IN THE HIGH COURT OF SINDH, KARACHI

Suit No.B-10 / 2019
[Soneri Bank Limited vs. Quetta Textile Mills Limited]

BEFORE
Mr. Justice Arshad Hussain Khan

FOR HEARING OF CMA 5921/2019
[u/s 10 of the Financial Institutions (Recovery of Finances) Ordinance 2001]
Read with Section 151 CPC

Mr. Waqar Ahmed, Advocate for the Plaintiff.
Mr. Muhammad Umar Javed, Advocate for the Defendants

Date of hearing: 04.11.2024

ARSHAD HUSSAIN KHAN, J.- This is an application [C.M.A. 5921/2019] Under Section 10 of the Financial Institution (Recovery of Finances) Ordinance, 2001 [**"Ordinance 2001"**], whereby the Defendants have prayed to grant them unconditional leave to defend the instant suit.

2. Concisely, the facts giving rise to the present suit, as averred in the plaint, are that the plaintiff is a banking company incorporated and existing under the laws of Pakistan and is carrying on its business at registered office. The defendant No.1 is a public limited company incorporated and existing under the laws of Pakistan. It has been stated that upon request and representations based on warranties by the defendants No. 2 to 8, the plaintiff extended various finance facilities to defendant No.1, being its customer, from time to time. The defendant No.1 fully availed and utilized various finance facilities from time to time, however, failed to repay the same, as and when the same fell due. The defendants requested to the plaintiff to restructure / reschedule the then overdue / outstanding amount related to the respective finance facilities. The plaintiff while allowing the aforesaid request restructured the amount of Rs.492,887,117/- [**"Finance Facility"]** related to the following outstanding amounts, in terms of Restructuring Agreement dated 30.3.2016 [**"Restructuring Agreement"**].

S.No.	Description	Amount
I	Principal Amount	Rs.481,967,000/-
II	Frozen Mark-up	Rs.10,920,117/-

3. It has been stated that the aforesaid outstanding amount was restructured for a period of six (6) years and the aforesaid outstanding mark-up was frozen and the defendants were required to pay the same on or before January 31, 2017. That the liabilities of defendant No.1 are secured by the securities mentioned in para-5 of the plaint. It has been further stated that defendant No.1 defaulted and has continued to default on its contractual obligations and as a result of the same a total sum of Rs.576,204,667.25 is overdue from the defendants and remained outstanding in respect of the Finance Facilities as of December 31, 2018, break-up summaries of the Finance Facilities and the outstanding liabilities of the defendants are mentioned in para No.7 of the plaint as follows :-

Sr. No.	Description	Amount
1	Principal amount disbursed to the Defendants	481,967,000.00
2	Principal amount paid by the Defendants	…….
3	Principal amount payable by the Defendants	481,967,000.00
4	Mark-up of frozen period from 01.10.2015 till 31.12.2015	10,920,117.47
5	Mark-up from 01.01.2016 till 30.09.2018	83,317,549.78
6	Total Mark-up from 01.10.2015 till 30.09.2018 [4+5]	94,237,667.25
	Total recoverable amount [3+6]	576,204,667.25

4. It has been stated that the efforts on the part of the plaintiff to persuade the defendants to adjust their outstanding liabilities have borne no fruit. Consequently, the plaintiff having no other option to recover its outstanding liabilities filed the instant suit under the provisions of Financial Institutions (Recovery of Finances) Ordinance, 2001 with the following prayers:-

1. For payment and recovery of sum of Rs.576, 204,667.25 together with future mark-up at the applicable rate.

2. For permanent injunction restraining the Defendant, its employees, agents or any other person acting for and on their behalf, directly and/or indirectly from selling, alienating, disposing of or creating third party rights in any manner whatsoever in respect of the hypothecated assets charged in favour of the Plaintiff.

3. For sale of the mortgaged properties as mentioned in para-5 above.

4. For sale of the hypothecated assets as mentioned in para-5 above.

5. For sale all other movable and immovable assets and properties of the Defendants No.1 to 8.

6. For payment of cost of funds in terms of Section 3 of the Financial Institution [Recovery of Finance] Ordinance, 2001 on the aforesaid suit amount from the date of default till the date of realization.

7. The suit may kindly be decreed with all other costs, charges and expenses incurred by the Plaintiff during the pendency of the suit.

