IN THE HIGH COURT OF SINDH AT KARACHI

(BANKING JURISDICTION)

Banking Suit No. B–20 of 2022

(*Bank Islami Pakistan Limited v. Hascol Petroleum Limited*)

Before:

Sana Akram Minhas J

Plaintiff	Bank Islami Pakistan Limited Through, Mr. Syed Aijaz Hussain Shirazi, Advocate
Defendant	Hascol Petroleum Limited Through, Ms. Maria Ahmed, Advocate
Date(s) of Hearing:	**8-4-2026 & 13-4-2026**
Date of Decision:	**20-7-2026**

O R D E R

1. **Sana Akram Minhas, J**: This Order decides the Plaintiff Bank's application, being CMA No.23/2026 **("Admission Application")**, filed under Order 12 Rule 6 of the *Code of Civil Procedure, 1908* **("CPC")**.

2. Through the Admission Application, the Plaintiff Bank seeks a judgment and decree on admissions for recovery of the outstanding principal amount of Rs.1,550,082,003/- (*Rupees One Billion Five Hundred Fifty Million Eighty-Two Thousand and Three*), which it contends stands admitted by the Defendant **("Hascol")**. The alleged admission is said to be contained in Judicial Companies Matter No.31/2022 **("JCM–31")**, a petition subsequently instituted by Hascol and presently pending before this Court in its company jurisdiction.

Pertinent Facts

3. The present Banking Suit was instituted on 9.6.2022 by the Plaintiff Bank against Hascol, inter alia, for recovery of Rs.1,867,797,823.80 (*Rupees One Billion Eight Hundred Sixty-Seven Million Seven Hundred Ninety-Seven Thousand Eight Hundred Twenty-Three and Paisa Eighty*), together with cost of funds and other ancillary reliefs, arising out of financing facilities extended to Hascol.

4. According to the Plaint, Hascol's total outstanding liability comprised:

- Principal outstanding of Rs.1,550,082,003/-;
- Profit outstanding of Rs.302,690,529.80; and
- Charity outstanding of Rs.15,025,291/-.

5. Thereafter, on 28.9.2022, Hascol instituted the aforesaid JCM–31 before this Court, in its company jurisdiction under the *Companies Act, 2017* **("Companies Act")**, specifically under Sections 279 to 283 and 285(8) thereof, seeking sanction of a "*Scheme of Arrangement*" **("Scheme")** approved by Hascol's Board of Directors, for compromise and arrangement with its creditors and members.

Respective Submissions

6. Learned Counsel for the Plaintiff Bank submitted that:

i) In JCM–31 and the Scheme annexed thereto, Hascol expressly admitted (in Schedule "B" of the Scheme) its outstanding principal liability towards the Plaintiff Bank in the sum of Rs.1,550,082,003/-, which corresponds to the principal amount claimed in the present Banking Suit.

ii) The Scheme identified the Plaintiff Bank as one of Hascol's creditors and reflected the aforesaid outstanding principal liability payable to the Plaintiff Bank.

iii) The aforesaid statements constitute clear, unequivocal and unambiguous admissions within the meaning of Order 12 Rule 6 CPC. Accordingly, the Plaintiff Bank is entitled to a judgment and decree on admissions in respect of the admitted principal amount.

7. In contrast, learned Counsel for Hascol argued that:

i) In paragraph 3 of its Counter-Affidavit to the Admission Application, Hascol has reiterated the preliminary objection (raised in its pending application [CMA No.11563/2022] seeking leave to defend the present Banking Suit), to the effect that the Suit was not validly instituted[1]. Consequently, no decree on admissions can be passed unless and

[1] The objection is elaborated in paragraph 9 of Hascol's CMA No.11563/2022 (application for Leave to Defend) under the heading *"Para-Wise Reply"*, wherein Hascol contends that the authority of the two officers who signed and verified the Plaint has not been established through a Board resolution or any other document evidencing their authorization to institute the present Banking Suit.

until the validity of the institution of the present Banking Suit is first determined.

