

IN THE NATIONAL COMPANY LAW TRIBUNAL
COURT NO. 5, MUMBAI BENCH

C.P. (IB) 1224/MB/2020

Under Section 7 of the IBC, 2016

In the matter of

Anand Rathi Global Finance Limited

Express Zone, A wing, 10th Floor,
Western Express Highway, Goregaon -
East, Mumbai - 400063

.... Petitioner

v/s.

Premier Limited

169, Gat Village, Sawardari Taluka
Khed (Chakan Industrial Area), Pune-
410501

.... Corporate Debtor

Order Pronounced on: 29.01.2021

Coram: Smt. Suchitra Kanuparthi, Member (Judicial)
Shri Chandra Bhan Singh, Member (Technical)

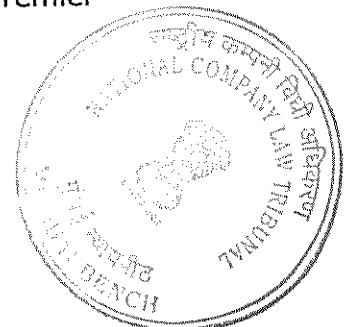
For the Petitioner: Adv. Prateek Seksaria a/w Adv. Saket Mone, Adv.
Vishesh Kalra, Adv. Radhika Kulkarni, Adv. Nishant
Chothani and Adv. Abhishek Saliyani i/b Vidhi
Partners

For the Corporate Debtor: Adv. Ankit Lohia a/w Adv. Dhanyashree Shah
and Adv. Debashree Dey i/b Desai & Diwanji

Per: Chandra Bhan Singh, Member (Technical)

ORDER

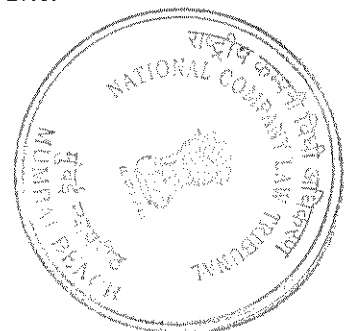
1. This Company Petition is filed by Anand Rathi Global Finance Limited (hereinafter called "Petitioner") seeking to set in motion the Corporate Insolvency Resolution Process (CIRP) against Premier



Limited (hereinafter called "Corporate Debtor") alleging that Corporate Debtor committed default in making payment of Rs. 8,35,25,398/- including interest as per the terms of the agreements by invoking the provisions of Section 7 of the Insolvency & Bankruptcy Code (hereinafter called "Code") read with Rule 4 Insolvency & Bankruptcy (Application to Adjudicating Authority) Rules, 2016.

Facts of the case:

2. The Petitioner is a Non-Banking Financial Company which extended loan amount of ₹3,00,00,000/- against securities facilities to the Corporate Debtor along with one Doshi Holdings Private Limited (Doshi) as co-borrowers under the Loan cum Pledge Agreement dated 29.06.2015 for a period of 6 months from the date of disbursement. The amount was disbursed to the Corporate Debtor on 29.06.2015. Thereafter, the tenure of the Loan cum Pledge Agreement dated 29.06.2015 was extended by a period of 6 months up to 28.06.2016 through an addendum dated 28.12.2015 and the same was further extended by a period of 24 months up to 28.06.2018 through an addendum dated 31.03.2016 (Facility 1).
3. The Petitioner granted a loan of ₹2,00,00,000/- to the Corporate Debtor along with one Doshi Holdings Private Limited (Doshi) as co-borrowers under another Loan cum Pledge Agreement dated 04.05.2016 for a term of 6 months from the date of disbursement. The amount was disbursed to the Corporate Debtor on 05.05.2016. Thereafter, the tenure of the Loan cum Pledge Agreement dated 04.05.2016 was extended by a period of 18 months up to 04.05.2018 through an addendum dated 06.10.2016 (Facility 2).
4. The Petitioner granted a loan of ₹1,00,00,000/- to the Corporate Debtor along with one Doshi Holdings Private Limited (Doshi) as co-borrowers under another Loan cum Pledge Agreement dated 05.10.2016 for a term of 1 month from the date of disbursement.



The amount was disbursed to the Corporate Debtor on 06.10.2016 (Facility 3).