8. To grant any other relief(s) which the Hon'ble Court may deem fit and proper in the circumstances of this case.

5. Upon notices and summons of the case, the defendants filed listed application [C.M.A. 5921/2019] for leave to defend the case to which objections by way of Replication on behalf of the plaintiff have been filed wherein while reiterating the stance taken in the plaint, the allegations levelled in the application have been denied, being frivolous and misconceived. It is stated that the application has not been framed in accordance with the provisions of Ordinance, 2001, and the same does not raise any question of fact or law. Further the application filed by the defendants is negation of the provisions of Section 10(3) and (4) of the Ordinance, 2001, and also does not fulfill the mandatory requirements of law and as such it is liable to be dismissed. It has been further stated that since the defendants have not disputed the execution of finance and security documents filed along with the plaint, therefore, no evidence is required to be led and the application is liable to be dismissed on this ground alone. It has been further stated that the denial of the defendants for availing the finance facilities, in absence of any documentary proof is nothing but denial for the sake of denial and an attempt to mislead this court just to avoid payments due in respect of finance facilities availed by defendant No.1.

6. Learned counsel for the defendants, during the course of arguments, while reiterating the contents of the application, inter alia, has contended that the suit as framed is not maintainable as the same is filed without resolution passed by the present Board of Directors of the plaintiff in favour of the signatories of the plaint. He has further contended that at the request of defendant No.1 the plaintiff restructured the remaining outstanding

balances of some of the facilities and in pursuance thereof the remaining outstanding principal amount of different facilities were required to be summed-up and payable within six years in the installments with markup equivalent to three months KIBOR, as such, no amount was disbursed by the plaintiff under the said restructuring agreement. It is also contended that defendant No.1 repeatedly asked the plaintiff to provide the details of calculation of outstanding principal amount against each facility to verify/ reconcile the summed-up amount in the offer letter and restructuring agreement, however, the required information was not provided. It is also contended that the plaintiff besides determining the exaggerated principal amount also claimed the sum of Rs. 10,920,117/- being frozen markup, whereas no markup for the agreed period of the transaction was payable on that date. He has further contended that the plaintiff is not entitled to charge further markup upon the restructured amount, which is tantamount to charge markup over markup, not permissible under the law. It is also argued that unless the plaintiff is directed to bring on record through its witness at the time of evidence the certified statement of accounts alongwith all relevant documents of the subject facilities from 20.01.2010 to 30.03.2016, it is very difficult to determine fairly and justly the outstanding principal amount against each of the facilities, which are agreed to be restructured by converting the same into Term Finance Facility, hence it is expedient to grant unconditional leave to defend to the defendants. It is also contended that statement of accounts annexed with the plaint are neither in accordance with the requirement of Bankers Book Evidence Act 1891 nor in compliance of the Rules & Regulations prescribed by SBP and section 9 of the Ordinance 2001, thus no presumption of truth can be attached to the same. It is argued that the Account Statement filed with the Plaint is full of inaccuracies and illegal computation of mark-up, compounding of mark-up and charging of mark-up over mark-up and liquidated damages, which is clearly contrary to the law and regulation of the State Bank of Pakistan. Lastly, it is urged that the defendants may be granted unconditional leave to appear and defend the suit. Learned counsel in support of his arguments has relied upon the cases of *Jamal Tube (Pvt.) Ltd., Lahore v. First Punjab Modarba, Lahore* [2021 CLD 1372], *Bank of Punjab v. International Ceramics Ltd. and Others* [2013 CLD 1472], *Messrs Soneri Bank Limited v. Messrs Compass Trading Corporation (Pvt.) Limited Through Director / Chief Executive and 3 others* [2012 CLD 1302 SINDH], *Messrs ICEPAC*

Limited and 2 others v. Messrs Pakistan Industrial Leasing Corporation Limited [2005 CLD 1186], *Messrs Haq Feed Industries (Pvt.) Limited Through Chief Executive and 7 others v. National Development Finance Corporation* [2007 CLD 975] and *Habib Bank Ltd. v A.B.M. Graner (Pvt.) Ltd. and Others* [PLD 2001 Karachi 264].

