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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

Reserved on: 26th August, 2020
Pronounced on: 31st August, 2020

+ O.M.P.(I) (COMM.) 142/2020 & I.A. 4600/2020, I.A.
4942/2020, I.A. 4943/2020

SUNIL GOEL Petitioner

Through: Mr. Raj Shekhar Rao and Mr.
Rajesh P., Advs.

versus

INDIABULLS HOUSING FINANCE LIMITED ... Respondent

Through: Mr. Sunil Dalal, Mr. Jaskaran
Singh and Mr. Kashish Narang,
Advs. for IBHFL
Mr. Sandeep Sethi, Sr. Adv.
assisted by Mr. Shalabh
Singhal, Adv. for M/s Guild
Builders Pvt. Ltd

CORAM:

HON'BLE MR. JUSTICE C. HARI SHANKAR

J U D G M E N T

% (Video-Conferencing)

1. Shares, of M/s Omaxe Ltd., held by the petitioner Sunil Goel, were pledged with the respondent M/s Indiabulls Housing Finance Ltd. (hereinafter referred to as "IHFL"), against a loan, advanced by IHFL to M/s. Omaxe Forest Spa and Hills Developers Ltd. (hereinafter referred to as "Omaxe Forest Spa").

2. The Chairman and Managing Director (CMD) of Omaxe Ltd., Rohtas Goel, is the brother of the petitioner. The petitioner, too, was a Director in Omaxe Ltd. till 4th August, 2018, on which date he resigned from Directorship. The shareholding pattern, in Omaxe Ltd., has been provided, in the petition, thus:

Promoters & Group	No. of shares	Approximate percentage of Promoters' Shareholding
Equity Share Holder		
Sunil Goel Group	33,71,170	0.78
Rohtas Goel Group	51,38,500	1.19
Jai Bhagwan Goel Group	20,67,650	0.48
Guild Builders Private Limited	11,66,32,697	26.94
Dream Home Developers Private Limited	89,25,117	2.06
Public	4,67,65,346	10.80
Total	18,29,00,540	42.25
Preference Share Holder		
Guild Builders Pvt. Ltd.	25,00,00,000	57.75
Total	25,00,00,000	57.75
Total Issued Share Capital	43,29,00,540	100.00

3. M/s. Guild Builders Pvt. Ltd. (hereinafter referred to as “Guild Builders”) was incorporated, on 22nd October, 2003, by the petitioner, Rohtas Goel and their brother Jai Bhagwan Goel. The three brothers continued as Directors of Guild Builders till 15th September, 2013, when they resigned from Directorship. The present shareholding

pattern in Guild Builders has been set out, in a tabular form, in the petition, thus:

Particulars	No. of Shares	Approximate percentage shareholding
SUNIL GOEL GROUP		
Sunil Goel	90,70,722	16.85%
Seema Goel	26,74,267	4.95%
Sunil Goel (HUF)	14,91,595	2.77%
Annay Realtors Private Limited	39,690	0.07%
	1,32,36,584	24.57%
ROHTAS GOEL GROUP		
Rohtas Goel	3,06,11,558	56.88%
Rohtas Goel (HUF)	17,51,662	3.25%
Sushma Goel	63,29,142	11.76%
Mohit Goel	1,561	0.003%
VSG Builders Private Limited	55,567	0.11%
NJS Developers Private	55,567	0.11%
	3,88,05,057	72.11%
JAI BHAGWAN GOEL GROUP		
Jai Bhagwan Goel	17,08,067	3.18%
Rekha Goel	27,402	0.05%
	17,35,469	3.23%
Total	5,38,16,800	100%

(There appears to be some discrepancy in the afore-extracted tables, which have been reproduced, verbatim, from the petition. However, these figures do not seriously affect the outcome of this proceeding; hence, I do not deem it to appropriate to dwell thereon.)

4. It is admitted, by the petitioner, that Guild Builders and its subsidiaries, including Omaxe Ltd., are part of the Omaxe Group of companies, which, it is stated, is a “quasi-partnership”, of the three brothers, namely the petitioner, Rohtas Goel and Jai Bhagwan Goel. The petitioner claims to own approximately 19% shares in Omaxe Ltd. and its group companies, and to have been illegally ousted from the position of Joint Managing Director of Omaxe Ltd. in September, 2017, against which the petitioner has moved the learned National Company Law Tribunal, Chandigarh (hereinafter referred to as “the learned NCLT”).

5. *Vide* three separate Loan Agreements, dated 29th September, 2015, loans of ₹ 65 crores, ₹ 65 crores and ₹ 20 crores, totalling ₹ 150 crores, were availed, by Omaxe Forest Spa, from the respondent IHFL. The covenants of all three Loan Agreements were identical, and it is necessary, in view of the nature of dispute that has arisen in the present case, to set out some of the relevant clauses thereof, thus:

(i) Clause 1.1 contained the Definitions, governing the Loan Agreement. Of these, the following definitions are material:

“(i) **“Agreement”** or **“Loan Agreement”** means *this agreement*, all schedules hereunder and all amendment(s)/addendum(s) *to this Agreement*, including such other document (s), which is made apart to this Agreement by reference.

(iii) **“Borrower(s)”** means the company(ies)/person(s)/firm(s) named in the Schedule I hereunder as the Borrower(s) and whose address(s)

and other details are also mentioned in Schedule I hereunder.

(iv) **“Borrower’s Dues”** means the outstanding principal amount of the Loan and other amounts payable by the Obligor(s) to the Lender as per the Loan Documents and/or any other agreement(s) entered between (a) the Obligor(s) and (b) the Lender, including any interest, Default Interest, fees, costs, charges, expenses and other sums whatsoever payable by the Obligor(s) to the Lender.

(v) **“Co-Borrower(s)”** means the company(ies)/person(s)/firm(s) named in the Schedule I hereunder as the Co-Borrower(s) and whose address(s) and other details are also mentioned in Schedule I hereunder.

(viii) **“Event of Default”** means any event(s) or circumstance(s) specified as such in this Agreement and/or any other event(s) or circumstance(s) referred to /defined as an Event of Default under any of the Loan Documents.

(x) **“Group Borrower’s Dues”** means

(i) the Borrower’s Dues payable to the Lender under the Loan Documents and

(ii) all amounts payable to the Lender and/or the other group/associate entity/entities of the Lender under/pursuant to any other Loan Agreement(s)/document(s) executed/to be executed from time to time between

(a) the Lender and/or other group/associate entity/entities of the Lender and

(b) the Obligor(s) and/or other group/associate entity/entities of the Obligor(s)

provided if any Security under the Loan Documents is and/or shall also be a security under such other Loan Agreement(s)/document(s).

(xiv) **“Loan”** means *the loan amount mentioned in Schedule I of this Agreement*, which will be or has been made available under this Agreement, as per the terms and conditions contained in the Loan Documents, to the extent the same is not cancelled, reduced or transferred under this Agreement.

(xv) **“Loan Documents”** means

- (a) this Agreement,
- (b) the Security Documents and/or
- (c) all other agreement(s), application(s), form(s), undertaking(s), document(s), letter(s), deed(s), memorandum(s), declaration(s) and/or power of attorney(s) evidencing, securing, governing or otherwise pertaining/relating to the Loan/Borrower's Dues and includes any amendatory, modifactory or supplemental agreement thereto.

(xvii) **“Obligor(s)”** means the Borrower(s), the Co-Borrower(s), the Guarantor(s), the Hypothecator(s), the Pledgor(s), the mortgagor(s), and/or any other person(s) providing any Security in favour of the Lender *under the Loan Documents* and/or who is or becomes a party (other than the Lender) *to any Loan Documents*.

(xx) **“Pledgor(s)”** means the companies/person(s)/firm(s) named in Schedule-I as Pledgor(s) and/or any other person(s)/entity, who/which have agreed/will agree to create a pledge/charged on its/their assets in favour of the Lender to secure, inter alia, the fulfilment of the Obligor(s)’ obligations under the Loan Documents including payment of the Borrower’s Dues to the Lender.

(xxi) **“Pledged/Charged Shares”** means the shares/securities pledged, charged, arranged and/or furnished as Security to secure the fulfilment of the Obligor(s)’ obligations *under the Loan Documents (including payment of the Borrower’s Dues to the Lender)* which shall include all the

(i) shares/securities of the Pledgor(s) credited or/to be credited from time to time in the Pledgor(s)’ Demat Account(s) as mentioned in the Schedule IV hereunder (“Demat Account(s)”) including the shares/securities mentioned in Schedule IV hereunder,

(ii) Share in the physical form, if any, as more particularly mentioned in Schedule IV hereunder,

(iii) such additional shares/securities, whether by way of bonus or rights issue or otherwise and any letter of allotment in relation thereto and instruments or other property from time to time received, receivable in respect of or in exchange for any and all of the Pledged/Charged Shares from time to time required by the Borrower(s), Co-Borrower(s) and/or the Pledgor(s) in any other manner and certificates representing such additional shares; and/or

(iv) Any shares/securities transferred/ deposited to/in the Demat Account(s) from time to time in any manner whatsoever.

Such Pledged/Charged Shares maybe wholly in a dematerialized state or in a physical state or partly in one form and partly in another form. The applicable provisions of the Loan Documents shall operate irrespective whether the Pledged/Charged Shares (or any part thereof) are in dematerialized state of physical state.

(xxv) **“Security”** means, as the context may require,

(a) a mortgage, charge, hypothecation, escrow, guarantee, pledge, lien and/or other security interest created and/or to be created in favour of the Lender securing the fulfillment of all the obligation(s) of the Obligor(s) (including payment of *the Borrower's Dues* to the Lender) *under the Loan Documents* and/or

(b) assets of the Obligor(s) provided/to be provided as security/collateral, by way of, *inter alia*, a mortgage, charge, hypothecation, escrow, encumbrance, guarantee, pledge, lien and/or other security interest, in favour of the Lender securing the fulfillment of all the obligation(s) of the Obligor(s) (including payment of *the Borrower's Dues* to the Lender) *under the Loan Documents* and/or any other arrangement(s)/agreement(s) having a similar effect.

(xxvi) **“Security Documents”** means, as the context may require, mortgage deed(s), other documents relating to mortgage, pledge/charge agreement, Power of Attorney, escrow agreement(s), deed of hypothecation, guarantee deed(s), demand promissory note, letter of continuity, any other document(s)/ declaration(s)/ memorandum(s)/ undertaking(s) *in relation to the Security* and/or any document(s)

designated as such by the Lender and any amendments thereof from time to time.

(Emphasis supplied)

(ii) Schedule I named Omaxe Forest Spa as the “Borrower”, with no Co-Borrower, Omaxe Ltd., Guild Builders, Rohtas Goel, Mohit Goel and the petitioner as the Guarantors, and Omaxe Ltd., Guild Builders, and the petitioner as the Pledgors, against the loan availed by Omaxe Forest Spa.