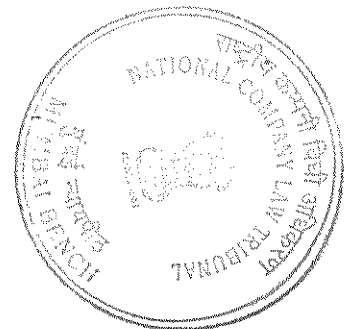
5. Under the Loan Agreement, the co-borrower of the Corporate Debtor, Doshi, pledged 53,01,000 shares of the Corporate Debtor in favor of the Petitioner to secure the repayment of amounts disbursed under the Loan Agreements.
6. The tenure of the above said Facilities got expired and the amounts became due and payable on the following dates:

Facility 1: 28.06.2018

Facility 2: 04.05.2018

Facility 3: 04.11.2016

7. The Corporate Debtor once made a payment of ₹2,00,00,000/- to the Petitioner through a cheque bearing No. 064101 dated 21.05.2020 towards monthly interest in respect of the aforementioned facilities under the said agreements. However, the Corporate Debtor did not pay the whole remaining outstanding to the Petitioner. The Petitioner then issued many margin Shortfall Notices/ Emails to the Corporate Debtor on 27.06.2019, 18.06.2019, 04.07.2019, 07.02.2020, 10.02.2020, 14.02.2020 and 17.02.2020 to call upon the Corporate Debtor to clear the margin shortfall at the earliest before filing the Petition under Section 7 of the Insolvency and Bankruptcy Code, 2016 to the Corporate Debtor. Thereafter, the Corporate Debtor sent the following email dated 19.02.2020 to the Petitioner:



From: Madhya Doshi <md@premier.co.in>
Sent: 19 February 2020 11:45
To: amirathi@rathi.com
Cc: manishjain@rathi.com, sachinshah@rathi.com, KS Hair
Subject: LAS loan default by Premier

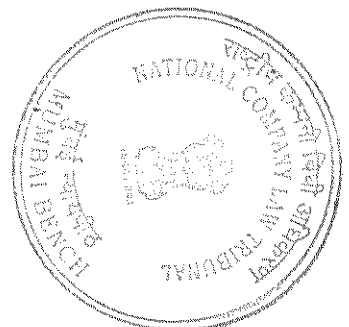


Dear Amit,

Yesterday your CFO Mr.Manish Jain was in touch with our CFO Mr.Nair regarding the default on the LAS loan aggregating to Rs.7.65 Cr (Rs.6 Cr Principal & Rs.1.65 Cr Interest) He was calling to inform us and personally let me know that there is now no choice but for them to take legal action with respect to this default unless we can demonstrate steps to regularize the problem. Unfortunately I was out of the office when he called hence this mail in response.

I have been personally keeping you updated about our situation and the severe challenges we are facing, particularly in the context of the cash flow control (via Escrow account) exercised over our receivables and collections by Edelweiss ARC (EARC), being the 100% secured lender to the Company. As the secured lenders have not been paid any interest they are not permitting us to service any other financial creditors dues until there is a comprehensive restructuring and resolution plan for the Company.

Since EARC took over our debt in mid-2017 they were supposed to do a debt restructuring plan for us including working capital support to run our operations. Unfortunately, for various reasons this did not materialise and our operations were progressively starved resulting in rapidly declining operations and collections.



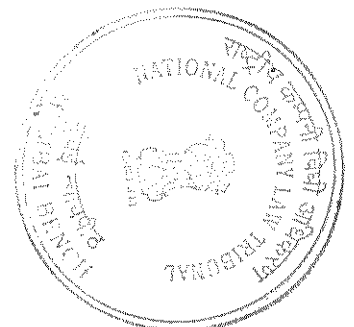
We were to receive nearly Rs.20 Cr from the Railways for the part acquisition of our land at Dombivli in 2018, which was permitted by EARC to partially repay ICDS as well as infuse in operations. Unfortunately this payment, despite regular and vigorous follow up, has been withheld for unjustified reasons by the Government finally forcing us to file a writ petition in the Bombay High Court last month. Fortunately the matter has been heard urgently and the next hearing is on 4th March, 2020.

During 2018-19 with the direction and approval from EARC (representing the secured lenders), we relocated our Pune plant and sold our factory land to the Runwal Group. However, the entire proceeds (being under the control of EARC) were adjusted against debt repayment to secured lenders. Despite our desire to use part of this money to clear ICDS, as explained above, the matter was not in our control.

In 2018-19 Corporation Bank, who was a 9% secured creditor filed an NCLT petition against us for non-implementing an OTS settlement that they had agreed accepting a substantial haircut of their dues. Finally this matter was resolved in September 2019 and our account with Corporation Bank is settled and closed. Even currently, our Company is facing NCLT petitions from various financial and operational creditors due to be heard in 12th March 2020. We are making all efforts in the High court for the Railway money as well as to gain time in the NCLT.

EARC has finally agreed to a restructuring plan for the Company but is not willing to commit any fresh funds towards operations and working capital. Consequently we are still struggling to find an alternate source of finance to restart operations. At the new site (20 km away in Chakan Industrial Area). We still hold 42 acres land at Dombivli value at Rs.250 Cr in addition to nearly Rs.100 Cr of plant & machinery at book value as against a principal amount of Rs.160 Cr due to secured lenders, namely EARC. There is interest in the land from various real estate developers including Runwal, but there are certain structural challenges that we are working to overcome.