ii) The Plaintiff Bank cannot rely upon the Scheme filed in JCM–31 for the purposes of Order 12 Rule 6 CPC, as it was prepared under the Companies Act for corporate restructuring and revival and cannot be treated as an admission of liability in proceedings under the *Financial Institutions (Recovery of Finances) Ordinance, 2001* **("FIO 2001")**. The two statutory regimes operate independently and the Scheme cannot be transplanted from one regime to the other.

iii) In any event, the Scheme contains no clear, unequivocal or unconditional admission of liability, being a "*without prejudice*" proposal, expressly subject to the approval of the creditors and the Company Court, while the figures contained therein are provisional, unreconciled and expressly stated to be subject to revision following reconciliation or determination by an independent auditor.

iv) There is no demonstrated nexus between the amount reflected in Schedule "B"[2] of the Scheme and the Plaintiff Bank's claim in the present Banking Suit. Mere reference to the present Banking Suit in Schedule "C"[3] does not establish that the figure mentioned in Schedule "B" corresponds to the liability claimed in the Plaint.

v) Since Hascol disputes the Plaintiff Bank's claim, including the principal amount, and its application for leave to defend under Section 10 of FIO 2001 remains pending, the Admission Application is liable to be dismissed.

8. Learned Counsel for both sides have relied upon judicial precedents in support of their respective submissions[4]. The authorities cited by the Plaintiff Bank are addressed in paragraph 15 below.

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[2] Schedule "B" to the Scheme – This Schedule is a table titled **"Details Of The Outstanding Liabilities"**, listing Hascol's twenty-one (21) creditors in descending order of the amounts shown against their respective names. The Plaintiff Bank (*Bank Islami Pakistan Limited*) appears at Serial No.12, with "1,550" recorded against its name under the column titled **"Outstanding Liabilities Amount in PKR Millions (as of the Valuation Date)"**.

[3] Schedule "C" to the Scheme – This Schedule is a table titled **"Details Of The Legal Proceedings"**, listing eleven (11) creditors in chronological order based on the year in which the respective legal proceedings were instituted, together with the corresponding Banking Suit numbers and the forum. The Plaintiff Bank (*Bank Islami Pakistan Limited*) appears at Serial No.10. However, the Banking Suit number is incorrectly stated as Suit No.B-09 of 2022 instead of the correct Suit No.B-20 of 2022; a typographical error which was pointed out and acknowledged by counsel for both parties.

[4] Defendant Hascol's Citations: PLD 2020 SC 366 (*Rahat and Company v. Trading Corporation of Pakistan*); 1996 SCMR 696 (*Macdonald Layton & Company v. Uzin Export-Import Foreign Trade Co*.); 2002 CLD 1392 (*In re: Pakland Cement Limited*); 2011 CLD 10 (*Jubilee Spinnings Weaving Mills Ltd v. Jubilee Energy Ltd*); 2021 CLD 1351 (*Summit Bank Limited v. Tanveer Cotton Mills*); 2023 SCMR 354 (*Divisional Superintendent Postal Services v. Khalid Mahmood*); 2020 SCMR 171 (*Kuwait National Real

<u>Relevant Legal and Documentary Framework</u>

9. Before examining the competing submissions, it would be appropriate to set out the relevant statutory framework alongside the material provisions of the Scheme relevant to the present controversy.

10. Order 12 Rule 6 CPC reads as follows:

> *6. Any party may, at any stage of a suit, where admissions of fact have been made, either on the pleadings, or otherwise, apply to the Court for such judgment or order as upon such admissions he may be entitled to, without waiting for the determination of any other question between the parties: and the Court may upon such application make such order, or give such judgment as the Court may think just*.