7. Conversely, learned counsel for the plaintiff, during the course of arguments, while reiterating the contents of his plaint as well as replication to the instant application has urged that the defendants have admitted the execution of finance and security documents and it is a well settled law that the admitted facts need not be proved, therefore, upon admission of the execution of the finance and security documents, the application cannot be granted and the same is liable to be dismissed. He has further argued that the Court has to see whether the defendants have raised any substantial question of law and fact or not, otherwise the application must liable to be dismissed. Learned counsel further argued that the plaintiff has filed this suit in accordance with law and filed statement of account in accordance with Bankers Books Evidence Act, 1891, by fulfilling all the requirements of law and the defendants have failed to raise any objection in respect of any entry of the Statement of Account or any documents attached with the Plaint. He has also argued that the plaintiff has filed this suit through duly authorized attorneys and in this regard the Power of Attorney is attached with the plaint. Learned counsel also vehemently denied the allegations that the plaintiff has charged any amount of mark-up illegally. He has argued that the defendants have raised frivolous objections even without going through the contents of the documents attached with the plaint. He has further argued that the plaintiff is entitled to recover the outstanding amount from the defendants as they have failed to pay the same. He has also argued that the defendants have miserably failed to raise any question of law or fact, which requires evidence and the facts are denied by the defendants for the sake of denial only without any documentary evidence or basis, therefore, leave to defend application may be dismissed with costs. Learned Counsel in support of his stance has relied upon the cases of *The Bank of Punjab v. Dewan Farooque Motors Limited* [2015 CLD 1756], *M/s. Dadabhoy Cement Industries Ltd. and 6 Others v. National Development Finance Corporation Karachi* [PLD 2002 SC 500], *Muhammad Arshad and Another v. Citibank N.A. AL-Falah Building Lahore* [2006 CLD 1011]

and *Saudi Pak Commercial Bank Ltd. v. Qazi Ehtishamul Haq and another* [2008 CLD 566].

8. I have heard learned counsel for the parties, perused the documents available on the record and have also gone through relevant law.

From bare perusal of the provisions of Financial Institutions (Recovery of Finances) Ordinance 2001, it appears that parties to a suit are obliged to specifically mention/plead in the plaint and Leave-to-Defend Application, the amount of finances availed by a defendant from the financial institution, the amount paid by the 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.

9. In the present case, it appears that defendant No.1 from time to time availed various Finance Facilities detail whereof are mentioned in schedule A of Restructuring Agreement **(Annexures B/1** to the plaint**)**. Record also reflects that in order to secure the Finance Facilities, availed by defendant No.1, various securities were created by defendants No. 2 to 8 in favour of the Plaintiff (**Annexures C to C/5, D to K/3, L to L/6** to the plaint) . The plaintiff in support of its stance in the case has also filed certified statement of accounts as well as break-up summaries as Annexures **M** and **M/1** to the plaint.

10. The record also transpires that the defendants in their application for leave to defendant did not dispute the documents viz. restructuring agreement, security documents, promissory note etc. annexed by the plaintiff along with the plaint, they however maintained that the Account Statement filed with the Plaint is full of inaccuracies and illegal computation of mark-up and charging of mark-up over mark-up and liquidated damages, which is contrary to the law and regulation of the State Bank of Pakistan. They have also raised objections regarding the statement of accounts, being not in conformity with the requirements of law including the Ordinance 2001 as well as Bankers' Book Evidence Act, 1891, which are not sustainable in law. It is imperative to mention here that the defendants have not filed a single document in support of their stance in the case, which could show that they have ever objected to the entries in the statement of accounts and/or raised any objection in respect of finance

facilities availed by them. Thus, the stance/objections of the defendants without any proof is nothing but devoid of merit. On the contrary, the plaintiff has annexed all the relevant agreements, security documents, promissory note etc., and the statement of bank accounts of defendant No.1 reflecting all transactions of the finance facilities from time to time as well as charging of markup and other expenses, substantiate the stance of the plaintiff in the present case. It may be observed that once the borrower avails the facility and does not dispute it while availing such facility, or for that matter later on, then subsequently on default, these objections are not to be appreciated. On perusal of the statement of accounts and the summary of transactions it shows that the finances were availed and utilized, therefore, the objections of the nature are not liable to be considered. Insofar as the objection with regard to markup, the defendants have also not particularized or specified the amounts of mark up claimed by them to have been excessively charged by the plaintiff-bank as mark-up over mark-up or beyond the agreed rate. The Supreme Court of Pakistan in the case of *Messrs Dadabhoy Cement Industries Ltd. v. National Development Finance Corporation Karachi* [PLD 2002 SC 500] while dealing with issue of Interest/Mark-up, inter alia, has held as under:

> "7…….. The argument that the respondent by adding further interest/mark-up on the amount on which interest/mark-up had already been paid, played fraud, has no substance, for, this fact was already in the knowledge of the petitioners as 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 the privy to the rescheduling of the loan, cannot turn around to say that further mark-up was fraudulently charged. It is settled law that where allegation of fraud is levelled, it must be specified and details thereof should be given. The contents of MOU were mutually agreed upon between the parties and there is nothing to suggest that the same as executed by fraud, misrepresentation or under duress or coercion."