AL



I hope this gives you a honest and transparent update on our situation. I am, as always, deeply grateful for your timely assistance and support with the LAS loan. Unfortunately the difficult environment coupled with our specific situation have led to do this unintended delay and default. As an NBFC I fully appreciate that you also face RBI, auditor and other scrutiny. Consequently if you have to initiate legal action I understand your position. The shares given as pledge have reduced dramatically in value and are not very heavily traded. Any sale will not yield any significant recovery. Hence, I request that you hold the pledged shares for whatever their worth presently.

Once again my sincere apologies for all this but it was genuinely unintentional.

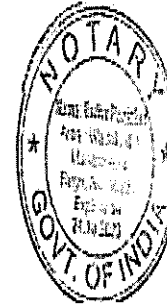
G

Regards

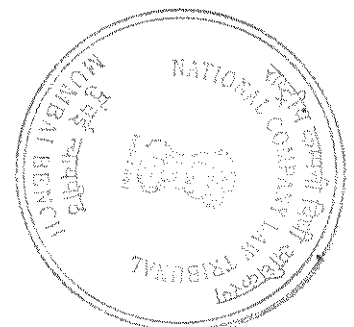
Maitreya

CMD

Premier Ltd



8. Later, a notice dated 12.06.2020 was sent by the Counsel for the Petitioner to the Corporate Debtor, Doshi and 8 others under Section 138 of the Negotiable Instruments Act, 1881 calling upon them to pay the Petitioner a sum of ₹7,91,69,662.36/- within 15 days from the date of receipt of the notice. Then, the Counsel for the Corporate Debtor replied to the above notice on 23.06.2020 and called upon the Counsel for the Petitioner to not initiate proceedings.
9. The Corporate Debtor, even after many reminder mails/ notices sent by the Petitioner to the Corporate Debtor to pay the outstanding amount, failed to repay the monies advanced as per the terms of the Loan Agreements. Then, the Petitioner invoked 53,01,000 shares pledged by Doshi on 02.07.2020. The securities

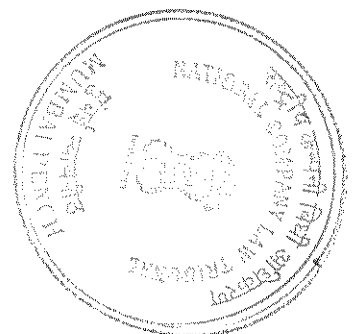


are listed on the stock exchange as on 14.09.2020 at ₹3.90 per share and therefore, the notional value thereof would be ₹2,06,73,900/-. However, the security as shares is not realizable at present and/or cannot be liquidated inasmuch as there are no buyers for buying a large stake (17.45% of the share capital) of the said shares on the stock exchange/s. Therefore, the estimated value of the security as per the Petitioner is NIL. Hence, the Petitioner filed the present Petition on 18.09.2020.

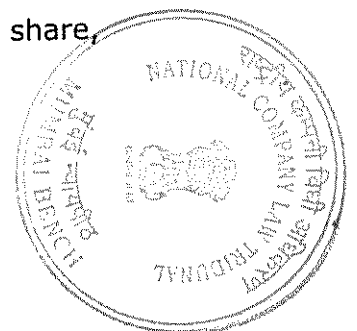
10. The Petitioner has enclosed the copy of following documents along with the Petition:

- i. Copy of Sanction Letter dated 27.06.2015;
- ii. Copy of Loan cum Pledge Agreement dated 29.06.2015;
- iii. Copy of Addendum to the Loan cum Pledge Agreement dated 28.12.2015;
- iv. Copy of Addendum to the Loan cum Pledge Agreement dated 31.03.2016;
- v. Copy of Sanction Letter dated 04.05.2016;
- vi. Copy of Loan cum Pledge Agreement dated 04.05.2016;
- vii. Copy of Addendum to the Loan cum Pledge Agreement dated 06.10.2016;
- viii. Copy of Sanction Letter dated 05.10.2016;
- ix. Copy of Loan cum Pledge Agreement dated 05.10.2016;
- x. Bank Account statements of the Petitioner showing debits in favor of the Corporate Debtor;
- xi. Copies of the correspondences between the Petitioner and the Corporate Debtor;
- xii. Copy of the cheque bearing No. 064101 dated 21.05.2020 of Rs. 2,00,00,000/- provided by the Corporate Debtor to the Petitioner;
- xiii. Ledger Account of the Corporate Debtor in the books of the Petitioner for the period 2015 to 2020.