11. The material provisions of the Scheme are set out below:

> <u>Article 1 of Scheme – Definitions And Interpretation of "*Outstanding Liabilities*"</u>:
>
> "***Determination Date***" has the meaning ascribed thereto in Article 5.2;
>
> "***Outstanding Liabilities***" means the aggregate sum of PKR 53,419,000,000/- (Pak Rupees Fifty Three Billion Four Hundred Nineteen Million), being the total principal amounts outstanding and payable by the Company to the Creditors as of the Valuation Date, as per details provided in Schedule B, which **<u>shall be updated / revised as of the Determination Date</u>** in accordance with the provisions of this Scheme and the term shall be construed accordingly;
>
> **[Emphasis added]**
>
> <u>Article 5 of Scheme – Acknowledgment And Determination Of The Outstanding Liabilities</u>:
>
> 5.2. It is acknowledged and recorded that the amounts of the Outstanding Liabilities (as stipulated in Schedule B) have been calculated and determined by the Company in good faith based on Its books and records, and a review of documents and statements of accounts available with it. The same have not been reconciled with the Creditors. Consequently:
>
> (a) Upon the sanction of this Scheme by the Court, in case any of the Creditors have objections with respect to the principal amount(s) claimed by them from the Company as of the Valuation Date, the same shall be communicated in writing by such Creditor(s) (along with full details and supporting documents) to the Company within a period of 30 (Thirty) days from the Completion Date (the "Objection Period");
>
> In the event that a Creditor does not notify the Company of its objection regarding the stated principal amounts owed by the Company (forming part of the Outstanding Labilities stipulated in

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Estate v. Educational Excellence Ltd); Unreported judgment of Division Bench of Sindh High Court dated 9.3.2026 in HCA No.83, 84 and 85 of 2014 (*Province of Sindh v. Muhammad Faisal Ahmed*); PLD 2023 Sindh 123 (*Eaton Phoenixtec MMPL Co. Ltd v. New Rabia Enterprises*); PLD 2018 Sindh 274 (*Hussain Developers v. 1st Senior Civil Judge*); PLD 2003 Kar 253 (*Gerry's International v. Qatar Airways*); PLD 2018 SC 114 (*Muhammad Hanif Abbasi v. Jahangir Khan Tareen*)

Schedule B), the amount already stipulated in Schedule B with respect to such Creditor shall be final and binding.

(b) Thereupon, the Company and the relevant Creditor(s) (which have notified the Company within the Objection Period) shall consult with each other in good faith to determine the principal amounts payable by the Company to such Creditors as on the Valuation Date within 30 (Thirty) days.

It is clarified that no other amounts or liabilities shall be included or claimed by the Creditors as part of such exercise, which would otherwise constitute “Other Liabilities”.

(c) In the event that the Company and relevant Creditors (on an individual basis) are unable to reach mutual consensus regarding the principal amounts payable by the Company to such Creditor(s) as on the Valuation Date, the Company shall appoint an independent auditing firm (chartered accountants), having a rating of at least Category “B" on the panel of auditors retained by the Stale Bank of Pakistan, to determine the principal amounts payable by the Company to such Creditor(s) as on the Valuation Date.

(d) The determination shall be carried out by the auditing firm within 14 (fourteen) days, based on the evidence and documents provided by the Company and relevant Creditor(s). The decision of the auditing firm shall be final and binding on the Company and Creditors.

(e) Pursuant to the above, based on the updated principal amounts owed by the Company to the respective Creditors, **<u>the Company shall revise / update the Outstanding Liabilities amount, and Schedule B, within 7 (seven) days (the “Determination Date")</u>**, and shall circulate the same to all the Creditors through courier. The **<u>updated Schedule B</u>** shall be deemed to be part of the sanctioned Scheme, and the settlement restructuring in terms of this Scheme **<u>shall be based on the updated Outstanding Liabilities amount, which shall be final and binding for the purposes of this Scheme</u>**. **[Emphasis added]**

<u>Article 9 of Scheme – Legal Proceedings</u>:

9.5. In the event that this Scheme is not approved by the requisite majority in value of the Creditors or sanction of this Scheme is not granted by the Court, **<u>nothing contained in this Scheme including, but not limited to, any amounts of liabilities of the Creditors shown in the Schedules, having been shown for settlement purposes only, shall be relied upon, construed or used as an admission or produced in evidence by any Creditor</u>** or the Company or its Directors in any pending or future litigation and the rights and remedies available immediately prior to the submission of this Scheme shall not be prejudiced thereby. **[Emphasis added]**

<u>Decision</u>

12. The rival submissions have been considered and the record perused.

Parameters For Exercise Of Jurisdiction Under Order 12 Rule 6 CPC

13. The Plaintiff Bank seeks a judgment on admissions under Order 12 Rule 6 CPC solely on the basis of certain statements contained in the petition filed in

JCM–31 and the Scheme annexed thereto, filed by Hascol in proceedings under the Companies Act.

