellant is the Guarantor.

Mr. Asim Mansoor Khan, learned Counsel for the appellant in I.A. No. 01 of 2010 concedes availing of the finance facility, however, submits that the same was for the benefit of Respondent No.2 who had availed the same on his personal guarantee to pay off the shares / liability of the outgoing Directors, whereas, the respondent No.1 itself is the majority share-holder of the appellant Company, by virtue of such investment, hence such facility does not fall within the definition of Finance as provided under the Ordinance, 2001. Learned Counsel has referred to two agreements both dated 2.11.1998 and submits that through the first agreement the shares of three outgoing Directors were jointly purchased by the Guarantor/respondent No.2 and National Technology Development Corporation Limited [NTDC], whereas through the second agreement also dated 2.11.1998, entered into between NTDC and respondent No.2, M/s NTDC invested an amount of Rupees Ten Million in the Appellant/Company. Per learned Counsel since respondent No.2 had stood as a Guarantor, whereas, NTDC was a fully owned subsidiary of respondent No.1, and became owner of 50% shareholding; therefore, the appellant

Company is not liable to make any payment pursuant to the impugned Judgment and decree.

Mr. Kamran Mirza, advocate holding brief for Mr. Khawaja Naveed Ahmed, advocate for appellant in I. A. No.23 of 2010 and for Respondent No.2 in I.A. No. 01 of 2010, submits that he will be relying upon the Counter Affidavit as well as memo of appeal filed respectively in the aforesaid appeals, perusal of which reflects that the case as set up is that since the management of Company was taken over by Respondent No.1 (BEL), by acquiring 50% shareholding, through NTDC, which is a subsidiary company of Respondent No.1, the Respondent No.2 was not liable for any such Finance availed by the Appellant/ Company, whereas, the personal guarantee was discharged by Chairman of Respondent No.1 Mr. Rauf Kadri vide letter dated 16.3.1999, duly verified by him while appearing in custody before the Banking Court on 16.1.2001.

Mr. Aijaz Ahmed Shirazi, Counsel for respondent No.1 submits that the appellant has raised an altogether new plea in this appeal, whereas, in leave to defend application, it has been contended that whatever amount was given to the appellant was to be adjusted from the sale of advertisements of respondent No.1, which were to be published in the Newspaper of the appellant and even some advertisements were published for which an amount of Rs.722925/- is outstanding.

We have heard all the Counsel and perused the record. It appears that the appellant in I.A. No. 01 of 2010 has not denied that an amount of Rs. 10 Million (Rupees Ten Million) was advanced as Running Finance under sanction letter dated 31.10.1998, on the basis of personal guarantee and promissory note of Respondent No.2. It is also not denied that the appellant company had defaulted in repayment of the finance facility and upon such failure, respondent No.1 had initiated recovery proceedings against the appellant and respondent No.2, which has culminated in passing of the impugned judgment and decree. The question that whether NTDC was a subsidiary of respondent No.1 or not and whether the amount of finance facility had been utilized for the benefit of the appellant company or respondent No.2, cannot be agitated through this appeal, through which the Judgment of the Banking Court established under the Financial Institution (Recovery of Finances) Ordinance, 2001, has been

assailed. The amount availed by the appellant is admitted, whereas, the appellant has defaulted in re-payment of the same. Insofar as the case of Respondent No.2 /Appellant in I.A. No. 23 of 2010 is concerned, it is an admitted position that he is the sponsor Director of the Appellant / Company, which had obtained finance facility in the sum of Rs.10, 000,000/- (Rupees Ten Million) from respondent No.1, whereas, he had personally bound himself to repay the same by executing a personal guarantee, which was a continuing guarantee and remains valid till the outstanding liability is paid, whereas, a promissory note was also signed by him. The dispute with regard to the fact that whether such amount was utilized by the appellant company for its benefit or by respondent No.2 to pay off the liability / investment of other retiring directors of the company, whereafter, 50% ownership was acquired by NTDC is not an issue before us nor the same can be decided in a Suit for recovery under the Ordinance 2001. The appellant and respondent No.2 ought to have settled such issue amongst them or through a Court of appropriate jurisdiction and not through instant proceedings.

In view of hereinabove facts and circumstances of the instant case, we are of the view both the aforesaid appeals do not merit any consideration, as appellants have admitted the finance facility and have failed to re-pay the same, therefore, both the appeals are hereby dismissed.

JUDGE

JUDGE