

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION

ARBITRATION PETITION NO. 276 OF 2024

1. Nikhil Hasmukh Malkan	]	
	]	
2. Usha Hasmukh Malkan	]	
	]	
3. Hasmukh N. Malkan	]	
	]	
All adults of Mumbai, Indian	]	
inhabitant, having their address	]	
at 401, Tareti Building, 4th floor,	]	
29-C, Doongershi Road,	]	
Walkeshwar, Malabar Hill,	]	
Bombay 400006.	]	...Petitioners.

Versus

Standard Chartered Investment	]	
and Loans (India) Limited,	]	
a company registered under the	]	
provisions of the Companies Act, 1956,	]	
having its registered office at	]	
6/FL Crescenzo Building,	]	
Bandra Kurla Complex,	]	
Bandra (E), Bombay 400051	]	...Respondent.

Mr. Shailesh Shah, Senior Advocate along with Mr. Ronish Mehta, Ms. Sonal Awasthi and Mr. Manee Vishwakarma i/b Vinod Mistry & Co., for the Petitioners.

Mr. Rahul Dev, Ms. Avina Karnad and Mr. Pranav Shetty i/b Argus Partners for the Respondent.

Coram : Sharmila U. Deshmukh, J.

Reserved on : July 31, 2026.

Pronounced on : September 9, 2026.
[Thr. Video Conferencing]

Judgment :

1. By this petition filed under Section 34 of the Arbitration and Conciliation Act [for short "**Arbitration Act**"], the Petitioner who is original claimant impugns the award dated 26th February 2024 rejecting the Petitioner's claim against the Respondent-bank for alleged illegal sale of pledged securities.
2. The dispute in the present case arises out of a loan-cum-pledge agreement dated 26th November 2018. The Petitioner had availed of a term loan of Rs.10 crore against pledge of shares of Reliance Industries Limited (RIL). Alleging illegal sale of 65,000 pledged securities in violation of the terms of sanction, arbitration came to be invoked seeking following reliefs:

"a. This Hon'ble Tribunal be pleased to pass an Award directing the Respondent to deposit 65,000 shares of Reliance Industries Limited into the Demant Account of the Claimants;

b. In the alternative to prayer clause (a) above, this Hon'ble Tribunal be pleased to pass an Award directing the Respondent to pay Rs.9,90,70,000/- to the Claimants as and by way of reimbursement of losses and/or damages suffered for illegal sale of 65,000 shares of the Claimants of Reliance Industries Limited on 19th March 2020, as per the Particulars of Claim annexed at Sr. No.20 to the Compilation of Documents of Claimants, along with interest thereon at the rate of 18% per annum from the date of filing the Statement of Claim till payment;

c. This Hon'ble Tribunal be pleased to pass an Award directing the Respondent to pay Rs.51,17,273/- to the Claimants as and by way of reimbursement of losses and/or

damages suffered for not being able to subscribe to 4,333 shares of Reliance Industries Limited in the public rights issue which took place in 13th May, 2020, as per the Particulars of Claim annexed at Sr. No.21 to the Compilation of Documents of Claimants, along with interest thereon at the rate of 18% per annum from the date of filing of the Statement of Claim till payment;

d. This Hon'ble Tribunal be pleased to pass an Award directing the Respondent to pay Rs.8,72,500/- to the Claimants as and by way of reimbursement of losses and/or damages suffered for loss of dividend in respect of 65,000 shares of Reliance Industries Limited upto the date of filing the Statement of Claim, as per the Particulars of Claim annexed at Sr. No.22 to the Compilation of Documents of the Claimants, along with interest thereon at the rate of 18% per annum from the date of filing the Statement of Claim till payment;

e. This Hon'ble Tribunal be pleased to order and direct the Respondent to pay INR 10 crores as damages as well as for causing mental & physical harassment, anxiety and agony by the Respondent owing to their illegal act in selling the shares of 65000 of the Claimants."

3. The learned Sole Arbitrator came to be appointed under Section 11 of the Arbitration Act.

4. The statement of claims pleads about an assurance given by the Respondent's representative that the buffer margin was 65% of the market value of shares as recorded in writing dated 5th November, 2018 and confirmed by emails and telephonic conversation. On 6th March, 2020, there was further pledge of 15,000 shares without any requirement as value of pledged securities was within buffer margin limit of 65%. It is claimed that there was surplus margin on 18th March,

2020, when email dated 19th March, 2020 was received and 65,000 shares were sold without notice despite Clause 7 and 20 of the agreement mandating written notice of 2 days.