(iii) Clause 2 dealt, exhaustively, with “The Loan and The Security”. The various sub-clauses thereunder, to the extent they are relevant, read thus:

“2.1 Loan Amount

Subject to the provisions of the *Loan documents*, the Pledgor agrees to lend to the Borrower(s) and/or the Co-borrower(s), and the Borrower(s) and/or the Co-Borrower(s) agreed to borrow from the Lender, *the Loan mentioned in Schedule I hereunder.*

2.2 Security and additional Security

(d) Pledge/Charge of Shares

i) At all times during the validity of the Loan Documents, the Borrower(s) and/or the Co-Borrower(s) shall cause to be forthwith created a first-ranking and exclusive pledge/charge in favour of the Lender on agreed percentage (as

specified in Schedule I hereunder) of the (present and future) shares, instrument(s) convertible into shares and/or instrument(s) with voting rights issued/to be issued by the company/companies mentioned in Schedule IV hereunder and in this regard, the Borrower(s) and/or the Co-Borrower(s) shall cause the (present and future) holders of the shares and/or the said instruments of such companies/companies to forthwith execute a pledge/charge agreement, other documents and a Power of Attorney in the form and substance satisfactory to the Lender. Further, without prejudice to the aforesaid, the Borrower(s) and/or the Co-Borrower(s) shall cause the Pledgor(s) to forthwith create a first-ranking and exclusive pledge/charge on the Pledged/Charged Shares in favour of the Lender and/or any of its agents/nominees/trustees, including all shares/securities lying in, and/or shares/securities which has been credited/shall be credited from time to time in the Pledgor(s)' Demat Account(s) mentioned in the Schedule IV to this Agreement and in regard of which the Borrower(s) and/or the Co-Borrower(s) shall cause the Pledgor(s) to execute a pledge/charge agreement, other documents and a Power of Attorney in the form and substance satisfactory to the Lender. The demat Account(s) shall be opened by the Pledgor(s) with a depository participant(s) as approved by the Lender.

ii) The Pledgor(s) is/are/shall be pledging the Pledged/Charged Shares in consideration that the Lender has agreed to lend and advance the Loan to the Borrower(s) and/or the Co-Borrower(s) with the understanding that *on or after*

the occurrence of an Event of Default under the Loan Documents the Pledged/Charged Shares or any part thereof may be sold, disposed off, transferred, encumbered and/or dealt with, in any manner whatsoever and on such terms and conditions (including the sale price) at the sole discretion of the Lender.

iii) The Borrower(s) and/or the Co-Borrower(s) confirm and undertake that the Pledged/Charged Shares, as more particularly described in the Schedule IV hereunder and which are to be/are pledged/charged in favour of the Lender, are the absolute property of the Pledgor(s) and that the same are and shall be free from all encumbrances and claims (except for any pledge/charge/claim of the Lender) at all times till all the obligations of the Obligor(s) *under the Loan Documents* have been complied with to the satisfaction of the Lender including payment/repayment of *Borrower's Dues* to the Lender by the Obligor(s) and all requisite consents, regulatory or otherwise, and procedural formalities for pledging the Pledged/Charged Shares are obtained and complied with.

iv) The Borrower(s) and/or the Co-Borrower(s) agree and shall cause the Pledgor(s) to agree to obtain all consents and permissions to execute such documents, deeds and writings as may be required by the Lender to create the *Security for payment and/or repayment of the Borrower's Dues under the Loan Documents*. The Borrower(s) and/or the Co-Borrower(s) shall ensure that the Pledgor(s) meet the requirements of

Loan Documents to the extent applicable to the Pledgor(s).

Unless otherwise agreed by the Lender, subject to clause 2.4 of this Agreement, the Pledged/Charged Shares shall not be permitted to be de-pledged/released of pledge/charge unless *the entire Borrower's Dues* have been repaid to the Lender.

2.3 Security Cover

The Borrower(s) and/or the Co-borrower(s) shall, and/or shall cause the Obligor(s) to, maintain the Security, as stipulated in Schedule I hereunder at all times during the validity of the Loan Documents ("**Security Cover**"). For the purposes of calculating the Security Cover, only the value of the immovable properties ("**Said Immovable Properties**") mortgaged in favour of the Lender to secure, *inter alia*, the Group Borrower's Dues, shall be taken into consideration. If at any time during the continuance of this Agreement, the Lender is of the opinion that the value of the Said Immovable Properties has become inadequate to maintain the Security Cover, then whether or not the Lender advising the Obligor(s) to that effect, within two days the Borrower(s) and/or the Co-Borrower(s) shall forthwith provide and furnish and/or shall cause the Obligor(s) to forthwith provide and furnish to the satisfaction of the Lender, either cash or such other Security (acceptable to the Lender) to the satisfaction of the Lender to make good the shortfall in the Security Cover so as to maintain the Security, at all times. The Lender shall be entitled to make a call for additional Security to the Borrower(s) and/or the Co-Borrower(s) if the Security Cover is not maintained and the Borrower(s) and/or the Co-Borrower(s) shall be bound to forthwith (within two days) provide/create additional Security to the satisfaction of the Lender. Without prejudice to the other provisions of the

Loan Documents, the Lender shall have the right to recall the Loan/Borrower's Dues in part or in full or exercise other rights under the Loan Documents including sell, transfer, dispose off, encumber and/or deal with the Security, or any part thereof, in any manner if the Security Cover is not maintained. The Lender shall be entitled to get the valuation of the Said Immovable Properties done (at the cost of the Borrower(s) and/or the Co-Borrower(s)) by any valuer(s) as and when the Lender reasonably deems fit.

In addition to the aforesaid Security Cover, the Borrower(s) and/or the Co-Borrower(s) shall, and/or shall cause the Pledgor(s) to, maintain the margin of at least 108.33% (one hundred eight point three three percent) of the Group Borrower's Dues at all times during the validity of the Loan Documents. For this purpose, only the value of the Pledged/Charged Shares (which are listed on stock exchanges in India) pledged in favour of the Lender to secure the Group Borrower's Dues shall be taken into consideration, at all times during the validity of the Loan Documents (**"Security Cover-Securities"**). If at any time during the continuance of this Agreement, the Lender is of the opinion that the value of the Pledged/Charged Shares (which are listed on stock exchanges in India) provided as Security has become inadequate to cover the margin of at least 108.33% (one hundred eight point three three percent) of the Group Borrower's Dues, then whether or not the Lender advising the Borrower(s) and/or Co-Borrower(s)/Pledgor(s) to that effect, the Borrower(s) and/or the Co-Borrower(s) shall forthwith provide and furnish (within 2 working days) and/or the Borrower(s) and/or the Co-Borrower(s) shall cause the Pledgor(s) to forthwith (within 2 working days) provide and furnish to the satisfaction of the Lender, either cash or such number of additional listed shares as Security and/or other

Security to the satisfaction of the Lender to make good the shortfall in the said margin so as to keep the said margin all times at or above 108.33% (one hundred eight point three three percent) of the Group Borrower's Dues. Further, the Lender shall have the absolute right to recall the Loan in part or in full or exercise other rights under the Loan Documents including sell, transfer, dispose off, encumbered and/or deal with the Pledged/Charged Shares, or any part thereof, in any manner if the value of the (listed) Pledged/Charged Shares falls to 97.50% (ninety seven point five zero percent) of the Group Borrower's Dues and if the Borrower(s) and/or the Co-Borrower(s) failed to forthwith provide and furnish within 2 working days additional listed shares as Security to the satisfaction of the Lender and the Borrower(s) and/or the Co-Borrower(s)/Pledgor(s) shall not contest the same. The value of the (listed) Pledged/Charged Shares shall be the average closing price of last 30 days/trading Sessions, of the (listed) Pledged/Charged Shares prevailing on the Bombay Stock Exchange Limited and/or National Stock Exchange of India. Notwithstanding anything to the contrary, if the value of the (listed) Pledged/Charged Shares of any company falls any time during the Tenure of the Loan more than 10% (ten percent) of the closing price on the previous day on Bombay Stock Exchange Limited and/or National Stock Exchange of India, then the Borrower(s) and/or the Co-Borrower(s) shall make good the shortfall in the security cover by forthwith paying cash to the Lender."

(Emphasis supplied)

(iv) Clause 2.4 deals with the circumstances in which the pledged as security could be released, and read as under:

"2.4 Release of Security

On the unconditional and irrevocable repayment/payment of the entire Borrower's Dues, costs and expenses, if any, incurred by the Lender and fulfilment of all the obligations of the Obligor(s) under the Loan Documents, the Lender shall forthwith release the Security created by the Obligor(s) in favour of the Lender by executing, at the costs of the Obligor(s) (including costs relating to stamp duty and registration charges, if any) all such documents as may be required for the said purpose.

During the continuance of this Agreement, subject to there being no breach of the Loan Documents by the Obligor(s) and/or no event of Default has occurred under the Loan Documents,

(a) If, the value of the (listed) Pledged/Charged Shares provided as Security is 108.33% (one hundred eight point three three percent) of the Group Borrower's Dues, then, the Lender shall at the request of the Borrower(s) and/or the Co-Borrower(s) release such number of (listed) Pledged/Charged Shares so as to ensure that the value of the remaining (listed) Pledged/Charged Shares provided as Security is at least 108.33% (one hundred eight point three three percent) of the Group Borrower's Dues. The value of the (listed) Pledged/Charged Shares shall be the average closing price of last 30 days/trading Sessions, of the (listed) Pledged/Charged Shares prevailing on the Bombay Stock Exchange Limited and/or National Stock Exchange of India; and/or

(b) On receipt of request for NOC for sale for unit(s) (forming part of the Properties mentioned in the Schedule III

hereunder) from the Borrower(s), the Lender will issue such NOC provided if the entire sale consideration has already been received from the buyer(s)/allottee(s) of such unit(s) and such sale consideration has been deposited in the escrow account(s) maintained as per the provisions of the Loan Documents.”

(v) Clause 3 dealt with “Repayment/Payment” of the loan.
The relevant part, thereof, may be reproduced thus:

“3. REPAYMENT/PAYMENT

3.1.1 The Borrower(s) and/or the Co-Borrower(s) shall repay/pay *the entire Loan* and interest thereon to the Lender in such manner as agreed/specified by the Lender from time to time and/or as per the Payment/Repayment Schedule. Subject to Clause 3.1.2, the Borrower(s) and/or the Co-Borrower(s) agree to pay to the Lender interest *on the Loan* or such part thereof as may be outstanding from time to time at such Interest Rate(s) as mentioned in Schedule I of this Agreement. Unless otherwise specified by the Lender from time to time,

- (a) interest shall be payable every month by the Borrower(s) and/or the Co-Borrower(s) on the Due Date(s) mentioned in the Payment/Repayment Schedule;
- (b) interest shall accrue from the Date of Disbursement;
- (c) interest shall be computed on the basis of a year of 360 days and the actual number of days elapsed;
- (d) interest shall be compounded on monthly rests or on such periodic rests as may be decided by the Lender from time to time; and

(e) in case of any payment default on the Due Date(s) by the Obligor(s) *under the Loan Documents*, interest shall be compounded (at the prevailing Interest Rate(s)) every month on the overdue amount and the Obligor(s) shall be liable to pay such compound interest to the Lender.