This Court in the case of Bank of Punjab v. Dewan Farooque Motors Limited [2015 CLD 1756] while relying upon the case of Dadabhoy (Supra), inter alia, has held as under:

> " 46……. In so far as the charging of mark-up on renewed/rescheduled amount is concerned, the same besides, misleading, misconceived is after-thought and calls for the wisdom of defendant. The defendant herein it is significant to note was fully aware of charging the 'mark-up' on renewed/rescheduled amounts. Despite such knowledge and awareness, the defendant, however, not only executed the Finance Agreements but also got itself benefitted therefrom. The defendant, now cannot be permitted to allege that the 'mark-up in terms of Finance

> Agreements are 'HARAM or otherwise, is prohibited. The defendant, if really did not want to pay the mark-up on the renewed/rescheduled amounts then, it should have not requested for renewal/rescheduling of the subject facilities."

11. The defendants by taking such objections cannot avoid the payment of the outstanding amounts due against them, which they availed in terms of the Agreements/Undertakings and Promissory Note, available on the record. Moreover, all the documents pertaining to finance facilities including restructuring agreement, and promissory note, etc., available on the record are duly executed, which beside binding are valid documents.

12. It may also be observed that the Ordinance 2001, is a special law and as per section (2)(e) of the Ordinance, 2001, customer is duty bound to fulfill the performance of undertakings, promises and commitments vis-a-vis repayment of finance facility availed by him. Being relevant, section 2(e) of the Ordinance 2001, is reproduced hereinbelow:

> "**2. Definitions.-** In this Ordinance, unless there is anything repugnant in the subject or context -
> (a) . . .
> (b) . . .
> (c) . . .
> (d) . . .
> (e) "obligation" includes
> (i) any agreement for the repayment or extension of time in repayment of a finance or for its restructuring or renewal or for payment or extension of time in payment of any other amounts relating to a finance or liquidated damages; and
>
> (ii) any and all representations, warranties and covenants made by or on behalf of the customer to a financial institution at any stage, including representations warranties and covenants with regard to the ownership mortgage, pledge, hypothecation or assignment of or other charge on, assets or properties or repayment of a finance or payment of any other amounts relating to a finance or performance of an undertaking or fulfillment of a promise; and
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> (iii) all duties imposed on the customer under this Ordinance;

From perusal of the above, it is manifestly clear that a bank's customer is obliged and duty bound not only to perform/fulfill his/its' undertakings/promises made in respect of re-payments of the outstanding dues including other amounts relating to finance facility, availed. In the present case, admittedly at the request of defendants the overdue/outstanding amount related to finance facilities has been restructured/rescheduled by the plaintiff. The Division Bench of Lahore

High Court in the case of *Citibank N.A. through Branch Manager v. Ameer Alam* [2015 CLD 429 DB], while dilatating upon the concept of restructuring /rescheduling of financial facility, inter alia, has observed as follows:-

> "(8) The concept behind Renewal/Restructuring/Rescheduling is that the renewal/rescheduling/restructuring of financial facility only ensues upon default, non-payment or inability in payment of outstanding liability by the customer who normally seeks such concession and upon admission of liability. By soliciting rescheduling or restructuring, a customer in a sense requests postponement of repayment of finance on renewed terms as agreed between the parties. By approving rescheduling/ restructuring of a financial facility the bank (as in the present case) foregoes its immediate right of recovery and enforcement of securities against the customer. The effect of rescheduling or restructuring of finance facility is mutually agreed by the parties to be absorbed by future interest or mark up till the agreed date of liquidation of liability. Thus, we are of the opinion that rescheduling, restructuring and renewal is also a facility or accommodation granted by bank to the customer. This facility has been recognized as "obligation" defined in section 2(e) of the Financial Institutions (Recovery of Finances) Ordinance, 2001. Reliance is placed on Habib Bank Limited v. Service Fabrics Ltd. and others (2004 CLD 1117) (Lahore).
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> '(9) As far as the observation by Judge Banking Court No.1, Faisalabad that the appellant-bank had not attached the statement of accounts w.e.f. 1995; it is suffice to observe that in the cases pertaining to restructuring the amount is not disbursed, it is brought forwarded in case of restructuring rescheduling of previous finance; bank is not obliged to have brought on record the statement of accounts prior to the agreement through which restructuring has been made as this is an admitted amount duly acknowledged by the borrower."