14. The jurisdiction under Order 12 Rule 6 CPC is discretionary, to be exercised judicially and not as a matter of right[5]. It is intended to enable the Court to pronounce judgment only where the admission relied upon is clear, unequivocal, unconditional and leaves no room for controversy[6]. The provision is not intended to substitute a trial where the alleged admission is qualified, conditional or reasonably capable of more than one interpretation. Equally, where the very document relied upon demonstrates that the alleged liability remains subject to determination, reconciliation or adjudication, the Court would not be justified in short-circuiting the ordinary adjudicatory process. The alleged admission must be gathered from a reading of the document as a whole, and a party cannot be permitted to rely upon isolated portions while disregarding the remainder[7].

15. Of the three authorities relied upon by the Plaintiff Bank – 2012 CLD 276 (*Khalil (Pvt) Limited v. m.v. Wales II*) – reiterates the very principle discussed above, namely, that a judgment on admissions may be rendered only where the admission relied upon is clear, unambiguous, categorical, unqualified and admits of no doubt. It is, therefore, consistent with the proposition set out in the preceding paragraph. As regards the remaining two authorities – PLD 2023 Sindh 123 (*Eaton Phoenixtec MMPL Co. Ltd v. New Rabia Enterprises*) and 2002 CLC 449 (*Qatar Airways v. Gerry's International (Pvt) Ltd*) – both the said Single Bench judgments have since been reversed/set aside in appeal[8] by the respective Division Benches of this Court.

Whether The Scheme Of Arrangement Contains An Unequivocal Admission

16. Examined in the foregoing context, the Plaintiff Bank's reliance upon the Scheme is misplaced. The Scheme was prepared as a proposal for compromise and arrangement amongst Hascol, its creditors and members, and was placed before this Court, in its company jurisdiction, for sanction

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[5] 1993 MLD 1287 (*Izzat Khan v. Ramzan Khan*); 1996 SCMR 696 (*Macdonald Layton & Company v. Uzin Export-Import Foreign Trade Co.*); 2007 SCMR 1684 (*Bashir Ahmed Khan v. Shamas-ud-Din*)

[6] 1996 SCMR 696 (*Macdonald Layton & Company v. Uzin Export-Import Foreign Trade Co.*); PLD 2003 Kar 253 (*Gerry's International v. Qatar Airways*); 2009 MLD 397 (*Shadab Developers v. Abdullah*); 2023 SCMR 354 (*Divisional Superintendent Postal Services v. Khalid Mahmood*)

[7] 2020 SCMR 171 (*Kuwait National Real Estate v. Educational Excellence Ltd*)

[8] Unreported judgment of Division Bench of Sindh High Court dated 6.11.2024 in HCA No.2/2023 (*New Rabia Enterprises v. Eaton Phoenixtec MMPL Co. Ltd*); PLD 2003 Kar 253 (*Gerry's International v. Qatar Airways*)

under the Companies Act. Likewise, paragraphs 12[9], 14[10] and 16[11] of JCM-31, relied upon by learned Counsel for the Plaintiff Bank, make it clear that the Scheme was intended to facilitate the restructuring and settlement of Hascol's liabilities through a statutory process of corporate rehabilitation. Significantly, paragraph 16 contemplates recovery of the outstanding amounts payable to creditors "*or a portion thereof*", in the manner prescribed under the Scheme. The qualifying words "*or a portion thereof*" are themselves inconsistent with any unconditional acknowledgment of liability for the entire amount claimed and underscore that the Scheme embodies a proposal for compromise and settlement, rather than an admission capable of sustaining a judgment under Order 12 Rule 6 CPC. The figures appearing therein cannot, therefore, be divorced from the statutory and contractual framework within which they were recorded.

17. More importantly, the Scheme itself negates the finality of the figures upon which the Plaintiff Bank seeks to found its application. The definition of "*Outstanding Liabilities*" expressly provides that the liabilities reflected in Schedule "B" "*shall be updated/revised*" in accordance with the Scheme. Thus, the very definition relied upon by the Plaintiff Bank contemplates that the figures in Schedule "B" are provisional and liable to revision.

