JUDGMENT SHEET
IN THE ISLAMABAD HIGH COURT, ISLAMABAD
JUDICIAL DEPARTMENT

E.F.A. No.06 of 2011
M/s Industrial Development Bank of Pakistan
Versus
M/s Blossom Towel Industries (Pvt.) Ltd. and others

Date of Hearing:	14.10.2021.
Appellant by:	Mr. Mujeeb-ur-Rehman Warraich, Advocate for the appellant in the instant appeal as well as for the respondent in connected E.F.A. No.07/2011.
Respondents by:	Mr. Qausain Faisal Mufti, Advocate for respondents No.1 to 3 in the instant appeal as well as for the appellants in connected E.F.A. N.07/2011.

MIANGUL HASSAN AURANGZEB, J:- Through this judgment, we propose to decide E.F.A. No.06/2011 and E.F.A. No.07/2011.

2. In this judgment, M/s Industrial Development Bank of Pakistan shall be referred to as the **"decree holder"**, whereas respondents No.1 to 3 shall be referred to as the **"judgment debtors"**.

3. Through appeal (E.F.A. No.06/2011), the decree holder has assailed the order dated 08.03.2011 passed by the learned Executing Court to the extent of making the judgment debtors liable to pay cost of funds on the delayed payment with effect from 24.11.2010. The decree holder seeks for the cost of funds to be payable by the judgment debtors with effect from 18.10.2007.

4. Through appeal (E.F.A. No.07/2011), the judgment debtors have assailed the said order dated 08.03.2011 to the extent of imposing a liability on the judgment debtors to pay cost of funds. The judgment debtors assert that they are not liable to pay cost of funds as the settlement arrived at between the parties did not have any provision for the payment of cost of funds. In the alternative, the judgment debtors assert that the cost of funds could only be at the rate prescribed by the State Bank of Pakistan (**"S.B.P."**) under Section 3 of the Financial Institutions (Recovery of Finances) Ordinance, 2001 (**"the 2001 Ordinance"**).

5. The record shows that on 09.06.2001, a suit for recovery of Rs.23,346,000/- was filed by the decree holder against the judgment debtors before learned Banking Court, Rawalpindi. On 12.02.2002, the judgment debtors' application for leave to defend the suit was dismissed,

and the decree holder's suit was decreed for an amount of Rs.17,753,805.09 with costs of suit and cost of funds from 31.01.2002 onwards. The decree holder had filed a petition for the execution of the judgment and decree dated 12.02.2002 before the learned Executing Court.

6. The judgment debtors had filed an appeal (R.F.A. No.33/2002) against the judgment and decree dated 12.02.2002 before the Hon'ble Lahore High Court, Rawalpindi Bench. The said appeal was disposed of, vide order dated 17.05.2010, which is reproduced herein below:-

> *"Learned counsel for the appellant states that on account of an agreement which is annexed as Mark 'A', the parties have reached a compromise. This position is confirmed by the learned counsel for IDBP. In view therefore, the RFA stands disposed of."*

7. Mark-A referred to in the said order dated 17.05.2010 passed by the Hon'ble Lahore High Court, Rawalpindi Bench is the letter dated 19.04.2007 from the decree holder setting out the terms of the settlement arrived at between the contesting parties.

8. During the pendency of the execution petition filed by the decree holder, a settlement was arrived at between the decree holder and the judgment debtors. The terms of the settlement were set out in the decree holder's letter dated 19.04.2007. Perusal of the said letter shows that the judgment debtors had been allowed to settle their outstanding liability on payment of Rs.9.745 million either from their own resources or through the sale of assets within a maximum period of six months from the issuance of the said letter. Paragraph 6 of the said letter shows that in case of failure by the judgments debtors to pay the said amount within the stipulated period of six months, the settlement would stand withdrawn / cancelled and the judgment debtors' liability would revert to the original position.

9. Vide letter dated 25.04.2007, the judgment debtors accepted the terms of the said letter. Subsequently, vide letters dated 27.08.2007 and 03.09.2007, the judgment debtors requested the decree holder to extend the period for the payment of the amounts payable to the decree holder under the terms of the said letter dated 19.04.2007.