5. The defence of the Respondent was that as per the terms of sanction, the Petitioners were required to maintain Loan to Value [for short "**LTV**"] ratio of 50% or 2 times (to be maintained at any time during the facility). The loan of Rs.10 crore was against the security facility, pursuant to which sanction letter dated 23rd November 2018 was issued mentioning the security cover. The terms and conditions of the facility were detailed in the Finance Against Securities Agreement (FAS) executed between the parties. The risk disclosure agreement, the power of attorney and demand promissory note were duly executed by the Petitioners. The loan facility was sanctioned against pledge of 1,85,000 shares of RIL as collateral security. In the month of January 2020, the Respondent had unpledged 40,000 shares out of 1,85,000 shares after taking into account the margin requirement. Due to COVID-19 pandemic, the market price of the pledged shares drastically dropped and top-up notices were issued by the Respondent to the Petitioner requesting to cover the margin shortfall of 50% on 2nd March 2020, 3rd March 2020, 4th March 2020, 5th March 2020 and 6th March 2020. The Petitioners further pledged 15,000 shares of RIL on 6th March 2020 to cover the shortfall in margin requirement of 50% and

thus total of 1,60,000 shares were pledged with the Respondent. The market fell post 6th March 2020, and further top-up notices were issued by the Respondent on 11th March 2020, 12th March 2020, 13th March 2020, 16th March 2020, 17th March 2020, 18th March 2020 and 19th March 2020 regarding the shortfall with a request to cover up the margin shortfall within a period of 7 days from the date of receipt of top-up notices or written intimation, whichever was earlier, failing which the Respondent will be constrained to sell the security to cover the shortfall. As there was default, the Respondent sold 65,000 pledged shares on 19th March 2020, to cover up the shortfall in loan account.

6. The learned Arbitrator framed the following issues:

- "i. Whether the Claimants are entitled to an award in an amount of Rs.9,90,70,000/- towards loss/ damage on sale of 65,000 shares of Reliance Industries Ltd by the Respondent?
- ii. Whether the Claimants proves the sale of 65,000 shares of Reliance Industries Ltd. by the Respondent was illegal in any manner whatsoever?
- iii. Whether the Claimants proves they suffered loss or damage in an amount of Rs.51,17,273/- on account of inability to participate in the rights issue of Reliance Industries Ltd. when the principle shares i.e. 65,000 shares were illegally sold?
- iv. Whether the Claimants are entitle to reimbursement of loss or damage amounting to Rs.8,72,500/- due to failure to receive dividend on 65,000 shares of Reliance Industries Ltd.?
- v. Whether the Claimants are entitle to an award in an amount of Rs.10 crores towards damages for mental and physical harassment and anxiety and agony?
- vi. Whether the Respondent proves that the Claimants have breached the finance against Security Agreement dated 26 November 2018?

- vii. Whether the Claimants were required to maintain a Loan to Value ("LTV") ratio of 50% or 2 times loan value (at any time during the facility) as per the provisions of the Sanction Letter, Finance Against Securities Agreement and other loan documents?
- viii. If the Claimants are entitled to any of the reliefs for damages, then whether they are entitled to interest and at what rate and from what date?
- ix. What award?
- x. What order as to costs?"

7. An additional issue was framed as under:

"Whether the claimants prove the due execution and terms/contents of the document at sr. No.1 of the claimants' compilation as also the telephonic conversations and transcripts at sr. No.2 and 12?"

8. The learned Arbitrator interpreted the terms of the contract as an arrangement in which the security cover was to be twice the amount sanctioned and in the present case would be Rs 20 crores for Rs 10 crore loan. It noted that the dispute arose about the interpretation of top-up mechanism read with the security cover, where the case of the Petitioners is that there should be 30% margin erosion before any notice is issued and the Respondent's case is of top-up as soon as the cover goes below 2 times. The learned Arbitrator considered various clauses of the deeds executed between the parties to hold that the margin erosion of 52.2% to 64%, enabled the Respondent to issue the top-up notice and on failure of the Petitioners to make payment or provide security, proceeded to sell the security. It held that in view of

the issuance of top-up notices, further sale notice was not required. It declined to accept that the alleged understanding, based on telephonic conversation and an email, which was not addressed to the Respondent but by a person who did not depose to the same, as an arrangement of sell down scenario at 65% erosion leading to the rejection of claim.

9. Mr Shah, learned Senior Advocate appearing for the Petitioner would submit that as per the agreement, the loan to value ratio was to be 50% and if the LTV ratio crossed 65%, then, the Respondent was entitled to sell the pledged shares after giving 2 days prior notice / intimation to the Petitioner. He submits that the issuance of notices to pledge additional shares in end of February substantiates the arrangement, and additional shares were pledged by the Petitioner on 6th March 2020. He submits that from 9th March 2020, the share prices started declining and on 11th March 2020, the Respondent again issued notices to the Petitioner. He submits that on 19th March 2020, the LTV ratio crossed 65% and the Respondent sold 65,000 shares at 3.02 p.m. and gave notice to the Petitioner on the same day at 7.26 p.m. giving 7 days time, i.e., after the shares were sold. He submits that the sanction letter dated 23rd November, 2018 is to be read with Clause (7) and Clause (20) of the agreement, which has been construed as parties to mean that only upon margin erosion of 65% and above, the Respondent was entitled to sell the shares and not merely on margin

deficiency crossing 50%. He would further point out that the Respondent's witness has admitted in his affidavit of evidence that if the value of securities falls below the 50% security cover, the Respondent has to give notice for rectification of the shortfall in the margin. He would further point out that in answer to Question Nos.30 and 37, the Respondent's witness has reiterated that the sell-down scenario was 65%. He would further submit that the conduct of Respondent in not selling the shares till LTV crosses 65%, also shows that it could not have been sold on mere crossing of 50%. He points out that the writing dated 5th November 2018 by the ex-employee of Respondent, who was in charge of the subject agreement also states that in event of value of security breaching 65%, the Respondent will issue a notice giving time for providing additional security or making the payment of shortfall amount to the bank, which is also borne out from the audio recording.