Reply of the Corporate Debtor:

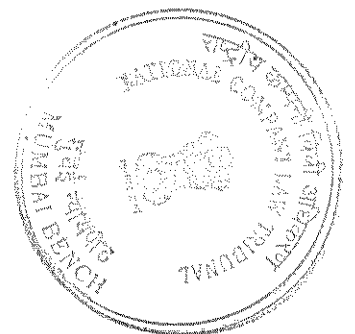


11. The Corporate Debtor contends that at the outset, the Corporate Debtor is undergoing a major restructuring process. Admission of the Petition would nullify all efforts of restructuring by M/s. Edelweiss Asset Reconstruction Company (EARC) since the year 2017. Owing to the challenging business situations faced by Premier in the Capital goods and Wind Energy related business segments, Corporate Debtor continued to suffer heavy losses and consequently, the bank accounts of Corporate Debtor became a Non-Performing Asset (NPA) in the books of its lenders/ bankers. As a consequence, the lenders of the Corporate Debtor assigned their debts to EARC in the year 2017 and at the time of the said assignment, creditors having value of over 90% of debt was assigned to EARC. As on date, EARC is a 100% secured creditor of the Corporate Debtor and has a first charge over all assets of it (which are mortgaged to it). In and around June 2018, the Corporate Debtor failed to service the loans under the Loan Agreements because EARC (as the 100% secured creditor of the Corporate Debtor and escrow account co-signer), did not permit, *inter alia*, any interest payments to the Petitioner and/or any other lenders.
12. The Corporate Debtor then submits that the alleged amount as claimed in the Petition has been wrongfully claimed and/or mentioned since the purported debt which was due and payable to the Petitioner by Corporate Debtor stood reduced on account of the Petitioner's invocation of pledge of the Corporate Debtor Shares, which were pledged by DHPL in favour of the Petitioner in lieu of the amounts disbursed only to Corporate Debtor under the Loan Agreements. The tenure of the facilities expired on 28.06.2018 and since Corporate Debtor failed to repay the amounts under the Loan Agreements, the default occurred on 29.06.2018. As on the date of default, i.e., on 29.06.2018 the stock exchange price of the Corporate Debtor Shares was in or around Rs. 14 - 16 per share.



i.e., Rs. 7,42,14,000 (53,01,000 X Rs. 14 per share). As per Clause 3.4 and 6 of the Loan Agreements, the Petitioner was entitled to immediate right of sale of the Corporate Debtor Shares. If the Petitioner had without unreasonable delay and demur invoked its pledge over Corporate Debtor Shares at the relevant time, then the entire amount of outstanding principal debt of Rs. 6,00,00,000 could have been satisfied. However, the Petitioner chose to invoke the pledge almost after 2 years after the purported default made by the Company in its repayment obligations. In the event the Petitioner was aggrieved by such default of Corporate Debtor, it could have exercised its pledge over Corporate Debtor Shares in 2018 itself when the price per share on the stock exchange was Rs. 14-16 per share. Had the Petitioner timely invoked the pledge, it would have recovered all the amounts that may have been outstanding and payable by Corporate Debtor to the Petitioner. Having voluntarily waited for 2 years, the Petitioner in this manner and with *malafide* intent cannot seek to now initiate actions under the Code against Corporate Debtor including invoking the pledge of shares. Having invoked the pledge, the Petitioner has now, with a *malafide* intent, illegally and wrongfully chosen not to sell/ transfer the Corporate Debtor Shares on the frivolous ground that there were no buyers for buying a large stake (i.e. Corporate Debtor Shares which constitute 17.45% of the shares of the Company). In effect, what the Petitioner has sought to do is to reduce the Doshi's shareholding in the Company and additionally recover illegally an amount of Rs. 8,35,25,398.

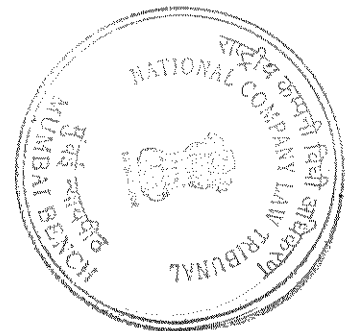
13. The Corporate Debtor further submits that The Petitioner has sought to file two Applications under Section 7 of the Code against Corporate Debtor and Doshi for recovering the purported debt of Rs. 8,35,25,398 arising under the same loan transaction, i.e., the present Petition and Petition No. CP (IB) 1220/(MB)/2020 against Doshi. It is further submitted that all the monies were disbursed to



