

ORDINANCE LVIII OF 1984

BANKING TRIBUNALS ORDINANCE, 1984

An Ordinance to provide a machinery for recovery of finance provided by banking companies under a system of financing which is not based on interest

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No. F. 17 (1)184-Pub.-The following Ordinance made by the President is hereby published for general information:-

Whereas it is expedient to provide a machinery for recovery of finance provided by banking companies under a system of financing which is not based on interest.

And whereas the President is satisfied that circumstances exist which render it necessary to take immediate action;

Now, therefore, in pursuance of the Proclamation of the fifth day of July, 1977, and in exercise of all powers enabling him in that behalf, the President is pleased to make and promulgate the following Ordinance :-

BANKING TRIBUNALS ORDINANCE, 1984

1. Short title, extent and commencement.- (1) This Ordinance may be called the Banking Tribunals Ordinance, 1984.

(2) It extends to the whole of Pakistan.

(3) It shall come into force at once.

BANKING TRIBUNALS ORDINANCE, 1984

2. Definition.- In this Ordinance, unless there is anything repugnant in the subject or context :-

(a) "banking company" means-

(i) a bank as defined in Banks (Nationalization) Act, 1974 (XIX of 1974).

(ii) a company incorporated outside Pakistan and transacting the business of banking in Pakistan ; and

(iii) a company specified in the Schedule ;

(b) 'Banking Tribunal' means a tribunal established under section 4 ;

(c) 'customer' means a person who has obtained finance from a banking company or is the real beneficiary of such finance, and includes a surety and an indemnifier ;

(d) 'commencing day' means the day on which this Ordinance comes into force ;

(e) 'finance' includes an accommodation or facility under a system which is not based on interest but provided on the basis of participation in profit and loss, mark-up or mark-down in price, hire-purchase, lease, rent sharing, licensing, charge or fee of any kind, purchase and sale of any property, including commodities, patents, designs, trade marks and copyrights, bills of exchange, promissory notes or other instruments with or without buy-back arrangement by a seller, participation term certificate, musharika certificate, modaraba certificate, term finance certificate or any other mode other than an accommodation or facility based on interest and also includes guarantees, indemnities and any other obligation, whether fund based or non-fund based, and any accommodation or facility the real beneficiary whereof is a person other than the person to whom or in whose name it was provided ; and

(f) 'rules' means rules made under this Ordinance.

3. Ordinance not to derogate from other laws.- The provisions of this Ordinance shall be in addition to and, save as otherwise provided in this Ordinance, not in derogation of; any other law for the time being in force.

4. Establishment Banking Tribunal

(1) The Federal Government may, by notification in the official Gazette, establish as many Banking Tribunals as it considers necessary, and, where it establishes more than one Banking Tribunal, shall specify in the notification the territorial limits within which each of them shall exercise jurisdiction under this Ordinance.

(2) A Banking Tribunal shall consist of a person who is or has been, or is qualified for appointment as a Judge of High Court or a District Judge or an Additional District Judge who shall be the Chairman, and two members, to be appointed by the Federal Government.

(3) To constitute a sitting of a Banking Tribunal, the presence of the Chairman and not less than one member shall be necessary.

(4). A decision of a Banking Tribunal shall be expressed in terms of the opinion of the majority of its members, including the Chairman, or if the case

has been decided by the Chairman and only one of the members and there is a difference of opinion between them in terms of the opinion of Chairman.

(5) A Banking Tribunal shall not merely by reason of a change in its composition, or the absence of any member from any sitting, be bound to recall and rehear any witness who has given evidence, and may act on the evidence already recorded by or produced before it.

(6) A Banking Tribunal may hold its sittings at such places within its territorial jurisdiction as the Chairman may decide from time to time.

(7) No act or proceeding of a Banking Tribunal shall be invalid by reason only of the existence of vacancy in or defect in the constitution of the Banking Tribunal.

5. Powers of Banking Tribunals.- (1) A Banking Tribunal shall-

(a) in the exercise of its civil jurisdiction, have in respect of a claim filed by a banking company against a customer in respect of, or arising out of, finance, provided by it, all the powers vested in a civil Court under the Code of Civil Procedure, 1908 (Act V of 1908).

(b) in the exercise of its criminal jurisdiction, by the offences punishable under this Ordinance and shall, for this purpose, have the same powers as are vested in the Court of Session under the Code of Criminal Procedure 1898 (Act V of 1899)

Provided that a Banking Tribunal shall not take cognizance of any offence punishable under this Ordinance except upon complaint in writing made by a person authorized in this behalf by the banking company in respect of which the offence was committed ; and

(c) exercise and perform such other powers and functions as are, or may be, conferred under, or assigned to it, by or under this Ordinance.

(d) A Banking Tribunal shall, in all matters with respect to which procedure has not been provided for in this Ordinance, follow the procedure laid down in the Code of Civil Procedure, 1908 (Act V of 1908), and the Code of Criminal Procedure, 1898 (Act V of 1898).