3.1.4 The Obligor(s) shall repay/pay *the Borrower's Dues and other monies payable under the Loan Documents* through the following modes as agreed between the Borrower(s) and/or the Co-Borrower(s) and the Lender – post-dated cheques/electronic clearing system/through an escrow account(s) maintained under the Loan Documents/RTGS/any other method. The Lender may, in its sole discretion, specify the mode(s) of payment/repayment under the Loan Documents from time to time and the same shall be binding on the Obligor(s).

3.1.5 The Borrower(s) and/or the Co-Borrower(s) shall, on the execution of this Agreement, issue and hand over to the Lender specified number of post-dated/undated cheques as mentioned in Schedule I hereunder *for repayment/payment of the Loan and interest*.

(Emphasis Supplied)

(vi) Clause 4, which dealt with “Default Interest”, rendered the Borrower/Co-Borrower(s) liable to pay default interest, at the rates specified in Schedule I to the Loan Agreement, if

- (a) the Obligor/Obligors failed to comply with their obligations, under the Loan Documents, by the given Due Date therefor, or
- (b) an Event of Default occurred.

(vii) Clause 4A dealt with the requirement – or, rather, the absence thereof – of any notice for payment, and read as under:

“No notice, reminder or intimation shall be given to the Obligor(s) regarding its/their obligation to repay/pay *the Borrower’s Dues* and it shall be entirely the Obligor(s)’ responsibility to ensure prompt and regular payment of *such amounts payable by the Obligor(s) to the Lender* when due and in the manner provided in the Loan Documents.”

(Emphasis supplied)

(viii) Clause 5 provided for “prepayment”, and for “foreclosure and cancellation”. It provided, *inter alia*, thus:

“If due to any law or any other reason(s), the Lender shall be entitled to require the Borrower(s) and/or the Co-Borrower(s) to repay/pay *the Borrower’s Dues (or any part thereof)* immediately or in shorter period and in one lumpsum or such suitable instalment/s as may be specified by the Lender notwithstanding the Tenure of the Loan. There Borrower(s) and/or the Co-Borrower(s) undertake to pay/repay *the Borrower’s Dues (or any part thereof)* on the date(s) as may be specified in the notice issued by the Lender to the Borrower(s) and/or the Co-Borrower(s) under this clause.”

(Emphasis supplied)

(ix) Clause 9.2 required, *inter alia*, the Borrower / Borrowers /Co-Borrowers to cause the Obligor/Obligors, to execute, in favour of the Lender, any further/additional/Fresh deeds, or documents, “*in respect of the Loan/Borrower’s Dues/Security*”.

(x) Clause 12 delineated, in its various sub-clauses, the “Events of Default”, for the purposes of the Loan Agreement.

These were

- (i) non-payment of “the Borrower’s Dues (or part thereof) and/or any amount payable pursuant to a Loan Document”, by the due date/dates, by the borrower(s)/co-borrower(s),
- (ii) utilisation of the loan for any unlawful purpose,
- (iii) breach, or default, of any provision/provisions of the Loan Documents by the Obligor(s), not attributable to any fault of the Lender, unless remedied within 3 days,
- (iv) misrepresentation,
- (v) the performance, of any obligations under the Loan Documents, by the Obligor(s) becoming unlawful,
- (vi) repudiation, by the Obligor(s), of the Loan Document, or intention to do so,
- (vii) Governmental intervention, as a result of which
 - (a) the management of the Obligor(s) was wholly or partly displaced, or
 - (b) the authority, of the Obligor(s), in the conduct of its business, was wholly or partially curtailed, or
 - (c) a majority of the issued shares of the Obligor(s), or any part of the revenue or assets of the Obligor(s) was seized or compulsorily acquired, or

- (d) any attachment, distress, execution or other process against the Obligor(s), or its properties, was enforced or levied upon,
- (viii) any event, or circumstance, having a Material Adverse Effect, or adversely affecting the ability of the Obligor(s) to perform its obligations under the Loan Documents, or to pay/repay *the Borrower's Dues* or any part thereof,
- (ix) deterioration or impairment of the Security, in whole or in part, or decline or depreciation in the value thereof, resulting in the Security becoming unsatisfactory in character or value, and the Borrower(s)/Co-Borrower(s) failed to provide additional security,
- (x) failure in business, bankruptcy, general assignment for the benefit of creditors, or suspension of payment, by the Obligor(s),
- (xi) inability, of the Obligor(s), to pay debts, or appointment of any liquidator or receiver in respect of any property or a state of the Obligor(s),
- (xii) amalgamation, merger, arrangement, demerger or reconstruction of any of the Obligor(s), without prior approval of the Lender,
- (xiii) cessation of the business of the Obligor(s),
- (xiv) the income/revenue/remuneration of the Obligor(s) becoming, or becoming likely to be, inadequate,
- (xv) death, mental unsoundness or imprisonment of any of the Obligor(s),

(xvi) continuous losses in the business of the Obligor(s),
(xvii) disposal of, or creation of a charge on, the Security, by the Obligor(s), without prior consent of the lender,

(xviii) threat to the Security given by the Obligor(s), or

(xix) any substantial change in the Constitution, or as shareholding pattern/profit sharing of the Obligor(s), without prior written consent of the Lender.

(xi) The consequence of the happening of an “Event of Default” was visualised by Clauses 12.2 and 12.3, which read thus:

“12.2 Consequence of an Event of Default

On and at any time after the occurrence of an Event of Default, Lender may, with or without any notice to any of the Obligor(s) and with or without the intervention of the court/arbitrator,

(i) cancel/recall the Loan whereupon *the Borrower's Dues* shall become immediately repayable/payable by the Obligor(s); and/or

(ii) initiate/exercise any or all of its rights, actions, remedies and powers under the Loan Documents and/or applicable laws; and/or

(iii) enforce, allot, sell, invoke, deliver, deal with, take possession, convey, transfer, assign, lease, sub-lease, encumber and/or dispose off in any manner (including by private treaty and/or auction), on such terms and conditions including the sale/transfer

price of the Security or any part/unit thereof as deemed fit by the Lender, any/all/part of the Security including the guarantees and/or the demand promissory notes, and/or do such other things in relation to and/or with respect to the Security (or any part thereof) which may be permitted under law.

If the net sum realised through the enforcement/sale/transfer of Security is insufficient to cover *the Borrower's Dues*, then without prejudice to the other rights and remedies of the Lender under the Loan Documents and/or in law, the Obligor(s) agree(s) and undertake(s) to pay to the Lender forthwith at the Lender's demand such amount *as will make up the shortfall*. The decision made by the Lender with respect to any matter under the Loan Documents shall be final and binding on the Obligor(s).

12.3 If any Event of Default or any event which, after the notice or lapse of time or both would constitute an Event of Default shall have happened, the Borrower(s) and/or the Co-Borrower(s) shall forthwith give the Lender notice thereof in writing specifying such Event of Default, or such event. The Borrower(s) and/or the Co-Borrower(s) shall also promptly inform the Lender if and when any statutory notice of winding-up under the provisions of the applicable laws or of any suit or legal process intended to be filed/initiated against the Obligor(s) is received by the Obligor(s). On the question whether any of the above events/circumstances has occurred/happened, the decision of the Lender shall be final, conclusive and binding on the Borrower(s) and/or the Co-Borrower(s). However, the Lender will act in a reasonable manner while exercising any such discretion given to the Lender under this Agreement. The rights, powers and remedies given to the Lender by this Agreement shall be in addition to all rights, powers and remedies given to the Lender by virtue of any other security, statute or the rule of law. The Lender may exercise a lender's

lien or right of set-off with respect to any obligation of the Borrower(s) and/or Co-Borrower(s) to the Lender and shall have a lien on all property or securities of the Borrower(s) and/or the Co-Borrower(s) in the Lender's possession or custody whether for safe keeping or otherwise. Without prejudice to what is stated hereinabove, the Parties hereby expressly agree and confirm that in the event of the Borrower(s) and/or the Co-Borrower(s) failing to pay *the Borrower's Dues or on happening of an event of Default*, in addition to any General or Specific Lien to which the Lender may be entitled by law, the Lender shall, without prejudice to any of its specific rights under the Loan Documents, be at liberty to apply any other money or amounts standing to the credit of the Borrower(s) and/or the Co-Borrower(s) in any account with the Lender in order towards repayment *of the Borrower's Dues*, without any notice to the Borrower(s) and/or the Co-Borrower(s).”

(Emphasis supplied)

(xii) Clause 15 of the Loan Agreement – which constitutes, in a way, the fulcrum of Mr. Sethi's submissions – provided for “Cross Liability”, and read as under:

“15. CROSS LIABILITY

Notwithstanding anything to the contrary contained in any agreement(s), the Obligor(s) expressly accept(s) and agree(s) that if a breach/default/an event of default occurs under any agreement(s) (including the Loan Documents) between (a) the Obligor(s) and/or any group entity/entities/associate company of the Obligor(s) and (b) the Lender and/or any of the INDIABULLS Companies, then such a breach/default/event of default under such agreement(s) shall also be an Event of Default under the Loan Documents and vice versa and then in such events the Lender and/or any of the INDIABULLS Companies shall, without

prejudice to any of its/their specific rights under each of the agreements, be absolutely entitled to exercise or any of its/their rights (including Loan recall) under any of such agreements (including the Loan Documents) at the sole discretion of the Lender and/or the INDIABULLS Companies. The term 'INDIABULLS Companies' shall mean and include the Lender, the promoter(s) of the Lender and/or any other associate/group companies/entities of the Lender, present or future."

6. Simultaneously, on 27th September, 2015 a Pledge/Charge Agreement (hereinafter referred to as "the Pledge Agreement") was executed between Guild Builders and the petitioner, as the pledgors, and IHFL, as the lender. The Pledge Agreement specifically recited that, the pledgors had agreed to create a first-ranking and exclusive Pledge, on the Pledged Shares, in favour of IHFL, for the loans mentioned in Schedule IB to the Pledge Agreement, and advanced under the Loan Agreement specified in the said Schedule. Schedule IB to the Pledge Agreement referred only to three Loan Agreements, being the Loan Agreements dated 29th September, 2015 *supra*, whereby loans of ₹ 65 crores, ₹ 65 crores and ₹ 20 crores were advanced, by IHFL to Omaxe Forest Spa.