and received by Corporate Debtor for which Doshi had merely pledged the Corporate Debtor Shares in favour of the Petitioner to secure the loan given by the Petitioner to Corporate Debtor under the Loan Agreements. The loan has always been serviced by Corporate Debtor. Doshi never even serviced the loans (or since execution of the Loan Agreements and even after the purported default in 2018 by Corporate Debtor, the Petitioner always and only called upon Corporate Debtor to service the loans). Despite the fact the monies were disburse to Corporate Debtor, the Petitioner went ahead and initiated action under the Code against both the Companies, i.e., Corporate Debtor alongside Doshi Holdings for the same cause of action. This clearly evidences the wrongful and unjust conduct on the part of the Petitioner. In the instant case, Corporate Debtor and Doshi are not joint venture companies and therefore, in terms of the *Dr. Vishnu Kumar Agarwal vs. Piramal Enterprises Ltd. [Company Appeal (ATI (Insolvency) No. 346 of 2018 and Company Appeal (AT) (Insolvency) No. 347 of 2018]* Judgment of the National Company Law Appellate Tribunal, the Petitioner cannot initiate the corporate insolvency resolution process and proceed against two Corporate Debtors for a same set of claims. In light of the above judgments, the Applications cannot be maintained simultaneously against Premier Limited (i.e. the Corporate Debtor) and Doshi (i.e. pledgor) for the same identical debt arising out of the identical loan disbursed by the Petitioner to Corporate Debtor. Based on the above facts and circumstances and in view of the aforementioned submissions, the present Petition ought to be dismissed with exemplary costs.

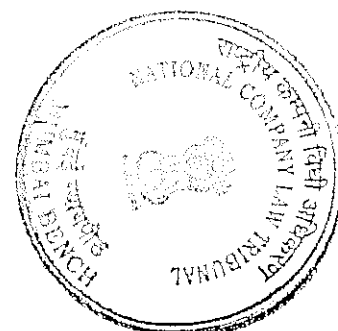
Findings:

14. The present Petition has been filed under Section 7 of the Code by the Petitioner, M/s. Anand Rathi Global Finance Limited (ARGFL), which is a Non-Banking Financial Company which has extended



security facilities to the Corporate Debtor, M/s. Premier Limited. The Corporate Debtor has admitted its default in payment of the debt to the tune of about Rs. 8.35 crores of which the Principal amount is of Rs. 6 crores and rest is interest as per rate applicable in terms of the Loan Agreements.

15. The Petitioner has disbursed the amount of Rs. 6 crore as loan to the Corporate Debtor along with Doshi Holdings Pvt. Ltd. (Doshi) as Co-borrower under three different Loan-cum-Pledge Agreements with the subsequent addendums. Under these Loan Agreements, the Co-borrower of the Corporate Debtor, Doshi has pledged 53.01 lakhs shares of the Corporate Debtor to the Petitioner to secure the repayment of amount disbursed.
16. The Bench notes that on 02.07.2020, when the Petitioner chose to exercise its rights. The said shares were trading at Rs. 3.90 per share of a face value of Rs. 10 per share amounting to a notional value, as claimed by the Petitioner, of Rs. 22,06,73,900/-. The Bench further notes that the debt, default and the inability to pay have been consistently admitted by the Corporate Debtor in its Affidavit of Reply.
17. The Corporate Debtor has basically raised two sets of contentions regarding non-maintainability of the Petition:
 - (i) That the amount payable to the Petitioner, i.e., of about Rs. 8.35 crores stood reduced on account of Petitioner's invocation of pledge of the Corporate Debtor shares which were pledged by Doshi. Unreasonable delay of more than 2 years by the Petitioner in invoking the pledge over Corporate Debtor shares which lead to deterioration in the value of Corporate Debtor shares. The Corporate Debtor mentions that the default occurred on 29.06.2018 and at that time, the stock exchange price of the shares were in or around Rs. 14-16 per share, i.e. Rs. 7,42,14,000/-. If the Petitioner had, without unreasonable delay, invoked its pledge over Corporate Debtor Shares at the



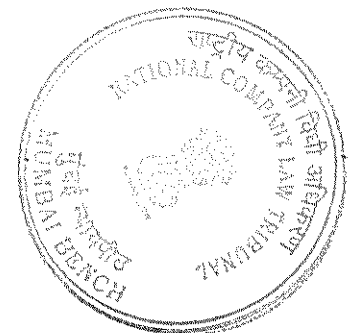
relevant time, then the entire amount of outstanding principal debt of Rs. 6,00,00,000 could have been satisfied.

(ii) The Application cannot be maintained for the same debt against Premier Limited as well as Doshi Holdings Private Limited.