(2) All proceedings before a Banking Tribunal shall be deemed to be proceedings within the meaning of sections 193 and 228 of the Pakistan Penal Code (Act XLV of 1860), and the Banking Tribunal shall be deemed to be a Court for the purposes of sections 480 and 482 of the Code of Criminal Procedure, 1898 (V of 1898).

(3) No Court other than a Banking Tribunal shall have or exercise any jurisdiction with respect to any matter to which the jurisdiction of a Banking

Tribunal extends under this Ordinance, including a decision as to the existence or otherwise of finance and the execution of a decree passed by a Banking Tribunal

Provided that nothing in the subsection shall be deemed to affect-

(a) the right of a banking company to seek any remedy before any Court or otherwise that may be available under the law by which the banking company may have been established or under that law as amended from time to time :
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(b) the power or jurisdiction of the banking company or any Court such as is referred to to clause (a) ;

or to require the transfer to a Banking Tribunal of any proceeding pending before the banking company ~or any Court immediately before the Commencing day.

(6) Procedure of Banking Tribunal.- (1) Where a customer commits default in fulfilling any obligation to a banking company, the banking company may, file against such customer with the Banking Tribunal a plaint which shall be verified on oath by the Branch Manager or an officer of the rank of ,Assistant Vice-President or Assistant Manager or such other officer as the Board of Directors of the banking company may authorize in this behalf.

(2) On a plaint being filed with the Banking Tribunal in accordance with the provisions of subsection (1), the Banking Tribunal shall issue notice requiring the defendant to show cause, with in ten days of the service of such notice as to why decree as prayed for in the plaint should not be passed against him.

(3) The notice under subsection (2) shall be served on the defendant in accordance with the procedure for service of notice laid down in subsection (3) of section 4 of the Banking Companies (Recovery of Loans Ordinance, 1979 (XIX of 1979).

(4) Upon the defendant failing to file a reply within the time given in the show cause notice under subsection (Z) or upon rejection by the Banking Tribunal of the plea taken by him in the reply, the Banking Tribunal shall pass a decree in favour of the banking company as prayed for in the plaint.

(5) In the event of the Banking Tribunal passing a decree against the defendant failing to give a reply to the show cause notice within the period specified in subsection (2), the Tribunal may, on the application of the defendant filed within thirty days of the passing of the decree, set aside the same and permit the defendant to file his reply under that subsection provided it is satisfied that there was sufficient cause for the defendant not having filed the reply within the specified period.

(6) All suits filed in the Banking Tribunal shall be disposed of within ninety days of filing of the plaint and in case proceedings continue beyond the said period, the defendant shall be asked to deposit in cash or to furnish a security, acceptable to the Tribunal, equal in value to the claim in suit, and, on failure of the defendant to make such deposit or furnish such security, the Banking Tribunal shall pass decree in favor of the Banking Company as prayed for in the plaint

Provided that, where the claim of the banking company is based on default of the defendant in payment of agreed installments, the deposit or security shall be to the extent of the amount of installments in default

Provided further that the requirement of deposit in cash or furnishing of security may be dispensed with if in the opinion of the Banking Tribunal the delay is not attributable to the conduct of the defendant.

(7) Any amount deposited by the defendant with the Banking Tribunal under subsection (6) may be withdrawn by the banking company upon an undertaking to refund the same to the Banking Tribunal if so ordered at any time.

(8) Where the claim filed before the Banking Tribunal is in respect of a mortgage of immovable property, "decree" shall mean final decree for foreclosure, sale or redemption, as the case may be, as provided Order XXXIV of the First Schedule to the Code of Civil Procedure, 1908 (V of 1908).

7. Provisions relating to certain offences.-(1) Whoever intentionally

destroys, or removes; or reduces the value of the property on the security of which finance was provided to him, or, without the prior approval in writing of the banking company which provided finance, transfers such property or any part thereof otherwise than in accordance with the terms of approval shall, without prejudice to any other action which may be taken against him under this Ordinance or any other law for the time being in force, be punishable with imprisonment of either description for a term which may extend to five years, and shall also be liable to fine, and shall be ordered by the Banking Tribunal trying the offence to deliver up or refund, within a time to be fixed by the Banking Tribunal, the property or value of the property so destroyed, removed or reduced in value or transferred as the case may be.

(2) All offences under this Ordinance shall be bailable, non-cognizable and Compoundable.

(3) Where the person guilty of an offence under this Ordinance is a company or other body corporate, the chief executive by whatever name called, and every director, other than a non-executive director, manager, secretary and other officer thereof shall, unless he proves that the offence was committed without his knowledge or that he exercised all due diligence to prevent the

commission of such offence, also be deemed to be guilty of the offence and shall be liable to be proceeded against and punished accordingly.