7. "Loan Documents", for the purposes of the Pledge Agreement, were defined, in sub-clause b) of Clause 1.1 of the Pledge Agreement, thus:

“ **“Loan Documents”** means (a) the Loan Agreement(s) and/or (b) all other agreement(s), application(s), form(s), undertaking(s), document(s), letter(s), deed(s), memorandum(s), declaration(s) and/or power of attorney(s)

evidencing, securing, governing or otherwise pertaining / relating to the Loan(s) / Secured Obligations /security /guarantee and includes any amendatory, modificatory the or supplemental agreement thereto.”

“Loan” was, in turn, defined in sub-clause d), as meaning “the loan(s) of the total principal amount(s) as mentioned in Schedule IB hereunder disbursed or to be disbursed under the Loan Agreement(s) and the other related Loan Documents.” A conjoint reading of sub-clauses b) and d) of Clause 1.1 of the Pledge Agreement, and Schedule IB thereto, make it apparent that the “Loan Documents”, for the purposes of the Pledge Agreement, were the three Loan Agreements dated 29th September, 2015, whereunder loans of ₹ 65 crores, ₹ 65 crores and ₹ 20 crores had been extended by IHFL to Omaxe Forest Spa, and none else.

8. Against the said loans, Schedule II to the Pledge Agreement (read with the definition of “Pledged/Charged Shares”, in sub-clause f) of Clause 1.1 of the Pledge Agreement) detailed the shares of Guild Builders in Omaxe Ltd., and the shares of the petitioner in Omaxe Ltd., as having been pledged. Clause 2 of the Pledge Agreement, titled “Pledge/Charge of Pledged/Charged Shares”, contained the following three sub-clauses:

“2.1 Pledge and Charge

This Agreement is for the benefit of the Lender and in consideration of the Lender having agreed to lend and advance/lent and advanced the Loan(s) to the Borrower(s) and/or the Co-Borrower(s) and in order to secure the Secured Obligations and the fulfilment of all the obligations of the Obligor(s) under the Loan Documents, the Pledgor(s): (i) hereby pledges/charges,

as security on a first-ranking charge/pledge basis exclusively in favour of the Lender, *the Pledged/Charged Shares* including the shares/securities as more particularly described in Schedule II hereunder in respect thereof accompanied by the Transfer Forms duly executed in blank, powers of attorney, and/or other relevant instruments and/or documents acceptable to the Lender; and (ii) hereby assigns, Hypothecates, pledges and charges to the Lender, as a continuing security interest, all of such Pledgor(s) right, title, interest, benefits, claims and demands whatsoever of such Pledgor(s) in, too, under order in respect of the Collateral and any indemnity, warranty or guarantee, payable by reason of laws to or otherwise with respect to any of the pledged/charged Shares to the Lender upon the terms and conditions set forth in this Agreement.

2.1.1 The Pledgor(s) is/are pledging/charging the Pledged/Charged *Shares in consideration of the Lender having agreed to lend and advanced/lent and advanced the Loan(s) to the Borrower(s) and/or the Co-Borrower(s) with the understanding that upon occurrence of an Event of Default under any of the Loan Documents, the Pledged/Charged Shares (or any part thereof) may be sold, transferred, assigned, encumbered, disposed of, and/or dealt with in any manner whatsoever and on such terms and conditions (including the sale price) as deemed fit by the Lender.*

2.1.2 On the above representation of the Pledgor(s) and the Pledgor(s) agreeing that upon the occurrence of an Event of Default under any of the Loan Documents, the Pledged/Charged Shares (or any part thereof) may be sold, transferred, assigned, encumbered, disposed off and/or dealt with, in any manner whatsoever and on such terms and conditions (including the sale price) as deemed fit by the Lender from time to time, the Lender has agreed to lend and advance/lent and advanced the Loan(s) to the Borrower(s) and/or the Co-Borrower(s).”

(Emphasis supplied)

9. Be it noted, even at this juncture, that it is nobody's case that the shares of the petitioner, in Omaxe Ltd., constituted subject matter of any other Pledge Agreement, in existence and in force, or stood/stands pledged against any other loan, yet to be liquidated.

10. Reverting to the facts of the case, the petitioner claimed to have understood that, as on 31st March, 2020, the aforesaid loan amounts of ₹ 65 crores, ₹ 65 crores and ₹ 20 crores, advanced by IHFL to Omaxe Forest Spa, under the Loan Agreement dated 29th September, 2015, had been entirely recovered. The petitioner, thereby, it is claimed, stood entitled to have its shares, in Omaxe Ltd., pledged with IHFL, against the said loans, de-pledged and released.

11. It is asserted, in the petition, that several representations, by the petitioner to IHFL, for release of the aforesaid pledged shares, met with no response. In the process, the value of the pledged shares, in the market, also depleted significantly. Between September, 2018 and January, 2020, the petitioner asserts that the price of the pledged shares had declined from ₹ 218/- to ₹ 155.40, per share. The reticence exhibited, by IHFL, in releasing the pledged shares, held by the petitioner in Omaxe Ltd. was, therefore, the petitioner asserts, subjecting it to recurrent and severe financial prejudice.

12. Though the disputes that have thus arisen, between the petitioner and IHFL, legitimately justifies the invocation of the arbitration clause, in the Loan Agreements dated 29th September, 2015 *supra*, the petitioner has invoked Section 9 of the Arbitration and

Conciliation Act, 1996 (hereinafter referred to as “the 1996 Act”), by means of the present petition, on the ground that urgent pre-arbitration interim reliefs, as sought in the petition, are necessary, in view of the steady depletion of the value of the shares, held by the petitioner in Omaxe Ltd., and the continuous financial prejudice being suffered by the petitioner. The prayer clause, in the present petition, reads thus:

“In light of above mentioned facts and circumstances, it is most humbly prayed before this Hon’ble Court that this Hon’ble Court be pleased to:

- a) Direct the Respondent to provide a true, fair and full disclosure of all its transactions in relation to the Loan Agreements dated 29.09.2015 referred to in para 34.1 above, including an updated statement of accounts till date, to the petitioner;
- b) Pass an appropriate direction directing the Respondent to issue No-Objection certificate to the Petitioner in case the loans stand paid or on receipt of payment from the Petitioner;
- c) Pass an appropriate direction restraining the Respondent taking any coercive steps in relation to the pledged shares and personal guarantee of the Petitioner till adjudication of present petition;
- d) Pass an appropriate direction restraining the respondent from using the securities and personal guarantee of the petitioner and against any other outstanding loan of Omaxe Limited or its subsidiaries;
- e) Pass an appropriate direction directing the Respondent to release to the Petitioner the shares of Omaxe Limited owned by the Petitioner and also absolve the personal guarantee extended by the Petitioner;
- f) Pass any other order(s), direction(s) or relief(s) in favour of the Petitioner and against the Respondent

as may be deemed fit and proper by this Hon'ble Court in the facts and circumstances of the present case and In the interest of justice."

13. Though the respondent, IHFL, has filed a reply, on merits, to the petitioner, Mr. Sunil Dalal, learned counsel appearing for IHFL submitted, on the very first date of hearing, i.e. 18th June, 2020, that the principal amounts of loan, of ₹ 65 crores, ₹ 65 crores and ₹ 20 crores, as advanced by IHFL to Omaxe Forest Spa, stood liquidated and that, therefore, IHFL was willing to release the pledged shares, held by the petitioner in Omaxe Ltd.. Thereafter, on 30th June, 2020, Mr. Dalal sought for some further time, in order to ascertain whether the shares of the petitioner were pledged against any other loan, advanced by IHFL. Today, Mr. Dalal has clarified that the shares have not been pledged against any other loan and that, therefore, IHFL is willing to release the said shares to the petitioner. This aspect has also been placed, in writing, by IHFL, on affidavit, to which I would be alluding at a somewhat later stage of this judgement.

14. Vehement opposition, to the release of the pledged shares of the petitioner, in Omaxe Ltd., surfaced, however, from Guild Builders which, for the said purpose, preferred I.A. 4942/2020 and I.A. 4943/2020, seeking impleadment, as a respondent, in the petition, and issuance of interim directions, to IHFL, not to release the pledged shares, despite the assurance, by Mr. Sunil Dalal, on 18th June, 2020. Additionally, I.A. 4943/2020 also seeks an order of restraint, against the petitioner, from alienating the said shares, even if they had been released by IHFL.

15. The petitioner has filed a response, to the aforesaid I.A. 4942/2020 and I.A. 4943/2020, filed by Guild Builders. It is asserted, by the petitioner, in the said responses, that Guild Builders had no locus to be impleaded in the present proceedings, and that the prayer, of Guild Builders, to restrain IHFL from releasing the pledged shares, held by the petitioner in Omaxe Ltd., even after liquidation of the loan advanced by IHFL to Omaxe Forest Spa, was completely devoid of merit.

16. Inasmuch as IHFL had expressed its consent, to the release of the pledged shares to the petitioner, arguments, before me, were essentially on the aforesaid two applications of Guild Builders, i.e. I.A. 4942/2020 and I.A. 4943/2020.

17. I proceed, therefore, to advert to the rival contentions of Guild Builders, represented by Mr. Sandeep Sethi, learned senior Counsel, and the petitioner, represented by Mr. Rajshekhar Rao, on I.A. 4942/2020 and I.A. 4943/2020.

Rival Submissions

18. The submissions of Mr. Sandeep Sethi, appearing for Guild Builders, may be enumerated, for the sake of convenience, thus:

- (i) The liquidation of the loan, advanced by IHFL to Omaxe Ltd., did not, *ipso facto*, or *ipso jure*, entitle the petitioner to

release of the shares, held by it in Omaxe Ltd. and pledged with IHFL, as the shares had been pledged, not merely to secure the loans of ₹ 65 crores, ₹ 65 crores and ₹ 20 crores, under the three Loan Agreements dated 25th September, 2015, but also against other loans, advanced to the companies of the Omaxe group, by IHFL or its associated companies.

(ii) The shares, forming subject matter of the petition, had been pledged, by the petitioner, along with shares of Guild Builders, held in Omaxe Ltd., which IHFL, in view of loan granted, by M/s Indiabulls Financial Services Ltd to Omaxe Ltd., of ₹ 200 crores, *vide* Pledge Agreement dated 9th August, 2011. (This aspect was, however, subsequently clarified, by Mr. Rajshekhar Rao, who pointed out that the shares, forming subject matter of these proceedings, were earlier pledged with Indiabulls Financial Services Ltd., against a loan of ₹ 200 crores, advanced by Indiabulls Financial Services Limited to Omaxe Ltd., against which loan the shares of Guild Builders were also pledged. However, the said loan of ₹ 200 crores was, subsequently, re-paid, thereafter the said shares were pledged against the loans of ₹ 65 crores, ₹ 65 crores and ₹ 20 crores, advanced by IHFL to Omaxe Ltd. under the Loan Agreements dated 29th September, 2015. Mr. Sandeep Sethi, too, fairly did not press the issue of the earlier pledge, of the shares forming subject matter of the present petition, under the Pledge Agreement dated 9th August, 2011, any further.)