10. Vide letter dated 22.10.2007, the decree holder informed the judgment debtors that their request for an extension in time for the payment by six months had been approved subject to the payment of cost

of funds at the rate of 12% per annum from 18.10.2007 till the settlement of the entire liability. In the said letter, the decree holder, in explicit terms, requested the judgment debtors to ensure payment of Rs.9.475 million along with cost of funds at the rate of 12% per annum with effect from 18.10.2007 till the settlement of the entire liability.

11. Vide letter dated 30.12.2007, the judgment debtors requested for yet another extension of one year from 31.12.2007 to clear their liability. In the said letter dated 30.12.2007, the judgment debtors specifically referred to the decree holder's letter dated 22.10.2007 and acknowledged that they had been allowed a six-month extension subject to the payment of cost of funds from 18.10.2007.

12. Vide letter dated 24.11.2010, the decree holder expressed its concerns regarding the non-payment of the settlement amount in accordance with the terms set out in the letter dated 19.04.2007. However, the decree holder called upon the judgment debtors to arrange payment of the remaining amount along with cost of funds for the delayed period by not later than 31.03.2011. The judgment debtors were cautioned that failure on their part to pay the remaining amount would cause the decree holder to withdraw the settlement and re-activate the execution proceedings for the recovery of the decretal amount under the decree dated 12.02.2002.

13. The impugned order dated 08.03.2011 passed by the learned Executing Court shows that out of an amount of Rs.97,45,000/- under the settlement between the parties, the judgment debtors had deposited Rs.72,97,000/- in the Court, whereas for the remaining 24,50,000/-, pay orders of Rs.8,24,000/- and Rs.16,26,000/- were given by the judgment debtors to the decree holder. In the impugned order, it is clearly mentioned that the principal amount of Rs.97,45,000/- stands adjusted. The learned Executing Court also ordered that the judgment debtors' mortgaged property stands redeemed.

14. As regards the cost of funds for the delayed period, the learned Executing Court ordered that the cost of funds shall be paid for the period commencing on 24.11.2010 (i.e. the date of decree holder's letter whereby an extension upto 31.03.2011 for the payment of the remaining amount had been granted).

15. The decree holder through its appeal (E.F.A. No.06/2011) assails the impugned order passed by the learned Executing Court only to the extent, whereby the period for which the cost of funds was payable by the judgment debtors was held to commence from 24.11.2010. The decree holder asserts that the period from which the payment of the cost of funds at the rate of 12% per annum is to commence from 18.10.2007 (as explicitly mentioned in the decree holder's letter dated 22.10.2007), and not 24.11.2010 as held by the learned Executing Court.

16. On the other hand, the judgment debtors, in their appeal (E.F.A. No.07/2011), assert that since there was no provision for the payment of the cost of funds in the terms of the settlement between the parties contained in the letter dated 19.04.2007, no order for the payment of cost of funds could have been made by the learned Executing Court against the judgment debtors. Furthermore, it was asserted on behalf of the judgment debtors that the demand for the payment of cost of funds at the rate of 12% per annum was most unreasonable since under Section 3 of the 2001 Ordinance, the cost of funds can only be at the rate prescribed by the S.B.P.; that the S.B.P. had, through circulars dated 21.09.2007, 03.12.2008, 05.10.2010 and 31.12.2010, notified the cost of funds to be 2.77%, 2.47%, 2.91% and 2.43%, respectively; and that the learned Executing Court could not have ordered the payment of cost of funds at a rate more than the one prescribed by the S.B.P.

17. We have heard the contentions of the learned counsel for the contesting parties and have perused the record with their able assistance.

18. The facts leading to the filing of the instant appeals have been set out in sufficient detail in paragraphs 5 to 14 above, and need not be recapitulated.

19. The only dispute between the contesting parties is on the question whether the judgment debtors are liable to pay cost of funds for the period beyond the date when they were required to pay the amount of Rs.97,45,000/- under the terms of the settlement contained in the decree holder's letter dated 19.04.2007. The terms of the said letter obligate the judgment debtors to pay Rs.97,45,000/- within a period of six months of the said letter i.e. by 19.10.2007.

20. It is an admitted position that the judgment debtors did not pay the said amount within the stipulated period of six months. It is also not disputed that the terms of the settlement contained in the decree holder's letter dated 19.04.2007 had no provision for the payment of cost of funds. However, the judgment debtors, vide letters dated 27.08.2007 and 03.09.2007, requested the decree holder to extend the period for the payment of the principal amount. The judgment debtors were, in effect, seeking an amendment in the terms of the settlement by seeking an extension in the deadline stipulated in the settlement for the payment of the principal amount. The settlement contained in the decree holder's letter dated 19.04.2007 had a contractual force and so would any amendment in the same agreed between the parties.