18. Article 5.2 of the Scheme reinforces this position in unmistakable terms. It records that the amounts reflected in Schedule "B" have been calculated by Hascol in good faith on the basis of its books and records but "*have not been reconciled with the Creditors*". The Scheme then prescribes a comprehensive mechanism whereby each creditor may object to the principal amount reflected against its name, following which the parties are required to undertake reconciliation. Failing consensus, the dispute is to be referred to an independent auditing firm whose determination is declared to be final and

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[9] Paragraph 12 of petition in JCM–31: That the terms and conditions reflecting the proposed compromise and arrangement, as broadly shared with the Creditors, have been stipulated in the Scheme of Arrangement dated 27.09.2022, which has been approved by the Board of Directors of the Petitioner on 23.09.2022 (the "Scheme of Arrangement").

[10] Paragraph 14 of petition in JCM–31: That the object of this Petition is to, inter alia, obtain sanction of this Hon'ble High Court to the Scheme of Arrangement for the compromise and arrangement envisaged between the Petitioner, the Creditors and the members of the Petitioner, involving the existing Liabilities of the Petitioner towards the Creditors as detailed in the Scheme of Arrangement.

[11] Paragraph 16 of petition in JCM–31: The Board of Directors of the Petitioner has approved the Scheme of Arrangement as the same constitutes a viable solution for the Creditors and is in the interest of all parties / stakeholders. The same would, inter alia, allow the Creditors to recover (including through restructuring and settlement) outstanding amounts payable to them from the Petitioner, or a portion thereof, in the manner prescribed under the Scheme of Arrangement, as full and final settlement for all the outstanding amounts payable by the Petitioner to the Creditors. Furthermore, such an arrangement and compromise would enable the Petitioner to revive its operations and business, and potentially continue to grow and develop as a going concern, which would be in the interest of all stakeholders, particularly the Creditors.

binding. Schedule “B” is thereafter to be revised and updated, and only the revised Schedule is declared final and binding for the purposes of the Scheme.

19. These provisions leave little room for doubt that the figures appearing in the original Schedule “B” were never intended to constitute a final acknowledgment of liability. Rather, they represent only Hascol’s preliminary assessment of the principal amounts based on its own books and records, expressly made subject to objections, reconciliation, independent determination and eventual revision. A figure which the parties themselves contemplate may subsequently be altered cannot simultaneously constitute a clear, unequivocal and unconditional admission within the meaning of Order 12 Rule 6 CPC.

20. The Plaintiff Bank’s contention that the figure of Rs.1,550,082,003/- appearing against its name in Schedule “B” constitutes an admission of the principal amount overlooks the qualifying provisions of the Scheme itself. The alleged admission cannot be severed from the document in which it appears. The Scheme, including its Schedules, constitutes a single integrated document and must be construed as a whole. It cannot be dissected by relying upon isolated schedules or individual entries while disregarding the remaining provisions which qualify, explain or condition them. Once Article 5.2, the definition of “*Outstanding Liabilities*”, and the contractual mechanism for reconciliation, independent determination and revision are read together with Schedule “B”, the alleged admission loses the certainty, finality and unconditional character necessary to invoke Order 12 Rule 6 CPC.

21. The Plaintiff Bank’s reliance on paragraph 16 of the petition in JCM–31 is equally misplaced. That paragraph merely explains the commercial objective underlying the proposed Scheme, namely, the restructuring and settlement of Hascol’s liabilities in the interests of all stakeholders. It does not elevate the provisional figures contained in the Scheme into final admissions of indebtedness, particularly when the Scheme itself expressly provides that those figures remain subject to reconciliation and revision.

Effect Of Article 9.5 Of The Scheme Of Arrangement

22. Equally significant is Article 9.5 of the Scheme. It expressly provides that, if the Scheme is neither approved by the requisite majority of creditors nor sanctioned by the Court, nothing contained therein – including the amounts reflected in the Schedules, which are stated to have been included solely for settlement purposes – shall be relied upon, construed or used as an admission, or produced in evidence in any pending or future proceedings. This provision makes it abundantly clear that the figures contained in the Scheme

were incorporated exclusively for the purposes of the proposed compromise and were never intended[12] to constitute admissions capable of being relied upon in collateral or adversarial proceedings.