(iii) Clause 2.3 of the Loan Agreements, dated 29th September, 2015, required the Pledgors – which included the petitioner – to maintain a margin of 108.33% of the Group Borrower’s dues, at all times during the validity of the Loan Documents. “Group Borrower’s Dues”, as defined in Clause 1.1, included all amounts, payable to IHFL, as well as its group/associate entity/entities, under any Loan Agreement between IHFL, or its associate/group entity/entities, and the obligors, or their group/associate entity/entities. This was subject only to the condition that the security, under the Loan Documents, i.e. the Loan Agreements dated 29th September, 2015, was also a security under such other Loan Agreements. It was erroneous, therefore, for the petitioner to contend that their shares, held by it in Omaxe Ltd. and pledged with IHFL, secured only the loans covered by the Loan Agreements dated 29th September, 2015. They also covered “Group Borrower’s Dues”, as defined in the Loan Agreements. Clause 2.3 required the petitioner, as one of the Pledgors, to maintain a margin of at least 108.33% of the Group Borrower’s dues at all times during the validity of the Loan Documents.

(iv) By virtue of the definition of “Group Borrower’s Dues”, as contained in Clause 1.1 of the Loan Agreements dated 29th September, 2015, all amounts payable to IHFL, by associate entities of the petitioner, under any Loan Agreement, constituted “Group Borrower’s Dues”. Mr. Sethi referred me to five Loan Agreements, the loans advanced under which, according to him, were also secured by the shares in Omaxe

Ltd., held by the petitioner and pledged with IHFL. The details of these five Loan Agreements, copies of which have been filed by Guild Builders, may be provided, in a tabular fashion, thus (“Garv” being an abbreviation of “M/s Garv Buildtech Pvt Ltd”):

Date of Loan Agreement	Lender	Borrower	Guarantor(s)	Pledgor(s)
30 th June, 2017	IHFL	Garv	(1) Guild Builders (2) Omaxe Ltd. (3) Rohtas Goel	Guild Builders
26 th March, 2018	IHFL	Garv	(1) Guild Builders (2) Omaxe Ltd. (3) Rohtas Goel	Guild Builders
25 th September, 2018	IHFL	Garv	(1) Guild Builders (2) Omaxe Ltd. (3) Rohtas Goel	Guild Builders
3 rd April, 2019	Indiabulls Commercial Credit Ltd.	Omaxe Ltd.	(1) Guild Builders (2) Garv (3) Omaxe Forest Spa (4) Rohtas Goel	(1) Omaxe Ltd. (2) Rohtas Goel
30 th March, 2020	Indiabulls Commercial Credit Ltd.	Omaxe Ltd.	(1) Omaxe New Chandigarh Developers Pvt Ltd (2) Garv (3) Omaxe Forest Spa (4) Rohtas Goel	(1) Omaxe Ltd. (2) Vimal Gupta (3) Kamal Kishore Gupta (4) Vinit Goyal (5) Manish Kumar Garg (6) Jitender Kumar Garg (7) Virender Kumar Singhal

For ease of reference, the aforementioned Loan Agreements are referred to, hereinafter, as the “tabulated Loan Agreements”.

(iv) The pleadings of the petitioner, before the learned NCLT, as also the pleadings before this Court in the present petition, clearly established that Omaxe Ltd. and Guild Builders were associate/group Companies of the petitioner.

(v) The only other criterion, satisfaction of which was required, in order to justify treatment of the loan amounts, extended by IHFL, or by its associate Company M/s Indiabulls Commercial Credit Ltd (hereinafter referred to as “IBCC”), under the tabulated Loan Agreements, was commonality of security. A comparison of the schedules to the said Loan Agreements (specifically Schedule III), vis-à-vis Schedule III to the Loan Agreements dated 29th September, 2015, forming subject matter of the present proceedings, indicated that the same land was pledged as security in all the Loan Agreements. Similarly, Guild Builders’ shares, which were pledged under the Loan Agreements dated 29th September, 2015, were also pledged as security, against the loans advanced by IHFL to Garv, under the Loan Agreements tabulated hereinabove. The shares in Omaxe Ltd., held by Omaxe Forest Spa, similarly, were pledged as security against the loan granted by IBCC to Omaxe Ltd., under the Loan Agreements dated 3rd April, 2019 and 30th March, 2020. The physical shares, which were pledged under the Loan Agreements dated 29th September,

2015, were also pledged as security against the loans advanced by IBCC to Omaxe Ltd., under Loan Agreement dated 3rd April, 2019, and by IHFL to Omaxe Ltd., under Loan Agreement dated 30th April, 2020. Mutual commonality of security, both qua landed property as well as shares, was, therefore, forthcoming, among the various Loan Agreements.

(vi) With the satisfaction of this last criterion, the amounts borrowed, by the borrowers under the tabulated Loan Agreements, also constituted “Group Borrower’s Dues”, within the meaning of the expression as defined in Clause 1.1 of the Loan Agreements dated 29th September, 2015, forming subject matter of consideration in the present petition.

(vii) This fact, seen in conjunction with Clause 15 of the Loan Agreements dated 29th September, 2015 (which provided for “Cross Liability”), rendered the shares, held by the petitioner in Omaxe Ltd., also liable to be proceeded against, for satisfaction of the debts forming subject matter of the tabulated Loan Agreements.

(viii) Liquidation of the amounts loaned by IHFL to Omaxe Ltd., under the Loan Agreements dated 29th September, 2015 did not, therefore, *ipso facto* entitle the petitioner to claim that the shares, held by it in Omaxe Ltd., pledged against the said loans, be de-pledged and released to it.

(ix) Were the shares of the petitioner, in Omaxe Ltd., pledged against the loans extended under the Loan Agreements dated 29th September, 2015, by IHFL to Omaxe Forest Spa, to be released to the petitioner, it would result in reduction of the security, available under the tabulated Loan Agreements, and, consequently, render the pledgors in the said Loan Agreements, including Guild Builders, liable to make up the shortfall, by furnishing additional securities. In fact, IHFL had already written, to Guild Builders, to furnish additional securities, thereby establishing the validity of the case set up by Guild Builders.

19. Mr. Sethi submitted, therefore, that, merely on account of the loans, extended by IHFL to Omaxe Forest Spa, under the Loan Agreements dated 29th September, 2015, having been liquidated, the petitioner could not stake a claim for release/de-pledge of the shares, held by it in Omaxe Ltd., pledged against the said loans. These shares could also be proceeded against, for satisfaction of the loans forming subject matter of the tabulated Loan Agreements, whereunder loans had been extended by IHFL, or its associate Company IBCC, to the associated Companies of the petitioner. These loans, therefore, constituted “Group Borrower’s Dues”, within the meaning of the expression as defined in Clause 1.1 of the Loan Agreements dated 29th September, 2015, and were also liable to be secured by the pledged shares forming subject matter of consideration in the present petition.

20. Responding to the submissions of Mr. Sethi, Mr. Rajshekhar Rao, learned Counsel for the petitioner, submitted that the contention, of Guild Builders, that the pledged shares, forming subject matter of the present petition, were also to be treated as security against the loans advanced by IHFL, or IBCC, under the tabulated Loan Agreements, was completely devoid of merit. Mr. Rao pointed out that the present proceedings were under Section 9 of the 1996 Act, relating to the Loan Agreements dated 29th September, 2015, to which IHFL and the petitioner, alone, were parties. IHFL had clearly stated that the entire amount of loan, advanced under the said Loan Agreements stood repaid and had, consequently, undertaken to return the pledged shares. Guild Builders had no locus to interfere therewith. The pledged shares, forming subject matter of the present proceedings, stood pledged *only* against the loans of ₹ 65 crores, ₹ 65 crores and ₹ 20 crores, advanced by IHFL to Omaxe Forest Spa, under the three Loan Agreements dated 29th September, 2015, and had not been pledged as security under any other Loan Agreement. There was nothing, in any of the Loan Agreements tabulated hereinabove, whereunder loans had been extended by IHFL, or IBCC, to Garv, or to Omaxe Ltd., to indicate that the shares of the petitioner in Omaxe Ltd., forming subject matter of the present proceedings, had been pledged as security under the said Agreements. In fact, pointed out Mr. Rao, all the said Loan Agreements, except for the Loan Agreement dated 30th June, 2017, had been entered into, after the petitioner had been removed from the post of Joint Managing Director of Omaxe Ltd. The petitioner was not, therefore, either party to the said Loan Agreements, or even aware of the execution thereof. Debts,

aggregating to over ₹ 300 crores had, therefore, been availed, and securities pledged thereagainst, after the petitioner had ceased to be part of any of the borrower, guarantor or pledgor entities, in any of the said Loan Agreements.

21. With respect to the “Cross Liability” provision contained in Clause 15 of the Loan Agreement dated 29th September, 2015, Mr. Rao submits that no occasion, even to consider invocation of the said provision, arose at all, as the provision applied only in the case of “default under such agreement(s)”, and, admittedly, there had been no such default, under any Loan Agreement. Moreover, Mr. Rao points out that the Clause operated “at the sole discretion of the Lender” and did not, therefore, *ipso facto* render the shares, held by the petitioner in Omaxe Ltd., liable to be proceeded against, even in the event of default under any of the five tabulated Loan Agreements.

22. Mr. Rao submits, further, that IHFL had, clearly, in its communication dated 5th September, 2018, to the petitioner, refuted, in so many words, the possibility of the shares held by the petitioner in Omaxe Ltd., pledged against the loans advanced under the Loan Agreements dated 29th September, 2015, operating as cross-collateralized security, against loans advanced under other Loan Documents. Further, the said communication clearly stated that the pledged shares would not be released to the petitioner till the loans availed by the borrowers from IHFL were repaid in full, as per the Loan Agreements dated 29th September, 2015. This position, pointed out Mr. Rao, was also apparent from e-mail, dated 16th June, 2020,

addressed by IHFL to the petitioner, which undertook to release the security, associated with the loans, of ₹ 65 crores, ₹ 65 crores and ₹ 20 crores, advanced under the Loan Agreements dated 29th September, 2015, between IHFL and Omaxe Forest Spa, on the said loans being liquidated. There was no whisper of any averment, pointed out Mr. Rao, in any of the communications from IHFL to the petitioner, indicating that the petitioner had evergreened its pledge. Rather, he submits, Clause 2.4 of the Loan Agreements dated 29th September, 2015, clearly rendered the pledged shares liable to be the pledged/released, consequent on the loan amounts being paid up.