8. Application of fines.- A Banking Tribunal imposing any fine under this Ordinance may direct that whole or a part thereof shall be applied in or towards-

- (a) payment of cost of all or any of the proceedings under this Ordinance ; and
- (b) payment to a banking company of compensation for any loss caused by the offence, including loss of income.

9, Appeal.-(i) Any person aggrieved by any order of the Banking Tribunal passed under subsection (4) or subsection (5) of section 6 or a decree or sentence passed under this Ordinance may, within thirty days of such order, decree or sentence, prefer an appeal to the High Court

Provided that no appeal filed by the defendant against a decree shall

be entertained unless the defendant has deposited with the Banking Tribunal the amount claimed in the suit under subsection (6) of section 6 or the decial amount

Provided further that, where the claim of the banking company is based on the default of the defendant in payment of agreed installments the deposit shall be to the extent of the amount of installments in default.

- (2) An appeal under subsection (1) shall be heard by a bench of not less than two Judges.

10. Finality of orders- Subject to the provisions of appeal under section 9, no Court or other authority shall call, or permit to .be called, iii

question any proceeding. order, judgment or decree of a Banking Tribunal or the legality or propriety of anything done or intended to be done by the Banking Tribunal under this Ordinance.

11. Execution of decree.- The Banking Tribunal shall, on the written application of the decree-holder, forthwith order execution of the decree or

order and where the decree or order pertains to money recover the amount covered, by the decree or order, as the case may be, as arrears of land revenue or in such other manner as may be applied for by the decree-holder, in accordance with the provisions of the Code of Civil Procedure, 1908 (Act V of 1908), or any other law for the time being in force

Provided that, in the case of application by the decree-holder for execution of the decree by arrest and detention of the judgment-debtor in prison, the proviso to section 51 of the Code of Civil Procedure, 1908 (Act V of 1908), and Rules 37 and 40 of Order XXI of the First Schedule to the said Code shall not apply and the Banking Tribunal shall, on such application, after giving the judgment-debtor opportunity of being heard, make an order for detention of the judgment-debtor in civil prison and shall, in that event cause him to be arrested if he is not already under arrest.

(2) The Banking Tribunal shall not without the consent of the decree holder allow the decretal amount to be paid in installments.

(3) Notwithstanding anything contained in this Ordinance, where a banking company holds any property belonging to the judgment-debtor as security, it may sell the same without intervention of Court either by public auction or private treaty to any person, and appropriate the proceeds thereof according to law towards total or partial satisfaction of the decree

Provided that proper account of the proceeds shall be filed with the Banking Tribunal not later than thirty days from the date of such satisfaction

Provided further that, where the Banking company wishes to sell the property by private treaty, it shall, before concluding the sale, give to the judgment-debtor, by a notice, the option to purchase or redeem it, as the case may be, at the same price within such time as the banking company may specify in such notice.

(4) Where a decree passed by a Banking Tribunal remains unsatisfied beyond a period of thirty days from the day of the decree, the Banking Tribunal shall on application by the decree-holder impose a penalty on the judgment-debtor of such amount as it may deem appropriate and the amount of such penalty shall be recovered from the judgment-debtor as a fine under the Code of Criminal Procedure, 1898 (Act V of 1898), and the recovery so made shall be made over to the banking company as liquidated damages for failure of the judgment-debtor to satisfy the decree.

(5) Any penalty imposed by a Banking Tribunal on a judgment-debtor under subsection (4) shall not be a bar to imposition of any further penalty at a later date where the failure to pay the decretal amount continues.

12. Limitation Act, 1908 (Act XI of 1908), not to apply- The provisions of the Limitation Act, 1908 (Act IX of 1908), shall not apply to any suit, application or other proceedings filed by a banking company under this Ordinance.

13. Power to amend Shedder.- The Federal Government may, by notification in the official Gazette, modify the Schedule so as to add any entry thereto or omit any entry therefrom.

14. Powers to make rules.- The Federal Government may, by notification in the official Gazette, make rules for carrying out the purposes of this Ordinance.

15. Indemnity.- No suit, prosecution or other legal proceedings shall lie against the Federal Government, a Banking Tribunal or a banking company- or any other person for anything which is in good faith done or intended to be done under this Ordinance or any rule or order made thereunder.

16. Removal of difficulties.- If any difficulty arises in giving effect to any of the provisions of this Ordinance, the Federal Government may, by notification in the official Gazette, make such provision as it thinks fit for removing that difficulty.

SCHEDULE (See section 2(a) and 13)

1. Bankers Equity Limited.
2. House Building Finance Corporation.
3. Investment Corporation of Pakistan.
4. National Development Finance Corporation.
5. National Investment Trust.
6. Pakistan Industrial Credit and Investment Corporation.
7. Pak-Libya Holding Co. Limited.
8. Pak-Kuwait Investment Co. Limited.
9. Saudi-Pak Industrial and Agricultural Investment Company Limited.
10. Small Business Finance Corporation.