Distinct Statutory Regimes And Their Independent Operation

23. The company law jurisprudence relating to schemes of arrangement recognises that the statutory regime governing corporate restructuring and rehabilitation and the statutory regime governing recovery proceedings under the FIO 2001 operate in distinct, though co-existing, statutory spheres serving different legislative purposes. A scheme of arrangement is intended to facilitate compromise, restructuring and corporate rehabilitation, not to function as a debt recovery mechanism or a coercive tool for recovery of disputed claims. It must, therefore, be construed within its own statutory context when relied upon in proceedings under the FIO 2001. Accordingly, the references to liabilities in a scheme of arrangement, in themselves, do not constitute the unequivocal admission of liability required for the purposes of Order 12 Rule 6 CPC. The foregoing conclusion accords with the authorities relied upon by learned Counsel for Hascol[13] in this respect.

Whether The Plaintiff Bank Is Entitled To A Judgment On Admissions

24. The Scheme, including its schedules, constitutes a single integrated document and must be construed as a whole. It cannot be dissected by placing reliance upon isolated schedules or individual entries while disregarding the remaining provisions which qualify, explain or condition them. No provision thereof may be read in isolation or in bits and pieces. Accordingly, neither the schedules nor the individual entries contained therein can be read in isolation from each other or from the operative provisions of the Scheme. Rather, the meaning and legal effect of every schedule and entry must be ascertained from a holistic reading of the Scheme as an integrated instrument.

25. The Plaintiff Bank has, in substance, invited this Court to extract a single figure from a document which, when read as a whole, repeatedly emphasizes and makes clear that the figure is provisional, unreconciled and liable to revision. Acceptance of such a contention would require the Court to disregard the very provisions of the Scheme which qualify, explain and condition the figure upon which the Plaintiff Bank relies. Such an approach is contrary to settled

[12] 2023 SCMR 354 (*Divisional Superintendent Postal Services v. Khalid Mahmood*)

[13] 2002 CLD 1392 (*In re: Pakland Cement Limited*); 2011 CLD 10 (*Jubilee Spinnings Weaving Mills Ltd v. Jubilee Energy Ltd*); 2021 CLD 1351 (*Summit Bank Limited v. Tanveer Cotton Mills*)

principles governing the construction of documents[14] and the exercise of jurisdiction under Order 12 Rule 6 CPC.

26. In these circumstances, it cannot be held that Hascol has made any clear, unequivocal, unconditional or unambiguous admission of liability in respect of the principal amount claimed by the Plaintiff Bank. The material relied upon merely reflects Hascol’s provisional assessment of its liabilities for the purposes of a proposed corporate restructuring process, expressly made subject to objections, reconciliation, independent determination and revision. Such a qualified and contingent statement falls far short of the standard contemplated by Order 12 Rule 6 CPC and cannot justify the pronouncement of a judgment on admissions.

27. In light of the foregoing, it is unnecessary to examine or decide Hascol’s preliminary objection regarding the maintainability of the instant Banking Suit. Even assuming, without deciding, that the Banking Suit is maintainable, the Admission Application fails on its own merits for the reasons recorded above.

Conclusion

28. Consequently, the jurisdictional preconditions for the exercise of powers under Order 12 Rule 6 CPC remain unsatisfied. The controversies between the parties, including the existence and extent of Hascol’s alleged liability, require adjudication in the ordinary course. The Plaintiff Bank is, therefore, not entitled to a judgment on admissions.

29. Accordingly, CMA No.23/2026 is ***dismissed***. The Banking Suit shall proceed in accordance with law.

JUDGE

[14] PLD 2003 SC 215 (*Saudi-Pak Industrial and Agricultural Investment Company v. Allied Bank of Pakistan*); 2007 CLD 1620 (*Absar Akhtar v. Zarai Taraqiati Bank Ltd*)