10. He would submit that the claim of Respondent is that as per their internal policy, no notice was required once the LTV crosses 65% is contrary to Clauses (7) and (20) of the agreement dated 26th November 2018, which speaks about 2 days prior written intimation. He submits that Section 176 of the Indian Contract Act, 1872 also requires a prior reasonable notice. He submits that it is not the pleaded case of the Respondent that no notice was required once the

LTV crosses 65% and if that be so, there was no need for the Respondent to give notice to the Petitioners on 19th March 2020 post sale of pledged shares. He submits that assuming without admitting that notices sent before the event of default are valid notice, the sale of shares was done before the expiry of 7 working days as the period of 7 days expired on 20th March 2020. He would submit that it is not the Respondent's case that they had sold without giving notice to the Petitioners and therefore the provision in the risk disclosure statement is irrelevant.

11. He has taken this Court in detail through the findings of the learned Arbitrator to contend that the award is perverse as the learned Arbitrator has ignored the sanction letter and the margin erosion ratio set out in the sanction letter and also vital oral evidence of the Respondent's witnesses admitting that the sell-down scenario is 65% erosion. He submits that the learned Arbitrator has ignored the conduct of Respondent of selling shares only after LTV crosses 65%. He submits that the learned Arbitrator has failed to consider the core issue as to whether the sell-down scenario was 50% or 65% and proceeded to discuss the method of calculation about which there was no dispute. He submits that the learned Arbitrator has ignored that the statement contained in the email dated 5th November 2018 was corroborated by the Respondent's witness. He submits that finding of

the learned Arbitrator on the audio recording overlooks the fact that the conversation corroborated the sell-down scenario at 65%. He would submit that the conversation did not vary the terms of the contract as the sanction letter which is also part of the contract puts the margin erosion at 65% for sale of pledged shares.

12. He submits that the learned Arbitrator has ignored that the top-up notices were prior to 19th March 2020, when it had not crossed 65% and the notice of sale has to be given after the default takes place, that is in this case on 19th March 2020 when it crossed 65% and not prior thereto. He submits that award is contrary to the terms of the agreement dated 26th November 2018 and sanction letter dated 23rd November 2018, which provides for margin erosion at the rate of 65%. He submits that finding of the learned Arbitrator is patently illegal as it holds that margin erosion is at 50%, which is contrary to the terms of the contract. He submits that the award is in contravention of the fundamental policy of the Indian law and in violation of the principles of natural justice in view of Section 176 of the Indian Contract Act, 1882. In support he relies upon the following decisions:

***PTC India Financial Services Ltd v. Venkateshwarlu Kari*¹**

***The Official Assignee v. Madholal Sindhu*²**

1 (2022) 9 SCC 704.

2 [1948] Indian Law Reports Bom 1.

13. *Per contra* Mr. Dev learned counsel appearing for the Respondent submits that the sanction letter enjoined the Petitioners to maintain security cover of 50% during the subsistence of the loan facility and in event of fall of security cover below 2 times of outstanding amount, the Petitioners were required to top-up the facility to maintain 50% margin. He would point out Clause 7, 20(1) and 20(2) of the loan agreement to contend that in the event the shortfall is not rectified within 2 days of notice, the Respondent was entitled to sell or realise part of the security as it deems fit. He would further point out that the risk disclosure document signed by the Petitioners permitted the Respondent to sell the security even without notice to maintain security cover.

14. He submits that on 28th February 2020, the value of pledged securities admittedly breached 50% LTV, triggering the top-up mechanism. He submits that from 2nd March 2020, top-up notices were addressed to the Petitioners intimating them to rectify the margin shortfall within 7 working days from the receipt of notice or from the first intimation failing which the Respondent would be constrained to sell the shares, which intimation continued till 6th March 2020. He submits that additional 15,000 shares of Reliance Industries Limited were pledged and despite thereof on 9th March 2020, the security cover continued to be below 50% LTV for which continuously top-up notices

were sent. He submits that on 19th March 2020, the shortfall went below 65% LTV, and the Respondent was compelled to sell 65,000 pledged shares to address the shortfall in the security cover and to regularize the loan account of the Petitioner. He submits that prior to selling of securities, the Respondent intimated the Petitioner about the imminent sale on the same day and there was no protest till 4th June 2020. He submits that reliance on the top-up mechanism in the sanction letter is misplaced as there is no contractual provision which makes reference to the value of security falling to 65% LTV, as a trigger event. He would submit that in any event, reference to 30% margin erosion is not applicable where the borrower has pledged equity or equity mutual funds as security for loan. He would further point out that the Petitioner's witness was unable indicate any contractual clause as regards the sell-down scenario of 65% LTV. He submits that the sale of pledged securities was undertaken in accordance with the contracts executed between the parties and RBI Circulars.