23. Insofar as the demand, by IHFL on Guild Builders, to furnish additional security, was concerned, Mr. Rao submits that there is nothing to indicate that the said demand was relatable to the release of the shares, held by the petitioner in Omaxe Ltd. and pledged as security under the Loan Agreements dated 29th September, 2015. He points out that there was no commonality of security, between the Loan Agreements dated 29th September, 2015, and the tabulated Loan Agreements, as the shares of the petitioner, in Omaxe Ltd., had not been pledged as security, under any of the tabulated Loan Agreements, to which, indeed, the petitioner was a complete stranger.

24. Relying on Section 2 (6) of the Companies Act, 2013, Mr. Rao submits that Guild Builders, Garv and Omaxe Ltd. could not be treated as “associate companies” of the petitioner, as the petitioner did not possess the ability to influence the affairs of the said Companies. Indeed, submits Mr. Rao, the petitioner being an individual and not a

Company, the concept of “associated companies” did not come in for invocation at all.

25. Mr. Rao also relied on the various covenants of the Pledge Agreement, dated 29th September, 2015, which already stands reproduced hereinabove. He, *inter alia*, drew my attention to the definition of “loan” and “obligor”, in the said Agreement as well as to Clauses 2.1, 2.6 and 3 thereof. He also pointed out that the initial covenants, in the said Pledge Agreement, clearly indicated that the Pledgors, to the said agreement, had created an *exclusive* pledge/charge on the Pledged/Charged Shares, in favour of IHFL, to secure the Secured Obligations in the said Pledge Agreement. These shares could not, therefore, be treated as having been pledged against the loans advanced under any other agreements. Mr. Rao also drew my attention, in this context, to the definition of “Secured Obligations”, as contained in sub-clause (g) of Clause 1.1 of the Pledge Agreement. He also invited attention to Clause 17 thereof, which dealt with the release of the pledged shares.

26. As such, submits Mr. Rao, the contention, of Mr. Sethi, that the pledged shares, forming subject matter of consideration in the present proceedings, also stood pledged against loans advanced under the tabulated Loan Agreements, was devoid of merit. Guild Builders, therefore, had no locus to interfere or intervene in the present proceedings, and the prayer in the petition was necessarily required to be allowed, in view of the submission, of Mr. Dalal, that IHFL was ready and willing to return the pledged shares.

27. I may note, at this stage, and before proceeding to deal with the submissions advanced before me, that Mr. Dalal had, towards the conclusion of the proceedings, sought to contend that the pledged shares, forming subject matter of the present proceedings, could not be released to the petitioner, till TDS was paid on the said loan amount, or a Certificate, in that regard, was issued to IHFL. On a query, being put to him by the Court, as to how the entitlement, of the petitioner, to return of the pledged shares, could be made dependent on payment of TDS, when TDS was required to be paid, not by the petitioner, but by Omaxe Forest Spa, and was to be paid, not to IHFL, but to the Income Tax authorities, Mr. Dalal withdrew his objection and, on instructions, submitted that his client was willing to release the pledged shares. Though Mr. Dalal did not seek to enter any caveat to this concession, it is obvious that, even after release of the pledged shares, the rights of IHFL, to proceed against Omaxe Forest Spa, on the aspect of TDS and furnishing of the TDS Certificates, would remain preserved.

Analysis and conclusion

28. Viewed any which way, I am unable to convince myself that Guild Builders has any locus to intervene in the present proceedings, far less to interdict the release of the shares of the petitioner in Omaxe Ltd., pledged with IHFL. The submission of Mr. Sandeep Sethi, that the pledged shares, forming subject matter of consideration, in the present petition, also constitute security against the loans advanced by

IHFL or IBCC, under the tabulated Loan Agreements, completely fails to impress.

29. Neither on the basis of the covenants of the Loan Agreements, dated 29th September, 2015, nor on the basis of the covenants of the pledged agreement, dated 29th September, 2015, nor, for that matter, the covenants of the tabulated Loan Agreements on which Mr. Sandeep Sethi relies, can it be said that the pledged shares, release of which is being sought by the petitioner, were also pledged against the loans advanced under the tabulated Loan Agreements.

30. A reading of the three Loan Agreements, dated 29th September, 2015, whereunder IHFL had advanced loans of ₹ 65 crores, ₹ 65 crores, and ₹ 20 crores to Omaxe Ltd., covenant by covenant, make it apparent that the Borrower's Dues, i.e. the dues of Omaxe Forest Spa towards IHFL, under the said Loan Agreements, alone, constitutes subject matter thereof, and the security, and security cover, contemplated thereunder, were intended to secure only the said loans. This may be demonstrated thus:

- (i) "Borrowers Dues" was specifically defined, in Clause 1.1. as meaning (a) the outstanding principal amount of the loan, (b) other amounts payable by the obligors to the lender as per
- (i) the Loan Documents and/or,
- (ii) any other agreements entered into between the obligors and the lender.

It is not in dispute that, presently, there is no other Loan Agreement, entered into, between the petitioner and IHFL.

(ii) “Loan” was defined as the loan amounts mentioned in Schedule I of the Loan Agreement, i.e. under Schedule I of each of the three Loan Agreements, dated 29th September, 2015.

(iii) “Loan Agreement” was itself defined, in Clause 1.1, as “this agreement”, alongwith the amendments/addenda thereto, and other documents made a part of the Loan Agreement by reference. The five tabulated Loan Agreements, dated 30th June, 2017, 26th March, 2018 , 25th September, 2018, 3rd April, 2019 and 30th March, 2020, have not, even by reference, been made part of the “Loan Agreement”.

(iv) Clause 2.1 specifically delineated the loans mentioned in Schedule-I to the Loan Agreements, as the subject matter thereof.

(v) Schedule-I, to the three Loan Agreements dated 29th September, 2015, limited the applicability, thereof, to the said Loan Agreements, and the loans advanced thereunder, of ₹ 65 crores, ₹ 65 crores and ₹ 20 crores.

(vi) Clause 2.2(d)(ii) specifically stated that the pledged/charged shares could be sold, disposed of, or otherwise encumbered, at the discretion of the IHFL *only on occurrence of an event of default under the Loan Documents*.

(vii) Clause 2.2(d)(iii) required the Borrower to undertake that the pledged shares would be kept free from encumbrance *till the obligation of the Pledgors under the Loan Agreements were complied with*, including the payments/repayment of the *Borrowers dues*.

(viii) Clause 2.2(d)(iv) required the Borrower to cause the Pledgors to obtain all consents and permissions required by the lenders, to create the security for payment and/or repayment of *the Borrower's Dues* under the Loan Documents.

(ix) Clause 2.2 (d) went on to clarify that the pledged shares would not be permitted to be de-pledged/released unless the entire *Borrower's Dues* had been repaid to the lender.

(x) Clause 2.4 – on which Mr. Rajshekhar Rao aptly relies – *required the lenders to release the security credited, by the Pledgors in its favour on payment of the entire Borrowers' dues and fulfilment of all obligations of the obligors under the Loan Documents. Here, at the cost of repetition, it may be emphasised that "Loan Documents" were specifically defined, in Clause 1.1, as meaning (a) the three Loan Agreements dated 29th September, 2015, (b) the Security Documents, and (c) all other agreements, or documents, relating to the Loan/Borrower's Dues. The five tabulated Loan Agreements were not, therefore, "Loan Documents", within the meaning of Clause 1.1.*

(xi) Clause 3.1.1 required the Borrower to repay the entire loan and interest thereon to the lender, in the manner specified by the lender, along with interest on the loan or outstanding part thereof, if any.

(xii) Clause 3.1.4 obliged the obligors to pay *the Borrower's Dues* and other monies payable under the Loan Documents.

(xiii) Clause 3.1.5 required the Borrower to issue and handover, to the lender, post-dated cheques for repayment/payment of the loan and interest.

(xiv) Clause 4A stipulated that no notice, reminder or intimation would be given to the obligors regarding their obligation to repay/pay *the Borrower's Dues*, the responsibility whereof was entirely on the obligors.

(xv) Clause 5 empowered the lender to require the Borrower to repay *the Borrower's Dues* immediately or in a short-term, and obligated the Borrower to repay *the Borrowers dues*, as so required by the lender.

(xvi) For the aforesaid purpose, Clause 9.2 required the Borrower to cause the obliger to execute, in favour of the lender, any additional deeds or documents, *in respect of the loan, the security or the Borrowers Dues*.

(xvii) Among the events of default, envisaged by Clause 12 of the Loan Agreement, were

(a) non-payment of *the Borrower's Dues*, or part thereof and/or any amount payable *pursuant to the Loan Documents*, and

(b) any event or circumstance, having a Material Adverse Effect, or adversely affecting the ability of the obligors to perform their obligations *under the Loan Documents* or to pay/repay *the Borrower's Dues* or any part thereof.

(xviii) On such an event of default occurring, the lender was empowered, by clause 12.2 to recall the loan. Such recall resulted in *the Borrower's Dues becoming immediately repayable/payable by the obligors*. In case the net sum realised by enforcement of security was insufficient to cover *the Borrower's Dues*, the obligors undertook to pay, to the lender, the shortfall therein.

(xix) Similarly, Clause 12.3 empowered the lender, in the event of the Borrower failing to pay *the Borrower's Dues* or on happening an event of default, to apply any other amounts standing to the Borrower's credit in any account of the lender, towards payment of *the Borrower's Dues*.

31. The golden thread, which runs through the Loan Agreements, dated 29th September, 2015, is, clearly, payment/repayment of *the Borrower's Dues*. The “Borrower's Dues” were defined as the

amounts payable by obligors to the lender under the Loan Documents or under any other agreements entered into between the obligors and the lender.

32. Insofar as the controversy in issue is concerned, the only documents, entered into between the petitioner and the IHFL, were the three Loan Agreements, dated 29th September, 2015. The petitioner was, admittedly, not a party to any of the five tabulated Loan Agreements. The “loan”, too, was defined as the loan amount mentioned in Schedule I to the Loan Agreement, dated 29th September, 2015.

33. Similarly, the Loan Agreements, dated 29th September, 2015, the security documents and other agreements/documents, pertaining/relating to the loan/or the Borrower’s Dues, were defined as “Loan Documents”. *Prima facie*, therefore, the submission, of Mr. Sethi, that “Group Borrower’s Dues” were also subsumed by the three Loan Agreements, dated 29th September, 2015, does not commend acceptance.

34. Mr. Sethi has, however, predicated his submission on

- (i) the definition of “Group Borrowers Dues” in Clause 1.1 of the Loan Agreements, dated 29th September, 2015,
- (ii) Clause 2.3 of the Loan Agreements, which dealt with the Security Cover to be provided by the Borrowers/Pledgors, and
- (iii) Clause 15, which dealt with cross-liability.