18. Since the "debt" and "default" is admitted by the Corporate Debtor, the Bench would examine the admissibility of the Petition based on the outcome regarding the above two issues mentioned by the Corporate Debtor, i.e., Premier Limited against the Petitioner. This Bench notes that invocation of pledged shares does not amount to said monies recovered. The Petitioner in this regard has drawn the attention to Regulation 79(8) of the SEBI (Depositories and Participants) Regulations, 2018 which reads as under:-

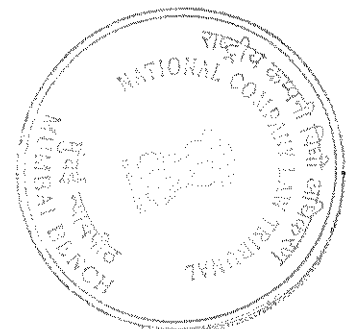
*"79. Manner of creating pledge or hypothecation
(8) Subject to the provisions of the pledge document, the pledgee may invoke the pledge and on such invocation, the depository shall register the pledgee as beneficial owner of such securities and amend its records accordingly."*

19. Therefore, it is clear that it is a step which has to be followed with the enforcement of security whereby the shares are transferred into the Pledgee's account. Only after this, the Pledgee, i.e., in this case the Petitioner, would be in a position to choose to sell or to hold on to the shares as per its discretion. Therefore, this Bench finds that the contention of the Corporate Debtor that since the Pledge was invoked on 02.07.2020, it amounts to the value of debt being reduced to the extent of the existing price of the shares in the stock markets on 02.07.2020 which is about Rs. 2.06 crores in this case as not tenable. Also, the Petitioner can not be held responsible for not invoking and selling the shares for a period of two years from the time of default. No fault can be attributed to the Petitioner for not invoking the shares and selling it immediately after default.



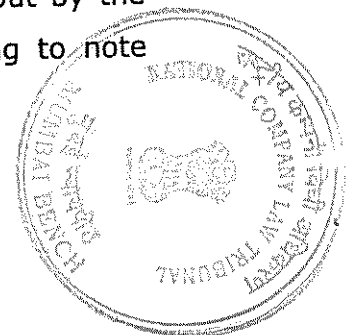
20. In this regard, the Bench notes that it is a settled law that any pledger, in this case Doshi, cannot compel a Pledgee (in this case Petitioner) to exercise power of sale as a mean to discharge debt. In this regard reference has been drawn to the High Court of Bombay Judgment of February 13, 2019 of *Reliance Project Ventures and Management Pvt. Ltd. Vs. ECL Finance Ltd.* wherein at Para 32, reference has been made to the Para 24 of the Judgement of *National Securities Clearing Corporation Limited vs. Prime Broking Company (India) Limited* which reads as under:

"24. It is therefore clear that a pledgee has the discretion to decide whether he wants to sell the pledge security; when to sell it; and how much of it to sell. The pledgor can not dictate the terms to the pledgee on how he is to exercise his right. If this is the correct position in law, and that is how I understand it, then, I find at least prima facie that the claim for damages on account of the Petitioner failing to sell all 20,00,000 Gitanjali shares between 19th March, 2013 and 27th April, 2013, cannot succeed in law. In fact on a perusal of the Complaint filed in Suit (L) No. 939 of 2013, at least to my mind, it is clear that the claim for damages is made on account of the Petitioners' failure to sell all 20,00,000 shares of Gitanjali between the period 19th March, 2013 and 27th April, 2013. It is not the case of the Respondent Company that the sale of the shares of Gitanjali by the Petitioner was conducted in breach of any agreement arrived at between the parties or was done improperly which has given rise to the claim in damages. As laid down in the judgement of the Madras High Court in the case of S.L. Ramaswamy Chetty and which has got approval of the Supreme Court in the case of Vimal Chandra Grover, the claim for damages can be brought by the pledgor against the pledgee only in the event



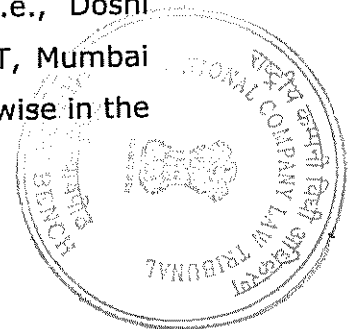
that the pledgee sells the pledged goods and the same are sold improperly. In the facts of the present case, the Respondent Company alleges that the Petitioner (who was the pledgee) ought to have sold all 20,00,000 shares and not only 2,97,731 shares of Gitanjali. This to my mind, does not in any way amount to a sale being conducted improperly as contemplated in the aforesaid two judgements. In fact, the grievance of the Respondent Company in the present case is that the Petitioners have acted improperly by not selling all 20,00,000 shares of Gitanjali. As stated earlier, in law, in the absence of an agreement in that regard, the pledgor cannot compel the pledgee to sell the pledge goods to discharge its debt. That is entirely at the discretion of the pledgee. This being the case, I find at least prima facie that the claim for the damages made by the Respondent Company on account of the Petitioner not selling all 20,00,000 shares of Gitanjali between the period 19th March, 2013 to 27th April, 2013 is unsustainable in law."

