

**IN THE BANKING COURT No. II AT KARACHI  
NEW SUIT No. 81/2006**

**CRESCENT LEASING CORPORATION LIMITED..... PLAINTIFF**

**VERSUS**

**NETWORK LEASING CORPORATION LIMITED.....DEFENDANT**

**ORDER**

**20.12.2006**

By this order I intend to dispose of the application for leave to defend u/s 10 of the Financial Institutions (Recovery of Finances) Ordinances, 2001 filed by the defendant. The plaintiff filed replication to the leave to defend application.

Heard Mr. Ejaz Hussain Shirazi for Mandviwala and Zafar advocate & legal consultants of defendant. He has contended that the suit is not maintainable as the same has been filed by un-authorized person. He has further contended that the plaint was signed by Asif Haider Mirza on behalf of the plaintiff M/s Crescent Leasing Corporation but no power of attorney has been produced alongwith the plaint to show that in fact Asif Haider Mirza was appointed as attorney of the plaintiff. He has further contended that it is also not mentioned in the plaint that in what capacity Asif Haider Mirza has signed the plaint. On merits learned advocate has contended that there are no outstandings of the plaintiff against the defendant as claimed by them as the alleged outstandings are lying with an other company of Crescent Group i.e. Crescent Standard Investment Bank Limited. The said payment was adjusted by the defendant under their right of set-off. Learned advocate has prayed that to consider the law point as well as right of set-off exercised by the defendant, leave to defend be granted. Learned advocate has relied upon 1997 CLC 795, PLD 1999 Karachi 260, PLD 2003 Karachi 156 and PLD 2004 Karachi 17.

Mr. Bahzad Haider partner of Ahmed & Qazi Associate appearing on behalf of the plaintiff has contended that the plaintiff Crescent Leasing Corporation Limited has no concern at all with the Crescent Standard Investment Bank Limited as both the bodies have their independent entity hence, the principal of set-off can not be applied to the instant case and the same is applicable when, for and against outstanding liabilities are against the one and same person or institution and not against the two different entities though may be belonging to the same group. He has further contended that the defendant on account of his alleged liability against Crescent Standard Investment Bank Limited trying to usurp the outstandings of the plaintiff against them. On law point learned advocate has pointed out that the power of attorney executed by the plaintiff in favor of Asif Haider Mirza is available on record and attached with the plaint as page No. 61. Learned advocate has also contended the application leave to defend is also in violation of Section 10(4) of Ordinance, 2001 hence, there appears no merits in the application for leave to defend and the same is liable to be dismissed. Learned advocate has relied upon 1984 CLC 2170, 1990 ALD 400 PLD 2002 Supreme Court 491, 2003 CLD 1754, 203 CLD 1406, 2005 CLD 327 and 2005 CLD 1489.

I have considered the arguments and perused the record. The verification of plaint shows that the plaint was verified and signed by Asif Haider Mirza mentioning/introducing specifically himself to be duly constituted attorney of the plaintiff. The said verification is also part of the plaint. The record also shows that sub-power of attorney regarding the nomination and appointment of Asif Haider Mirza as attorney of the plaintiff is placed on record. Though it is not placed in sequence of other documents but it is attached with the vakalatnama signed by Asif Haider Mirza hence, on this point the suit can not be held to be not maintainable as argued by the learned advocate for defendant. On merits, the sanction and disbursement of finance facility amounting to Rs. 25 million by the plaintiff to the defendant is not denied by the defendant. The defendant also admitted the repayment partly to the plaintiff as such there is no dispute or denial of finance facility provided by the plaintiff and availed and utilized by the defendant. The sole plea taken by

the defendant is that after disbursement of finance facility they placed an amounting to Rs. 25 million with Crescent Standard Investment Bank Limited an other member of Crescent Group, with full knowledge of the plaintiff but Crescent Standard Investment Bank Limited failed to repay it's liability, therefore, the defendant exercised their legitimate rights of set-off against and with relevant member of Crescent Group and stoped payment of the plaintiff. Although the defendant has contended that the plaintiff and Crescent Standard Investment Bank Limited both are belonging to Crescent Group, but not a single documents has been produced alongwith the application for leave to defend to show that in fact both the financial institutions are belonging to the Crescent Group. Even from the submissions of the defendant particularly with regard of the announcement of merger of plaintiff and Crescent Standard Investment Bank Limited are two different entities hence these were announced and going to be merged and liability of one entity can not be adjusted against the liability towards the other entity. The principal of set-off can not be applied against two separate and independent entities even if both the separate entities are belonging of same group as both entities have their independent business and network. The citations relied upon by the learned advocate for defendant bears different facts, hence the same are not applicable to the case in hand. As such in my view no prima-facie case on merit is made out in favor of the defendant for grant of leave to defend, therefore, I dismiss the application u/s 10 of the Financial Institutions (Recovery of Finances) Ordinances, 2001.

Both the parties are directed to file their breakups respectively.

Announced in open Court on this 20<sup>th</sup> day of December 2006.