35. Mr. Sethi acknowledges the fact that the petitioner was not a party to any of the five tabulated Loan Agreements. Mr. Sethi's submission is that the loans, under the said agreements, were advanced by IHFL, or its associate company IBCC, to the associated companies of Sunil Goel and were, therefore, part of the "Group Borrower's Dues" as defined in Clause 1.1 of the Loan Agreements dated 29th September, 2015. These loans, too, therefore, Mr Sethi would seek to submit, were required to be secured by the obligors to the said Loan Agreements, including the security provided by the petitioner, in the form of the shares of Omaxe Ltd, held by him.

36. A juxtaposed reading of the various clauses of the Loan Agreements dated 29th September, 2015, however, does not lend itself to such an interpretation.

37. The definition of "Group Borrower's Dues" as contained in Clause 1.1 of the Loan Agreements, dated 29th September, 2015, being a definition clause, has no independent existence, isolated from the covenants of the Loan Agreements, in which the expression finds place. It is well-settled that recourse and reference, to a definition clause, whether in a statute or in a contractual document, would be inappropriate, divorced from the statutory, or contractual covenant, wherein the expression, so defined, finds mention. Definition clauses are only aids to interpretation of the substantive clauses of the statutory or contractual instrument, and have no independent existence or applicability.

38. In order to appreciate the submission of Mr. Sethi, *qua* the definition of “Group Borrower’s Dues”, as contained in Clause 1.1 of the Loan Agreements dated 29th September, 2015, it would be necessary, therefore, to refer to Clause 2.3, wherein the expression “Group Borrower’s Dues” finds place, and on which Mr Sethi, too, relies.

39. Mr. Sethi has placed great emphasis on the opening sentence of Clause 2.3, which reads thus:

“The borrower(s) and/or the co-Borrower(s) shall, and/or shall cause the obligor(s) to maintain the security cover as stipulated in Schedule I, hereunder, at all times during the validity of the Loan Documents.”

What, therefore, was required to be secured, by the security provided by the obligors to the Loan Agreements dated 29th September, 2015, was, submits Mr. Sethi, not merely the loans advanced under the said Loan Agreements, but also the security cover as stipulated in Schedule I thereto.

40. This stipulation, in clause 2.3, cannot, however, help Mr. Sethi, as Schedule I to each of the Loan Agreements, dated 29th September, 2015, refers *only* to the amount of loan advanced under the said Loan Agreements, i.e. to the amounts of ₹ 65 crores, ₹ 65 crores, and ₹ 20 crores respectively. Viewed thus, the opening sentence of Clause 2.3, in fact, militates *against* the submission of Mr. Sethi, as it makes it abundantly clear that the security cover, required to be provided under each of the Loan Agreements, dated 29th September, 2015, was only required to cover the loan advanced under such Loan Agreement, and

not under any other Loan Agreement, including any of the five tabulated Loan Agreements.

41. Mr. Sethi has also invited my attention to the second (unnumbered) para of Clause 2.3 of the Loan Agreement, dated 29th September, 2015, which reads thus:

“In addition to the aforesaid security cover, the Borrower(s) and/or and co-borrower(s) shall, and/or shall cause the pledgor(s) to maintain a margin of at least 108.33% *of the Group Borrowers Dues* at all times during the validity of the Loan Documents.”

(Emphasis supplied)

According to Mr. Sethi, this stipulation, as contained in Clause 2.3, seals the case of the petitioner, as it required the pledgors to maintain a margin of at least 108.33% *of the Group Borrower's Dues* during the validity of the Loan Agreement dated 29th September, 2015.

42. Mr. Sethi seeks to juxtapose this stipulation with the definition of “Group Borrowers Dues” as contained in Clause 1.1, to submit that the loans payable under the tabulated Loan Agreements, also partook the character of “Group Borrower's Dues” as defined in the said Clause, thereby rendering the petitioner liable to provide security cover to maintain a margin of at least 108.33% *thereof*, during the validity of the Loan Documents. Liquidation of the loan, advanced under the three Loan Agreements, dated 29th September, 2015, therefore, Mr. Sethi would seek to submit, does not eviscerate this responsibility of the Pledgors – including the petitioner – emanating from Clause 2.3 of the Loan Agreements dated 29th September, 2015.

43. This submission of Mr. Sethi, too, though attractive at first blush, fails, on a deeper reading, to convince.

44. The error in the submission of Mr. Sethi is primarily attributable to the sentence which immediately follows the afore-extracted sentence from the second para of clause 2.3, which reads as under:

“For this purpose only the value of pledged/charged shares (which are listed on Stock Exchanges in India), pledged in favour of the lender *to secure the Group Borrower’s Dues*, shall be taken into consideration, at all times during the validity of the Loan Documents.”

(Emphasis supplied)

The responsibility of the Pledgors to ensure maintenance of 108.33% of the Group Borrower’s Dues was, therefore, to be reckoned on the basis of the shares pledged in favour of IHFL *to secure the Group Borrower’s Dues, alone*. A distinction becomes immediately apparent, between the shares, in Omaxe Ltd., held by the petitioner, and the shares in Omaxe Ltd., held by Guild Builders Ltd., both of which were pledged with IHFL, under the Loan Agreements dated 29th September, 2015. While the shares of Guild Builders Ltd. were pledged, not only to secure the Borrower’s Dues under the Loan Agreements, dated 29th September, 2015, but also as security under the tabulated Loan Agreements, the shares of the petitioner were pledged as security, *only to secure the Borrower’s Dues under the Loan Agreements, dated 29th September, 2015*, and *not* the Group Borrower’s Dues.

45. Even if, therefore, it were to be assumed, *arguendo*, that the loans advanced under the five tabulated Loan Agreements were “Group Borrower’s Dues”, the shares of the petitioner held in Omaxe Ltd., pledged with IHFL to secure the loans advanced under the three Loan Agreements, dated 29th September, 2015, not having been pledged against the loans advanced under any of the five tabulated Loan Agreements, their value would not be taken into account, while operating the second para of Clause 2.3 (*supra*). The submission, of Mr. Sethi, that the pledged shares, forming subject matter of the present petition, also secured the loans advanced under the five tabulated Loan Agreements, therefore, would be liable to fail even on this ground.

46. That apart, when one refers to the definition of “Group Borrower’s Dues”, as contained in Clause 1.1 of the Loan Agreements dated 29th September, 2015, it would be seen that, in order for amounts payable to IHFL, under any other agreement, to be liable to be treated as “Group Borrower’s Dues”, two conditions are cumulatively required to be satisfied, viz.

- (i) that the documents, whereunder the said amount was payable to IHFL, was executed between IHFL or its associate entity/entities, and the obligor(s) or its/their associate entity/entities, and
- (ii) that the security, under the Loan Documents, was also a security under the said “other” Loan Agreement/Loan Document.

47. Neither of these requirements, properly assessed, stands satisfied in the present case, insofar as the five tabulated Loan Agreements are concerned. In the first place, as Mr. Rao correctly points out, the petitioner, Sunil Goel, being an individual, it would be difficult to hold that Guild Builders, Omaxe Ltd. or Garv were his associated entities. The concept of “associated entities” necessarily predicates corporate or quasi-corporate entities, and not individuals vis-à-vis corporate entities. Secondly, the applicability of the definition of “Group Borrower’s Dues”, to amounts payable under documents other than the three Loan Agreements dated 29th September, 2015, necessarily requires, as its *sine qua non*, commonality of the security, under the said Loan Documents, vis-à-vis the three Loan Agreements dated 29th September, 2015. The intent behind this stipulation, which is apparent, would stand entirely defeated, were the submission of Mr. Sethi be accepted. For security, under the Loan Agreements, to also cover liabilities, towards IHFL, relating to other Loan Agreements or Loan Documents, there had, necessarily, to be commonality of the said security, between/among the Loan Documents in question. In other words, it is only such security, under the Loan Agreements dated 29th September, 2015, as expressly secured the loans advanced under other Loan Documents, which could operate as security under such Loan Documents as well. It is only thus, that the concept of commonality of security can operate. This stipulation, as expressly and consciously engrafted in the definition of “Group Borrower’s Dues”, in Clause 1.1 of the Loan Agreements dated 29th September, 2015, completely militates against treating the shares in Omaxe Ltd. held by the petitioner and pledged

as security under the Loan Agreements dated 29th September, 2015, being treated as security under any other Loan Documents, unless the loans advanced under such Loan Documents expressly stand secured by such shares. The shares held by the petitioner in Omaxe Ltd., pledged with IHFL as security for the loan, covered by the three Loan Documents dated 29th September, 2015, not having been pledged against the loan advanced under any other Loan Document, cannot be treated as security under such other document. The loan amounts, payable under such documents, cannot, therefore, be regarded as “Group Borrower’s Dues”, as defined in Clause 1.1 of the Loan Agreements dated 29th September, 2015.

48. Proceeding, now, to the “Cross Liability” provision, contained in Clause 15 of the Loan Agreements dated 29th September, 2015, a holistic reading of the said clause, in my view, would entitle IHFL, as the lender, to exercise its rights under the Loan Agreements, consequent on a breach/default under any other agreement, only if such other agreement is between the obligor (or its associate entity) and any of the IndiaBulls’ Companies, *qua the security provided by such obligor*. The very concept of cross-liability or cross-collateralisation, as applicable to commercial contracts, predicates reciprocity of security and commonality of the parties to the contract. This is, even etymologically, apparent, as “cross-collateralisation” necessarily requires *the same collateral* being available, as security against more than one loan. “Cross-collateralisation”, as a concept known to commercial contracts, necessarily predicates the usage of the collateral, available as security against one loan, as collateral

against a second loan. If, however, the two loans are governed by independent loan agreements, the inclusion of a cross collateralisation clause, in one of them, cannot, *proprio vigore*, justify proceeding against the collateral, provided in the said loan agreement, for satisfaction of the loan in the other agreements, unless the said security is also collateral under such other agreements. It is open, to contractual parties, to provide for such a dispensation in the loan agreements. Absent such dispensation, however, the mere existence of a cross collateralisation, or cross liability, clause in one of the agreements, would be insufficient. It is, apparently, in awareness of this legal position, that the definition of “Group Borrower’s Dues”, as contained in Clause 1.1 of the Loan Agreements dated 29th September, 2015, incorporated a condition of commonality of security. In a similar vein, Clause 2.3 of the Loan Agreements dated 29th September, 2015, too, provides that, while reckoning 108.33% of the Group Borrower’s Dues, to be secured by the Security Cover, to be provided by the pledgors, only such securities, as are pledged against the Group Borrower’s Dues, would be taken into account. The mere existence of Clause 15, in the Loan Agreements dated 29th September, 2015, therefore, cannot justify the submission, of Mr. Sethi, that, even after liquidation of the loans advanced under the said Loan Agreements, the shares of the petitioner in Omaxe Ltd. should remain pledged with IHFL, despite such shares not having been secured against any Group Borrower’s Dues. At the cost of repetition, it may be pointed out that the shares of Guild Builders, pledged as security against the loans advanced under the Loan Agreements dated 29th September, 2015, stood on a different footing, as Guild Builders was

also obligor, under the five tabulated Loan Agreements.