21. It is very clear from the above quoted Judgment that it is entirely at the discretion of Pledgee which is the Petitioner to sell the shares in case the Pledger makes the default. However, in the event the pledgee does not exercise the discretion, no blame can be put on the pledgee. It is therefore clear that the Pledgee has the discretion to decide if he wants to sell the pledged security, when to sell it and how much to sell it. The Pledger cannot dictate terms to the Pledgee on how to exercise his right.
22. In view of the above this Bench is very clear that the decision of the Petitioner not to exercise option of invocation of shares at the time when the default occurred in 2018 and invoking it only on 02.07.2020 is perfectly correct as per law and he is well within his rights to exercise such discretion and no blame can be put by the Corporate Debtor on the Petitioner. It is also interesting to note



here that even the Pledger (Doshi) way back on 19.02.2020, i.e., way before 02.07.2020 when the Petitioner invoked the Pledge, had written a letter, both in the capacity of Pledger and co-borrower, to the Petitioner and the relevant part of the same is quoted as "..... As an NBFC, I fully appreciate that you also face RBI, auditor and other scrutiny. Consequently, if you have to initiate legal action, I understand your position. The shares given as pledge have reduced dramatically in value and are not very heavily traded. Any sale will not yield any significant recovery. Hence, I request that you hold the pledged shares for whatever their worth presently." This clearly shows that even the Petitioner should not sell the shares as it would not yield any significant recovery.

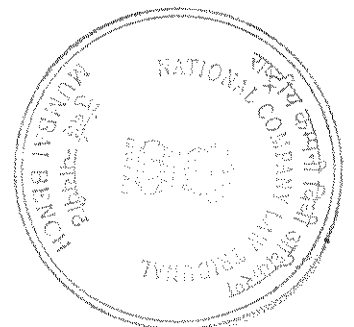
23. The contention of the Corporate Debtor that the Petitioner has filed two Applications under Section 7 of the Code against Premier Limited (Corporate Debtor in the present case) as well as Doshi Holdings Private Limited for recovering the debt of about Rs. 8.36 crores arising out of same transaction is not tenable and therefore should be dismissed. For this, the Corporate Debtor has relied upon NCLAT Judgment of January 08, 2019 in case of *Dr. Vishnu Kumar Agarwal Vs. Piramal Enterprises Limited (2019 SCC OnLine NCLAT 542)* and a similar Judgment of NCLAT of February 17, 2020 in the matter of *IFCI Ltd. Vs. M/s. ACCIL Hospitality Ltd. [Company Appeal (AT) (Insolvency) No. 1422 of 2019]*. The Corporate Debtor mentions that the Applications cannot be maintained simultaneously against Premier Limited (Corporate Debtor herein) and Doshi Holdings Private Limited, the Co-borrower/ the Pledger, for the same debt arising out of identical loan. This Bench takes note of the above contention and is of the view that the present Petition C.P. 1224/MB/2020 has been filed only against Premier Limited (Corporate Debtor herein) and not against Pledger, i.e., Doshi Holdings Private Limited. The Bench also note that NCLT, Mumbai has not passed any Order regarding admissibility or otherwise in the



case of the Co-borrower, i.e., Doshi Holdings Private Limited for which a separate Company Petition 1220 of 2020 has been filed by the Corporate Debtor in NCLT, Mumbai.

24. Since the separate Petition filed by the Petitioner against the Co-borrower, Doshi Holdings Private Limited, in C.P. No. 1220/2020 has not been decided yet, there is no bar in accepting admission of the present Petition (C.P. No. 1224/2020) against the Corporate Debtor, Premier Limited. In fact, reference to buttress this can be made with regard to the Para Nos. 32 and 33 of the Judgment of *Dr. Vishnu Kumar Agarwal Vs. Piramal Enterprises Limited (2019 SCC OnLine NCLAT 542)* which are extracted below:

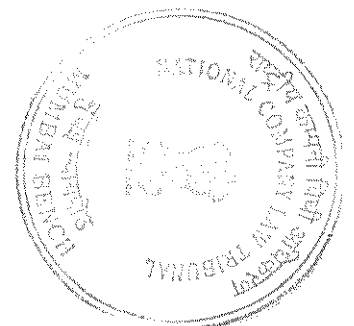
"32. There is no bar in the 'I&B Code' for filing simultaneously two applications under Section 7 against the 'Principal Borrower' as well as the 'Corporate Guarantor(s)' or against both the 'Guarantors'. However, once for same set of claim application under Section 7 filed by the 'Financial Creditor' is admitted against one of the 'Corporate Debtor' ('Principal Borrower' or 'Corporate Guarantor(s)'), second application by the same 'Financial Creditor' for same set of claim and default cannot be admitted against the other 'Corporate Debtor' (the Corporate Guarantor(s)' or the 'Principal Borrower'). Further, though there is a provision to file joint application under Section 7 by the 'Financial Creditors', no application can be filed by the 'Financial Creditor' against two or more 'Corporate Debtors' on the ground of joint liability ('Principal Borrower' and one 'Corporate Guarantor', or 'Principal Borrower' or two 'Corporate Guarantors' or one 'Corporate Guarantor' and other 'Corporate Guarantor'), till it is shown that the 'Corporate Debtors' combinedly are joint venture company.