15. He submits that writing dated 5th November 2018 is not an official document and has not been proved to have been executed by the ex-employee of Respondent as also the telephonic recording remained unproven. He submits that the learned Arbitrator has taken into consideration the terms of the contract and has interpreted the same which is possible view deserving no interference. In support he

relies upon the following decisions:

K. L. Enterprises LLP v. Bajaj Finance Ltd³

Parsa Kente Collieries Ltd. v. Rajashtan Rajya Vidyut Utpadan Nigam Ltd⁴

Dyna Technologies Pvt Ltd. v. Crompton Greaves Ltd⁵

DMRC Ltd v. Delhi Airport Metro Express (P) Ltd⁶

16. I have perused the documents produced on record. I have also perused the impugned award passed by the learned Sole Arbitrator.

17. There is no dispute about the sanction of term loan of Rs.10 crore by the Respondent to the Petitioners against the pledge of securities, which in the present case was 1,85,000 shares of RIL. It is also not in debate that the fall of LTV ratio below 50% or 2 times security cover triggers the event for issuance of notice for rectification of shortfall in the margin.

18. The dispute is about the extent of margin erosion which entitles the Respondent to sell the pledged securities and the notice required to be given after the default takes place i.e. stipulated margin erosion. Though admitting that the margin cover is required to be 50%, the contention of Mr. Shah is that the sell down scenario for the pledged shares occurs upon margin erosion is 65% and after giving 2 days prior written intimation, the pledged securities can be sold.

³ 2020 SCC OnLine Del 2797.

⁴ (2019) 7 SCC 236.

⁵ (2019) 20 SCC 1.

⁶ (2024) 6 SCC 357.

19. The pleaded case of the Petitioners, in so far as claim of default being margin erosion of 65% is concerned, is premised on the assurance given by the Respondent's representative, emails and telephonic conversations. During the hearing, the case of the Petitioners has been improved to interpret the top up mechanism in the sanction letter as the arrangement of sell down scenario being 65% margin erosion. Mr. Shah has laid great emphasis on the Top Up mechanism set out in the sanction letter, which reads thus:

"Top-Up Mechanism : Below 2x cover for Equity & Equity Mutual fund, for others 30% margin Erosion."

According to Mr. Shah the reference to 30% margin erosion constitutes the sell down scenario with prior notice of two days.

20. The sanction letter sets out the terms of sanction and the security cover is mentioned as "50% / 2 times (to be maintained at any time during the facility) and the Top-up mechanism as "Below 2x cover for equity and equity mutual fund, for others 30% margin erosion". The loan-cum-pledge agreement executed between the parties details the terms and conditions on which the loan facility has been advanced to the Petitioners. Clause (7) of the loan-cum-pledge agreement details the arrangement in case of fall in the value of security and reads as under:

"7. FALL IN THE VALUE OF THE SECURITY

7.1 If at any time the value of the Securities falls so as to create a deficiency in the Margin requirement specified by SCILL from time to time or there is a withdrawal in excess of the loan facility, the Borrower/the Pledgor shall within two (2) Business Days of notice from SCILL, deposit with SCILL additional Securities in the form of cash or such other form of Securities which may be acceptable to SCILL. The Borrower shall be responsible for checking from time to time all such Margin deficiency, irrespective of whether SCILL the Borrower of the same or not.

7.2 If the Borrower and or the Pledgor fail to deposit the additional security as required in clause 7.1 above, SCILL, may at its discretion sell, dispose of or realise all or part of the securities then held by SCILL, whether on the Exchange or as an off market trades or otherwise as SCILL may deem fit, without being liable for any loss or damages or diminution in value.

7.3 The Borrower and or the Pledgor shall not raise any objection in respect of such disposal of the Securities by SCILL and/or the adequacy of consideration realised therefrom.

7.4 In the event that the sums realized upon such sale of Securities are not sufficient to make good the deficiency in the Margin requirement or the excess overdrawn in respect of the Facility, the Borrower/Obligor shall immediately pay SCILL, the sum required to make good such shortfall.

7.5 Notwithstanding that no Event of Default has occurred, SCILL at its sole discretion will also have the option to sell redeem/transfer any portion of any of the Securities and apply the amount realised towards repayment and liquidation of part of the Facility Balance/Loan Balance, so as to maintain the Margin."

21. Clause (20) of the agreement deals with the events of default and consequences and reads as under:

"EVENTS OF DEFAULT AND CONSEQUENCES:

20.1 Upon the occurrence of any of the following events (the "Events of Default"):

- (a) any representation, warranty or declaration provided by the Borrower in terms of this Agreement and in relation to the Facility is or becomes false, misleading or otherwise incorrect;
- (b) the Borrower fails to observe or comply with any of the terms and conditions of this Agreement or any other document entered into with SCILL, under/in relation to the Facility;
- (c) the Borrower fails to make payment of any amount due under/in relation to the Facility as and when it becomes due;
- (d) the Borrower commits any act of bankruptcy, insolvency, suspends payment to any of its creditors, or if any petition of bankruptcy or winding up is filed by or against the Borrower which petition is not withdrawn within 30 days of being admitted;
- (e) a receiver is appointed over the whole or any part of the property of the Borrower;
- (f) the Borrower ceases or threatens to cease carrying on its business;
- (g) any order of attachment, distress, execution or other similar process is enforced against the Borrower and/or upon any security provided to SCILL. in relation to the Facility;
- (h) any litigation, arbitration, investigative, regulatory or administrative proceeding/action is current, pending or threatened against the Borrower or any other event occurs, which SCILL, determines in its absolute discretion has (or might, if adversely determined, have) a material adverse effect on:
 - (i) the condition (financial or otherwise), assets, operations, prospects or business of the Borrower; or
 - (ii) the ability of the Borrower to comply with its obligations under this Agreement and/or any other document in relation to the Facility; or
 - (iii) the validity, legality or enforceability of, or the rights or remedies of SCILL under this Agreement and/or any other document in relation to the Facility; or
 - (iv) the validity, legality or enforceability of the security or on the priority or ranking of the security;