13. Moreover, defendant No.1, in the present case, also signed ' Demand Promissory Note' (**Annexure-L/7** to the plaint) which under section 118 of Negotiable Instruments Act, 1881, [XXVI of 1881] attaches itself the presumption of truth. Section 118 of Negotiable Instruments Act, 1881 [XXVI of 1881] being relevant is reproduced herein below:-

> **"118. Presumptions as to negotiable instruments**----Until the contrary is proved, the following presumptions shall be made,
>
> (a) *of consideration;* that every negotiable instrument was made or drawn for consideration, and that every such instrument, when it has been accepted, indorsed negotiated or transferred, was accepted, endorsed, negotiated or transferred for consideration;
>
> (b) *as to date*; that every negotiable instrument bearing a date was made or drawn on such date;
>
> (c) *as to time of acceptance*; that every accepted bill of exchange was accepted within a reasonable time after its date and before its maturity;

(d) *as to time of transfer;* that every transfer of a negotiable instrument was made before its maturity;

(e) *as to order of endorsement;* that the endorsements appearing upon a negotiable instrument were made in the order in which they appear thereon;

(f) *as to stamp*; that a lost promissory note, bill of exchange or cheque was duly stamped;

(g) *that holder is a holder in due course*; that the holder of a negotiable instrument is a holder in due course; provided that, where the instrument has been obtained from its lawful owner; or from any person in lawful custody thereof by means of an offence or fraud, or has been obtained from the maker or acceptor thereof by means of an offence or, fraud, or for unlawful consideration, the burden of proving that the holder is a holder in due course lies upon him."

Not only, under section 118 of Negotiable Instruments Act, 1881 [XXVI of 1881], a statutory presumption vis-a-vis consideration, date, time of acceptance and transfer, order of endorsement, stamping and as to holder in due course of Negotiable Instrument is attached to a negotiable instrument but the same also attracts a special rule of evidence.[1]

14. In the present case, the defendants have failed to file any substantive document, which could show that after restructuring/rescheduling the overdue/outstanding amount, they have paid any installments in accordance with the Restructuring Agreement. Moreover, the defendants have also failed to pin-point any entry in the 'certified statement of accounts', as being wrong or incorrect. It is needless to say that entries made in the 'certified statement of accounts' attach themselves the statutory presumption of truth' that is to say under the Bankers' Books Evidence Act, 1891 [Act XVIII of 1891].[2]

15. Under the parameters of Financial Institutions (Recovery of Finances) Ordinance, 2001 the defendant is entitled for a relief if question of law and fact is being established. In terms of section 10(3) of the Ordinance 2001, the application for leave to defend is supposed to be in the form of written statement which shall be containing summary of substantial question of law as well as fact in respect of which in the opinion of defendant, evidence needs to be recorded. In view of the circumstances,

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[1] Muhammad Arshad and another v. Citibank N.A., Lahore [2006 SCMR 1347] and Habib Bank Ltd. v. Taj Textile Mills Ltd. and 5 others [2009 CLD 1143].

[2] UBL v. Messrs Sartaj Industries through Qaiser Iqbal, Managing Partners and 6 others [PLD 1990 Lahore 99] And Askari Commercial Bank Ltd. v. Hilal Corporation [Pvt.] Ltd.. and 6 others [2009 CLD 588].

where the defendants have failed to establish any question of law and the fact which requires the determination of civil right and obligation by the Court and the Court is of the opinion that there is no question or issue which requires evidence then it would not only be a futile effort but the proceedings would also be frustrated. Orders XIV and XV of Civil Procedure Code which deal with Settlement of Issues and disposal of a suit at first hearing also support that if parties are not at issue, judgment is to be passed straightaway without recording evidence. Denial against law cannot constitute any question of law. If the principle as alleged by defendants is set then perhaps the provisions of Section 10 of the Ordinance 2001 would become redundant, hence after adopting due process, person who is entitled for any relief should be granted and on this account only the trial should not be frustrated but not otherwise.[3]