21. The decree holder, vide letter dated 22.10.2007, conveyed the approval for the extension by six months with effect from 30.06.2007, but explicitly made the said extension *"subject to the payment of cost of funds @ 12% p.a. from 18.10.2007 till the settlement of the entire liability."* In the said letter, the judgment debtors were explicitly required to ensure payment of Rs.94,75,000/- along with cost of funds at the rate of 12% per annum with effect from 18.10.2007. Apparently, by that time the judgment debtors had paid Rs.3,30,000/- out of the principal amount of Rs.97,45,000/-.

22. The *quid pro quo* for an extension by the decree holder in the payment of the remaining principal amount by the judgment debtors was the payment of the cost of funds at the rate of 12% per annum with effect from 18.10.2007 by the judgment debtors to the decree holder.

23. The judgment debtors did not question the above mentioned condition on which an extension had been granted to them in the payment of Rs.94,75,000/-. So much so that the judgment debtors, in their letter dated 30.12.2007, acknowledged that the extension in time had been granted to them subject to the cost of funds from 18.10.2007. Through the said letter dated 30.12.2007, the judgment debtors had sought yet another extension for the payment of the remaining principal amount.

24. The vital question that needs to be answered is whether the judgment debtors can be relieved of their obligation to pay the cost of funds at the rate of 12% per annum with effect from 18.10.2007, which was a condition on which an extension in time had been granted to the

judgment debtors. The decree holder had granted the extension in time to the judgment debtors subject to the said condition because 18.10.2007 was considered to be the date by which the judgment debtors were supposed to have discharged their liability to pay the settlement amount of Rs.97,45,000/-. Since the said amount was not paid by 18.10.2007, the decree holder was justified in demanding payment of the cost of funds at 12% per annum with effect from 18.10.2007.

25. The terms of the settlement contained in decree holder's letter dated 19.04.2007 have a contractual force. This settlement was arrived at after the passing of the decree dated 12.02.2002, and was meant to supersede the said decree provided payment of Rs.97,45,000/- was made by the judgment debtors within a period of six months from 19.04.2007. By seeking an extension in time for the payment of the principal amount, the judgment debtors were, in fact, seeking to amend the terms of the settlement contained in the decree holder's letter dated 19.04.2007. The extension in time was granted conditionally by the decree holder. This condition was expressly accepted by the judgment debtors, vide letter dated 30.12.2007. The judgment debtors cannot be relieved of their liability to pay the cost of funds at the rate and from the date as expressly accepted by them in their letter dated 30.12.2007.

26. True, the S.B.P. may have notified the rates of the cost of funds from time to time but the cost of funds demanded by the decree holder at the rate of 12% per annum with effect from 18.10.2007 has a contractual force as is apparent from the decree holder's letter dated 22.10.2007 and the judgment debtors' letter dated 30.12.2007. It was for the judgment debtors to have raised an objection to the condition on which an extension in time had been granted to them by the decree holder at the stage when the letter dated 22.10.2007 was sent by the decree holder to the judgment debtors. Admittedly, the judgment debtors did not object to the said condition rather acquiesced and accepted the same.

27. In view of the above, we are of the opinion that the learned Executing Court committed an illegality by ignoring the condition on which an extension in time for the payment of the remaining principal amount had been granted to the judgment debtors by the decree holder through the latter's letter dated 22.10.2007. Therefore, the appeal (E.F.A. No.07/2011) filed by the judgment debtors is dismissed whereas the

appeal (E.F.A. No.06/2011) filed by the decree holder is allowed to the extent that the judgment debtors shall be liable to pay the cost of funds for the delayed period at the rate of 12% per annum commencing from 18.10.2007 (i.e. the date by which the judgment debtors were bound to pay the principal amount of Rs.97,45,000/- under the terms of the settlement contained in the decree holder's letter dated 19.04.2007).

(TARIQ MEHMOOD JAHANGIRI)
JUDGE

(MIANGUL HASSAN AURANGZEB)
JUDGE

ANNOUNCED IN AN OPEN COURT ON 18.10.2021.

(JUDGE) **(JUDGE)**

APPROVED FOR REPORTING

*Ahtesham**

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