(i) to the extent that Security has been provided by any person other than the Borrower, any of the events set out in Clauses 19.1(a) to 19.1(o) above occur in relation to such third party;

(j) If there is any deterioration or impairment of any securities or any part thereof or any decline or depreciation in the value thereof (whether actual or reasonably anticipated), which causes the securities or any part thereof, in the Judgment of SCILL to become unsatisfactory as to character or value;

(k) the Securities (if any) created ceases to enure to the benefit of SCILL:

(l) all or any part of the Facility is not utilised for the Purpose:

(m) if it is certified by a firm of accountants appointed by SCILL (which BCILL, is entitled and hereby authorised to so appoint at any time) that the liabilities of the Borrower exceed the Borrower's assets or that the Borrower is carrying on a business at a loss:

(n) there is a default, Event of Default or other similar condition or event (however described), or a potential Event of Default which with the lapse of time or giving of notice , may become an Event of Default, under one or more agreements or instruments entered between (i) SCILL and the Borrower; or (ii) SCILL and any of the Obligor's affiliates/associated company(ies); or (iii) the Borrower and any of its lenders; or (v) the Borrower's affiliates/associated company(ies) with any of their lenders.

(o) If a cross default as below occurs:

(i) any Debt of the Obligor is not paid when due or within any originally applicable grace period;

(ii) any Event of Default or a potential Event of Default (however described) which with the lapse of lime or giving of notice may become an Event of Defaults occurs under any contract or document relating to any Debt:

(iii) any commitment for any Debt of the Obligor is cancelled or suspended by a creditor as a result of an Event of Default (however described):

(iv) any creditor of the Obligor becomes entitled to

declare any Debt due and payable prior to its specified maturity as a result of an Event of Default (however described): or

(v) any encumbrance over any assets of the Obligor to secure any other Debt becomes enforceable.

20.2 If an Event of Default occurs or is outstanding, SCILL, may at any time with immediate effect by a notice in writing to the Borrower:

(i) cancel the Facility, whereupon no further utilisation may be made of the Facility; and/or

(ii) declare the outstanding amounts/all monies outstanding (whether or not then otherwise due) under the Facility as being immediately due and payable or otherwise payable on demand; and/or

(iii) accelerate the repayment of the Facility, and/or.

(iv) self dispose off or realise all or any of the Securities held by SCILL, whether on the Exchanges or as off market trades or otherwise as SCILL may deem fit, after giving the Borrower, notice of not less than 2 (two) days. Such disposal can be done on such terms and for such price that SCILL, deems at and apply the net proceeds towards the satisfaction of the LOAN Balance including charges, expenses etc. and the Obligor shall not raise any objection in respect of such disposal of the Securities by SCILL and/or the adequacy of consideration realized therefrom. In the event that the sums realized upon such sale of Securities are not sufficient to make good the payment due to SCILL. the Borrower shall immediately pay SCILL the sum required to make good such shortfall; and/or

(v) commence legal proceedings to recover such sum, the Borrower will further pay SCILL, all advances, charges, cost, expenses, including all legal fees incurred or paid by SCILL in exercising any right, power or remedy conferred by this Agreement, (and/ or in the enforcement thereof) and all such amounts shall become a part of the indebtedness secured hereunder and shall be paid to SCILL by the Borrower Immediately and without demand; and/or

(vi) SCILL, has the right to enforce the Security and/or Additional Security pertaining to the Facility, including but not limited to the substitution of the Borrower/sale of the Securities."

22. The Risk Disclosure Statement signed by the parties provides for margin call and reads as under:

Margin Call

Using the example of Mutual Fund and Equity Shares as Security over the tenor of Facility, its market value may fluctuate and fall below your original investment value of INR 200000. In this case SCILL has the right to require that you either top-up the Securities or to sell off part of Securities already pledged to SCILL and apply the proceeds from the sale as described below.

SCILL may first contact you (either verbally or in writing) to request that you top-up the Securities. If you fail to comply with the top-up request, the Securities that you pledge to SCILL may be liquidated. However if the market value of your Securities falls below what we consider to be adequate Security Margin which we may determine and vary from time to time at our discretion, SCILL will liquidate the Securities pledged immediately without any prior notice to you.

Upon Liquidation the proceeds will be used to settle the outstanding loan plus Interest and any other administrative charges. The remaining monies if any will be refunded to you. In the event that SCILL Liquidate your Securities and the proceeds are still insufficient to settle the outstanding loans plus interest and any other administrative charges, you should be liable to SCILL for the shortfall."