16. Moreover, the Honourable Supreme Court in the case of *Apollo Textile Mills Ltd. and others v. Soneri Bank Ltd.* [PLD 2012 Supreme Court 268]**,** inter alia, has held as under:

> "15. The rationale of the schematic discipline of Ordinance of 2001 is evident. A banking suit is normally a suit on Accounts which are duly ledgered and maintained compulsorily in the books of Accounts under the prescribed principles/standards of Accounting in terms of the laws, rules and Banking practices. As such instead of leaving it to the option of the parties to make general assertions on Accounts, the Ordinance binds both the sides to be absolutely specific on accounts. The parties to a suit have been obligated equally to definitively plead and to specifically state their respective accounts.
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> 16. The scope of the suit thus becomes well defined. The controversies are confined to the claimed and / or the disputed numbers, facts and reasons thereof. Unnecessary controversial details, the evidence thereto and the time of the trial, are curtailed. The trial would remain within the laid out parametrical scope of the claimed and the disputed accounts."

17. Reverting to the case in hand, the objections of the nature raised by the defendants are general and evasive denials, as such the same are not sustainable in law. Moreover, the defendants cannot take refuge under the said objections and refuse to payback amount already availed by defendant No.1 in respect of finance facilities under the agreements of the subject proceedings. Furthermore, the very object of section 10(4)(b) of the Ordinance 2001 is to give an opportunity to the defending customer to make out a case for the grant of leave by disclosing the amounts paid by him to

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[3] National Bank of Pakistan v. Raja Traders, Through Sole Proprietor and 8 others [2016 CLD 1938]

the financial institution and the dates of such payments. He will not be absolved from his obligations under section 10(4) ibid by simply disputing or denying the amount claimed in the Suit, or by stating an amount towards repayments in general or in vague terms without disclosing dates of payments and without filing documents in support thereof. In the instant case, the defendants did not file any substantive documentary proof in support of their stance taken in the application for leave to defend. In the case of Apollo Textile Mills Ltd (supra), the Honourable Supreme Court was also pleased to hold, inter alia, that under section 10(4) of the Ordinance, the defending customer has statutory responsibility to plead and state clearly and particularly the finances availed by him, repayments made by him, the dates thereof, and the amounts of finance repayable by him; and, he is saddled with an additional responsibility to also specify the amounts disputed by him. It has been further held that a defending customer is obliged to put in a definite response to the bank's accounting and has under subsections (3) and (4) of section 10 ibid to compulsorily plead and answer in the application for leave to defend his accounts as well as the facts and amounts disputed by him as repayable to the plaintiff. It has been specifically held that non-impleadment of accounts under subsections (3) and (4) of section 10 ibid in terms thereof, entails legal consequences under subsections (1), (6) and (11) of section 10 ibid. It has been further held that because of the Ordinance being a special law, the provisions of section 4 thereof override all other laws; the provisions contained in the said Sections require strict compliance; and, non-compliance therewith attract consequences of rejection of the application for leave to defend. In the instant case, the defendants despite having full opportunity to comply with the mandatory requirements of subsections (4) and (5) of section 10 ibid at the time of filing the application for leave to defend, have failed in availing such opportunity, hence, they are bound to face the consequence of their non-compliance as held by the Honourable Supreme Court in Apollo Textile Mills Ltd (supra); and, their application for leave to defend is liable to be rejected.

18. For what has been discussed above, I am of the considerate view that the defendants have failed to raise any substantial questions of facts and law which requires recording of evidence for its resolution. And the defendants have not denied the execution of finance and security documents

as well as restructuring agreement, as such, the defendants are liable to pay not only finance availed but also other accrued charges, if any. Therefore, while dismissing the leave to defend application instant Suit is decreed against the defendants for an amount of Rs.576,204,667.25 (inclusive of markup) together with cost of funds as contemplated under section 3 of the Ordinance, from the date of default till realization of the amounts. The Suit is further decreed for sale of mortgaged properties and hypothecated assets in terms of prayers clauses No. 3, 4 and 5.

JUDGE

Jamil*