33. For the reasons aforesaid, while we uphold the initiation of the 'Corporate Insolvency Resolution Process' initiated under Section 7 of the 'I&B Code' against 'Sunssystem Institute of Information Technology Pvt. Ltd.' – ("Corporate Guarantor No. 2") by impugned order dated 24th May, 2018, we hold that the impugned order dated 31st may, 2018 initiating 'Corporate Insolvency Resolution Process' under Section 7 against the 'Sunrise Naturopathy and Resorts Pvt. Ltd.' - ('Corporate Guarantor No. 1') for same very claim/ debt is not permissible and the application under Section 7 was not maintainable."

25. Therefore, as per the above Judgment of PIRAMAL, two separate Applications can be filed simultaneously under Section 7 against Premier Limited as well as Doshi Holdings Private Limited who is Co-borrower. However, under Section 7, if the claim against Premier Limited (Corporate debtor herein) is "Admitted" then for the same set of loans, arising under the same loan documents, the same debt/ claim against Doshi will not be permissible in terms of the NCLAT Judgment of *Dr. Vishnu Kumar Agarwal Vs. PIRAMAL Enterprises Limited (2019 SCC OnLine NCLAT 542)*.
26. This Bench, on perusal of the documents filed by the Financial Creditor, is of the view that the Corporate Debtor defaulted in repaying the loan availed. In the light of above facts and circumstances, the existence of debt and default is reasonably established by the Petitioner as a major constituent for admission of a Petition under Section 7 of the Code. Therefore, the Petition under sub-section (2) of Section 7 is taken as complete, accordingly this Bench hereby admits this Petition prohibiting all of the following of item-(I), namely:

(I) (a) The institution of suits or continuation of pending suits or proceedings against the Corporate Debtor including execution of



any judgment, decree or order in any court of law, tribunal, arbitration panel or other authority;

(b) transferring, encumbering, alienating or disposing of by the Corporate Debtor any of its assets or any legal right or beneficial interest therein;

(c) any action to foreclose, recover or enforce any security interest created by the Corporate Debtor in respect of its property including any action under the Securitization and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (SARFAESI Act);

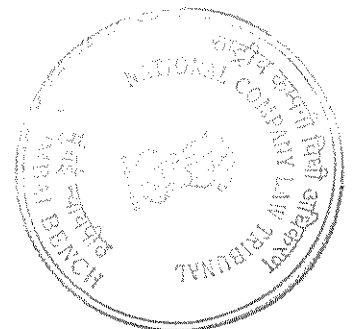
(d) the recovery of any property by an owner or lessor where such property is occupied by or in the possession of the Corporate Debtor.

(II) That the supply of essential goods or services to the Corporate Debtor, if continuing, shall not be terminated or suspended or interrupted during moratorium period.

(III) That the provisions of sub-section (1) of Section 14 shall not apply to such transactions as may be notified by the Central Government in consultation with any financial sector regulator.

(IV) That the order of moratorium shall have effect from the date of pronouncement of this order till the completion of the corporate insolvency resolution process or until this Bench approves the resolution plan under sub-section (1) of Section 31 or passes an order for liquidation of Corporate Debtor under Section 33, as the case may be.

(V) That the public announcement of the corporate insolvency resolution process shall be made immediately as specified under Section 13 of the Code.



(VI) That this Bench hereby appoints, Mr. Kanak Jani, having office at 17, Sai Moreshwar Luxuria, Plot No. 74, Sector 18, Kharghar, Navi Mumbai - 410210; having Registration No. IBBI/IPA-001/IP/P-01757/2019-2020/12685 as Interim Resolution Professional to carry the functions as mentioned under Insolvency & Bankruptcy Code.

27. The Registry is hereby directed to communicate this order to both the parties and the Interim Resolution Professional immediately.

Sd/-
Chandra Bhan Singh
Member (Technical)

Sd/-
Suchitra Kanuparthi
Member (Judicial)

Certified True Copy
Copy Issued "free of cost"
On 02.02.2021


Joint Registrar
National Company Law Tribunal Mumbai Bench