23. The sanction letter, the agreement and the risk disclosure statement cover the entire arrangement between the parties based on which the loan facility was advanced to the Petitioners. The documents undoubtedly disclose that at all times, the LTV was to be maintained at

50%. Clause 7.2 of the agreement specifically entitles the Respondent to liquidate the securities upon failure to maintain margin requirement despite written notice of 2 days. Clause 7.5 of the agreement provides that even if no default occurs, the Respondent at its sole discretion is entitled to sell any portion of the securities and apply the amount realised towards repayment and liquidation of part of the loan balance so as to maintain the margin. The Top Up mechanism, as the expression suggests, in the sanction letter is to top up the security cover in event it falls below 2 x cover.

24. Clause 20(1)(j) provides that if there is any decline or depreciation in the value of security, the same constitutes an event of default. Clause 20(2) provides that in event of default, the Respondent may at any time by a notice in writing to the borrower, sell, dispose of or realise any of the securities held by the Respondent after giving the borrower a notice of not less than 2 days. The agreement between the parties enjoined the Respondent to give notice of 2 days for deposit of additional securities or for alienation. The risk disclosure document on margin call provides that the Respondent may first contact the borrower to top-up the security and in case of failure to comply with the top-up request, the security pledged with the Respondent may be liquidated.

25. It is the margin requirement of 2 x cover which is sacrosanct and was required to be maintained as such at all times, permitting the Respondent to sell the securities even if there is no event of default in order to maintain the margin. The contention of Mr. Shah that the margin requirement is 50%, however, sell down scenario is 65% breach, is contrary to the terms of the agreement. There is no contractual clause demonstrating sell down scenario at 65% margin erosion. The submissions are canvassed by Mr. Shah on the basis of the sanction letter, writing of 5th September, 2018, emails, telephonic conversations and cross examination of Respondent's witness.

26. Though not their pleaded case, even if reliance is placed on the sanction letter, the same cannot be read in isolation and has to be read in consonance with the agreement and the risk disclosure statement to ascertain the agreement between the parties. The sell down scenario of 65% as contended by Mr. Shah does not stand to reason in view of the undisputed position that the security cover was required to be maintained at 50%/ 2 times at any time during the facility and in event of non rectification of deficiency entitled the Respondent to alienate the security.

27. The Learned Arbitrator noted the submissions of the Petitioners of alleged understanding contained in the writing of 5th September, 2018 executed by the ex-employee of Respondent representing that

upon value of security falling below 65%, notice will be given to give additional security or make payment of shortfall amount. The Learned Arbitrator held that the understanding is not part of the contractual documents. It held in paragraph 66 that notices were issued by Respondent and duly received by the Petitioners to which there was no protest. It observed that if there was an understanding that nothing was to be done till breach of 65%, then normal reaction would be to protest in some form. It held that it is not open to vary the contractual documents arrived at between the parties and read in another understanding based on telephone conversations and emails.

28. Even ignoring the specific clauses in the loan agreement for the moment, in event the submission of Petitioners is accepted that the sell down scenario is 65% margin erosion, the requirement of rectification of margin shortfall upon security cover falling below 50% would have no sequiter. The borrower can very well ignore the fall in security cover below 50% and wait till 65% margin erosion rendering the condition of maintaining the security cover at 50% at all times redundant. The documents executed between the parties clearly spells out that the non compliance of margin shortfall below 50% entitles the Respondent to sell with 2 days notice.

29. The top up notices issued by the Respondent, which are admitted, called upon the Petitioners to rectify the margin shortfall

failing which there would be sale of pledged securities. There was no protest by the Petitioners claiming that the sell down scenario occurs only upon 65% margin erosion and in fact the Petitioners pledged additional securities on 6th March, 2020 when the security cover fell below 50%.

30. The learned Arbitrator has formulated the correct proposition in paragraph 37 as under:

“The issue which arises and where the dispute arises is about the interpretation of top-up mechanism read with the security cover, when the Claimant says that there has to be 30% margin erosion before any notice should be issued and the Respondent states that it is entitled to top-up as soon as the cover goes below 2 times.”

31. The Learned Arbitrator reasoned that Clause 7.1 and 7.2 provides that the Respondent is entitled to sell if there is margin deficiency and the borrower fails to deposit additional security as required by Clause 7.1. The Learned Arbitrator proceeded to consider as to what constitutes margin in terms of the sanction letter, definition clause of margin, Annexure 1 of the loan agreement to hold that LTV of 50 is not disputed and is in line with RBI norms and not in dispute. It further considered the events of default under Clause 20 which entitles the Respondent to sell and that the risk disclosure statement provided for securities to be maintained in such a manner that there is adequate margin and it is open for Respondent to liquidate the securities

immediately without prior notice, even though the same has not been done in present case.

32. The Learned Arbitrator interpreted the documents executed between the parties to hold in paragraph 47 that the arrangement was that in event of deficiency in value of securities as compared to outstanding loan, the option was to make up the deficiency, which did not happen in present case. It noted in paragraph 52 that it is not the case that there is no shortfall or the calculation of shortfall is erroneous. It held in paragraph 53 as under:

"53. I have also considered the statement of defence and paragraphs 20 to 23, thereof where they have explained the top up notices along with the erosion in the portfolio value and shortfall amounts versus the outstanding balance all of which show that there was clearly a margin erosion as was understood by the agreement between the parties, and the definition of the margin calculation under the agreement itself, requiring the Claimants to make up a shortfall, which was ultimately not done, resulting in the sale of the securities, which is in dispute in the present matter. Again, these calculations of the outstanding balance, shortfall amount, portfolio value are not disputed or controverted by the claimants or shown to be incorrect calculations or stated as erosions which are not in line with the agreement. In fact, the arguments of the Claimants were contrary to the plain terms of the agreement, which provided that if there was a margin erosion, as per the definition already extracted herein above that enabled the Respondent to call upon the Claimants to provide additional security or make payment of the shortfall which has time and again been intimated to the Claimants and we have seen one instance where the claimant in fact provided additional security. At the contemporaneous time there is not a single letter or email where the Claimant has responded saying that this shortfall/top up notices are incorrect in their calculation or not in accordance with the agreement between the parties. In view of the same. I cannot find that the Respondent is at fault."

33. The Learned Arbitrator by an interpretative process has arrived at a finding of what constitutes the margin requirement to be maintained by the Petitioners. The finding of margin erosion is premised on consideration of the top up notices and the shortfall amounts, which were not disputed or controverted as not being in line with the agreement. In paragraph 58, the Learned Arbitrator has rendered a specific finding that as the method and calculation of LTV and calculations in the top up notices has not been shown to be erroneous, upon the Petitioners failure to pledge further shares, the Respondent was justified in selling as it had done. The Learned Arbitrator has thereby negated the case of the Petitioners of sell down scenario being at 65% margin erosion.

34. The findings in the impugned Award would indicate that the Learned Arbitrator was conscious of the case put up by the Petitioners as regards the sell down scenario of 65%. After assessing the material on record, it upholds the LTV ratio of 50 and entitlement of Respondent to sell upon failure of Petitioners to pledge further shares despite notice. The Learned Arbitrator has assessed the evidence on record in paragraph 48 as under:

“48. What is provided in terms of maintaining a margin and the LTV has been explained by RW-1 in answer to question 37 of his cross examination where he explains with an explanation about margin shortfall calculation. The manner in which the Margin calculation has been explained by the Respondents witness has not been disputed and it is in accordance with the formula for

"Margin" under the agreement between the parties already set out here in above. I have also considered the answers to Q 30 to 41 of RW-1 in cross examination which proves the method adopted by the Respondent and the calculations are not disproved by the cross examination."

35. The contention of Mr. Shah is that vital oral evidence in cross-examination of Respondent's witness has been ignored. The cross-examination shows that Question No 32 to 34 were in respect of email dated 11th September, 2020. The response to Question No 41 and 43 also speaks of intraday breach of 65%. Pertinently, the deposition of Respondent's witness in Paragraph 12 of affidavit of evidence deposes about discretionary intraday shortfall margin, beyond which securities may be liquidated without notice. It is this intraday shortfall margin of 65%, which is discretionary policy, being deposed by the witness and not that the contractual arrangement between the parties fixed the 65% margin erosion as sell-down scenario. The Learned Arbitrator has not ignored the evidence but has assessed the evidence to come to a finding in paragraph 66 that the email of 11th September, 2020 is post discussion proposal and that the reference to 65% is to state that there will be an immediate requirement of funding in case the LTV intra day is 65% as opposed to the norm of giving customer a 7 day notice referred to in the previous bullet point.

36. The Learned Arbitrator has arrived at finding of fact that paragraph 20 and 22 of SOD shows margin erosion of 52% to 64% which includes the outstanding balance, shortfall amount and portfolio value as on 18th March, 2020. There is no finding of fact that the sale took place on breach of 65% margin erosion. It is well settled that the Arbitrator is the master of quantity and quality of evidence. It is not open for this Court to re-assess the evidence and substitute its view for that of the Learned Arbitrator. The Learned Arbitrator has assessed the evidence to hold that as per the terms of the contract, the Respondent was justified in selling upon breach of LTV of 50% and no perversity is demonstrated.

37. The shortfall amount notified to the Petitioners by the top up notices is summarised in the following tabular statement for ease of reference :

Date of Notice	Shortfall amount
28 th February, 2020	4,370,957.28
2 nd March,2020	190,653,250
3 rd March,2020	2,718,169.53
4 th March, 2020	3,011,351.04
5 th March, 2020	5,066,282.55
9 th March,2020	11,172,383.59
11 th March,2020	8,014,246.61
12 th March,2020	15,371,178.12
13 th March,2020	11,900,109.63
16 th March,2020	19,178,904.16
17 th March,2020	19,783.835.67
18 th March,2020	22,940,767.18

38. The Learned Arbitrator has noted the above notices issued by the Respondent calling upon the Petitioners to pledge additional securities or pay the amount mentioned as shortfall within 7 days. The Learned Arbitrator noted that there was no cross examination on these notices and that these notices have remained unanswered. The margin shortfall is therefore an admitted position as well as the Petitioner's failure to rectify the margin shortfall. Upon failure, Clause 7.2 of the agreement comes into play entitling the Respondent to sell the shares to maintain the margin.

39. The Learned Arbitrator has considered the terms of the contract to hold in paragraph 55 that the terms of agreement do not provide for further sale notice and the top up notices clearly put the Petitioners to notice that there would a sale. The contractual arrangement between the parties as contained in Clause 7 and 20 of the agreement mandated the Respondent to give notice of two working days to regulate the shortfall, failing which the Respondent would be entitled to sell the securities. The contract does not speak of any further notice to be given apart from the top up notices. As the findings of the Learned Arbitrator are based on interpretation of the terms of the contract, the error, if any, is an error within jurisdiction incapable of being corrected in Section 34 jurisdiction.

40. All the top up notices called upon the Petitioners to pledge additional shares failing which the shares would be sold. The Learned Arbitrator has noted that the contents of the notice dated 18th March, 2020 shows that the security cover was reduced by almost 4.5 crores, which was not the first of the notices. It further noted that under Clause 7.5, there could be sale even without an event of default to maintain margin requirement. The risk disclosure statement entitled the Respondent to liquidate the securities immediately without prior notice. In the present case, the notice was given to the Petitioners to rectify the shortfall deficiencies within seven days. The notice time of 7 days, though not mandated as per the contract, cannot be held against the Respondent to contend that after 11th March, 2020 notice, the period of 7 days would expire on 19th March, 2020 and sale could be conducted only on 20th March, 2020. The contractual requirement was of two days' notice.

41. The submission of absence of notice for sale of pledged shares and reliance on Section 176 of Contract Act is premised on the contention of the sell down scenario being 65% breach, which occurred on 19th March, 2020. As the contention of sell down scenario of 65% breach stands negated, the several top up notices calling upon the Petitioners to maintain the security cover failing which the shares would be sold constitutes sufficient notice. There was thus sufficient

notice to the Petitioners about the decline in the security cover. In view of the top up notices issued by the Respondent, the Learned Arbitrator has rightly negated the contention of the Petitioners that there was no adequate notice of sale. Pertinently, the Delhi High Court in the case of ***K.L. Enterprises LLP and Others*** (supra) was considering an application under Section 9 of the Arbitration and Conciliation Act, 1996 to restrain the Respondent therein, which was a finance company, from selling the pledged shares. The terms of the contract were somewhat similar to the present case. The Learned Single Judge considered the provisions of Section 176 of Indian Contract Act and Regulation 58 of SEBI (Depositories and Participants) Regulations, 1996 to hold that there is no requirement for prior notice for invocation of a pledge by the pledgee.

42. The conclusion of Learned Arbitrator about adequate notice being given finds support in the interpretation of terms of the contract, that the margin requirement to be maintained was 2 times of the loan amount and upon failure to rectify the shortfall, the Respondent was entitled to sell the security to maintain margin requirement.

43. In ***DMRC Ltd vs Delhi Airport Metro Express (P) Ltd*** (supra), it was held that the ground of patent illegality is available, if the decision of arbitrator is so irrational that no reasonable person would have

arrived at it or the construction of contract is such that no fair or reasonable person would take or that the view of the arbitrator is not even a possible view. A finding based on on evidence or an award which ignores vital evidence in arriving at its decision would be perverse and liable to be set aside on the ground of patent illegality.

44. The Petitioner's case of perversity is on the ground of ignorance of vital document and oral evidence that the fall of security cover below 50% would trigger the rectification notice and sell down scenario occurs when the LTV goes below 65%. The Learned Arbitrator has interpreted the sanction letter, the clauses in the agreement and the risk disclosure statement to arrive at a finding that failure to cure the breach of margin requirement of 2 times security cover justified the sale by the Respondent. The view taken by the Learned Arbitrator is a possible view and is a view which appeals to this Court. The sanction letter cannot be read in isolation and when read with the agreement and risk disclosure statement, the inescapable conclusion is that the agreement between the parties was that upon failure of the Petitioners to rectify the margin shortfall upon notice, the Respondent was entitled to sell the shares to maintain the margin. The Top Up mechanism cannot be read to mean that the mention of 30% margin erosion triggered the sell down scenario. The Learned Arbitrator has the jurisdiction to interpret a contract having regard to terms and

conditions of the contract and if the view is possible view, no interference is warranted.

45. The contravention of fundamental policy of Indian Law is premised on Section 176 of Contract Act. The issuance of top up notices intimating the Petitioners about the margin shortfall and calling upon the Petitioners to rectify the shortfall failing which the shares would be sold to maintain the margin is not disputed. The occurrence of margin shortfall is not disputed. The Learned Arbitrator has considered the several top up notices as sufficient notice, which cannot be faulted with. The reliance on Section 176 of Contract Act has its basis in the Petitioner's case that the sell down scenario takes place only on breach of 65% margin cover, which case has been negated.

46. In light of the discussion above, no grounds for interference under Section 34 of Arbitration Act is made out. Resultantly, the Petition fails and stands dismissed. Interim Applications, if any, do not survive for consideration and stands disposed of.

[Sharmila U. Deshmukh, J.]