49. That apart, Clause 15 can never operate, against an obligor, to any of the Loan Agreements dated 29th September, 2015, in respect of a default, under some other agreement, to which the obligor is not a party. In the present case, the situation is exacerbated by the fact that, of the five tabulated Loan Agreements, save and except for the Loan Agreement dated 30th June, 2017, all other Loan Agreements were executed after the petitioner had been ousted from the post of Joint Managing Director in Omaxe Ltd. The petitioner was, therefore, never associated with the execution of the tabulated Loan Agreements, and was not even a director in Omaxe Ltd. at the time of execution of four out of the five tabulated loan agreements, and it would be preposterous, therefore, to treat the shares, pledged by the petitioner with IHFL as security for the loans advanced under the Loan Agreements dated 29th September, 2015, also as security under the tabulated loan agreements, executed after the petitioner ceased to be a director in any of the companies in question, and to the execution of which the petitioner was a complete stranger.

50. Construction of the covenants of commercial contracts, it is well settled, has to be guided by commercial sense.¹ The manner in which Mr. Sandeep Sethi would seek to juxtapose the definition of “Group Borrower’s Dues” as contained in Clause 1.1, with Clauses 2.2, 2.3 and 15, of the Loan Agreements dated 29th September, 2015, in the opinion of this Court, is opposed to all basic tenets of

¹ Vedanta Ltd v. Shenzhen Shandong Nuclear Power Construction Co. Ltd, MANU/DE/3139/2018

commercial common sense. On their face, therefore, these submissions cannot be accepted.

51. The need to interpret, in any greater detail, Clause 15 of the Loan Agreements dated 29th September, 2015, is obviated by Clause 2.4 of the said Loan Agreements, which obliges IHFL to, forthwith, release the security created by the obligors – including the petitioner – consequent on repayment of *the entire borrower's dues* and fulfilment of all the obligations of the obligors *under the Loan Documents*. This stipulation, which expressly covers the release of the security pledged under the Loan Agreements dated 29th September, 2015, therefore, militates, conclusively, against the submission of Mr. Sandeep Sethi, that, *even after liquidation of the loans advanced under the said Loan Agreements*, the shares of the petitioner, pledged with IHFL, should not be released.

52. That apart, IHFL, in its communication, dated 5th September, 2018 *supra* to the petitioner, has itself emphasised, in the following passages, the above position, as is manifest by the italicised words therein. The said communication may be reproduced, for ready reference, thus:

“Date: 05.09.2018

To

Mr. Sunil Goel
Farm No. 37C, Radhey Mohan Drive,
Bandh Road, Asola, Fatehpuri Beri,
South Delhi, New Delhi – 110 074

Dear Sir,

Ref: Your letter(s) dated August 6, 2018 and August 14, 2018 addressed to, inter alia M/s Indiabulls Housing Finance Limited ("IHFL") for release of (a) shares of Omaxe Limited pledged by Mr. Sunil Goel in favour of IHFL ("Said Shares") and (b) the guarantee (s) provided by Mr. Sunil Goel in favour of IHFL ("Said Guarantee(s)") in connection with the loan(s) availed by M/s. Omaxe Forest Spa and Hills Developers Limited ("Borrower(s)") from IHFL.

This has reference to the captioned letter(s).

At the outset, we deny the allegations made against us in your captioned letter(s). You have raised these issues earlier as well and we have already responded to you including vide our letter dated November 23, 2017. In relation to the same, we wish to reiterate the Said Shares and the Said Guarantee(s) provided by you *cannot be and shall not be released till the loan(s) availed by the Borrower(s) from IHFL ("Loan(s)") are repaid in full as per the provisions of the Loan Documents relating to the Loan(s) ("Loan Documents")*.

Further, kindly note that it is the discretion of IHFL to decide whether or not any security shall be released (including which security shall be released, if any) till the obligations under the Loan Documents are fulfilled/complied with by the Obligor(s). Without prejudice to the foregoing, since you have claimed in the captioned letter(s) that you hold/control (directly or indirectly) more than 25% shares of M/s. Guild Builders Private Limited, you have benefitted due to release (by us) of pledge on some of the shares held by M/s. Guild Builders Private Limited.

In relation to your allegation of cross-collateralization of the Said Shares and the Said Guarantee(s) for the other loan(s) availed by M/s. Omaxe Limited and/or its group companies without your consent, we deny such charges. We confirm that the Said Shares and the said Guarantee(s) are security for the loan(s) mentioned in the Loan Documents executed by you (e.g. pledge agreement(s) and the guarantee deed(s)).

Your purported dispute(s)/differences with Mr. Rohtas Goel or that you are no longer the JMD of Omaxe Limited or that you no longer part of the management of Omaxe Limited *have no bearing on your obligations under such documents executed by you in our favour*. Please note that you are, and shall continue to be, bound by the documents executed by you in our favour including the pledge document(s) and the guarantee deed(s). Without prejudice to the aforesaid, it is noted that you have acknowledged in your captioned letter(s) that you (and your family members) are still a promoter-shareholder of Omaxe Limited (holding/controlling around 20% shares directly or indirectly, as claimed by you) and the Borrower(s) is a subsidiary of Omaxe Limited.

As per the contents of the captioned letter(s), it is clear that you are trying to wriggle out of your obligations under the Loan Documents executed by you and that you have an intention to repudiate such Loan Documents. In view of this, we may treat this as an Event of Default underclause 12.1.6 of the Loan Agreement(s) relating to the Loan(s) and consequently we shall be entitled to recall the entire outstanding Loan(s) and the Borrower's Dues and upon failing to pay the recalled amount(s) by the Obligor(s) to the Lender, we shall be entitled to, *inter-alia*, enforce/sale/transfer/assign all securities/collateral including the said Shares and the said Guarantee(s).

We, therefore, request you to stop harassing us by writing to us time and again with the same request/issues.”

53. The email dated 16th June, 2020, addressed by IHFL to the petitioner also emphasised this position, by stipulating thus:

“Dear Sir

This is in reference to your various communications addressed to us, with respect to below loans, we hereby confirm that upon receipt of the payment towards full and final closure for following dues (as on date) to Indiabulls Housing Finance Limited, *we would release the security associated with these loans.*”

(Emphasis supplied)

54. The reliance, by Mr. Rao, on the covenants of the Pledge Agreement, contemporaneously drawn up, with the three Loan Agreements, on 29th September, 2015, is also, in my opinion, well taken. Before advertizing thereto, it would be appropriate to reproduce the relevant clauses, of the Pledge Agreement, thus:

(i) At the very commencement of the Pledge Agreement, it was stipulated thus:

“The Pledgor(s) has/have agreed to create a first-ranking and *exclusive pledge/charge* on the Pledged/Charged Shares in favour of the Lender to secure the Secured Obligations in consideration of the Lender agreeing to lend/having lent their Loan(s) pursuant to the Loan Agreement(s) and the related Loan Documents. The pledge/charge created herein in favour of the Lender over the Collateral by the Pledgor(s) is a first-ranking and *exclusive pledge/charge*.”

(Emphasis supplied)

(ii) “Secured Obligations” was defined, in sub-clause (h) of Clause 1.1, thus:

“ **“Secured Obligations”** shall mean the Loan(s) together with all interests, default interests, costs, charges, expenses and other monies payable by the Obligor(s) to the Lender *under the Loan Agreement(s) and other Loan Document(s)*.”

(Emphasis supplied)

(iii) “Loan” was defined, in the same Clause, thus:

“ **“Loan(s)”** means the loan(s) of the total principal amount(s) as mentioned in Schedule IB hereunder disbursed or to be disbursed under the Loan Agreement(s) and the other related Loan Documents.”

(iv) Release of collateral, under the Pledge Agreement, was covered by Clause 17 thereof, which read thus:

“17 RELEASE

Promptly upon the occurrence of the Final Settlement Date, the Lender shall, at the Pledgor(s) cost and expense, release the Collateral from the pledge/charge granted hereby, and take the following steps (i) redeliver such of the Collateral as may be in the possession of the Lender and has not therefore been sold or otherwise applied or released; and (ii) redeliver the Pledged/Charged Shares and the powers of attorney executed in favour of the Lender marked ‘cancelled’.”

(v) “Final Settlement Date” was defined, in sub- clause c) of Clause 1.1, as having “the meaning ascribed to it in Clause 2.6 of the Agreement”. Clause 2.6 read, for its part, thus:

“2.6 Waivers and Acknowledgements

The Pledgor(s) hereby waive its/his/her/their right to, and shall not, revoke this Agreement (and the pledge/charge created hereunder in favour of the Lender) until the Secured Obligations have been paid in full to the satisfaction of the Lender and there are no outstanding obligations of the Obligor(s) under the Loan Documents (“**Final Settlement Date**”).”

(vi) To make matters more explicit, Clause 3 provided thus:

“3 CONTINUING SECURITY

This Agreement and the security created hereunder, is and shall be a continuing security and shall remain in full force and effect *until the Final Settlement Date*, notwithstanding any

intermediate payment or satisfaction of the whole or any part of the Secured Obligations or the insolvency or liquidation or any incapacity or change in the constitution or the status of the Pledgor(s) or any intermediate settlement of account. The pledge and charge created under this Agreement is in addition to and independent of the security created in accordance with the terms of the other Loan Documents or the enforcement thereof, or any other action that may be commenced against the Pledgor(s) or any person by the Lender or its nominee(s) and any such other security shall not in any way be prejudiced or affected by this Agreement.”

(Emphasis supplied)

55. Clause 17 of the Pledge Agreement, therefore, obligated IHFL to release the collateral – including the pledged shares of the petitioner – on the occurrence of the Final Settlement Date. The date of payment of the secured obligations, under the Pledge Agreement, in full, was to be treated as “Final Settlement Date” under Clause 2.6 of the Pledge Agreement read with the definition of “Final Settlement Date” in Clause 1.1 thereof. “Secured obligations” was defined, in sub-clause (h) of Clause 1.1 of the pledged agreement as meaning the loan (with interests, costs and other monies, etc.) payable by the obligor/obligors to IHFL *under the Loan Agreement and other Loan Documents*. “Loan” was in turn, defined as the loan of the total principal amounts as mentioned in Schedule IB of the pledge agreement disbursed under the Loan Agreement and other related Loan Documents.

56. *Schedule IB to the Pledge Agreement referred only to the three*

Loan Agreements dated 29th September, 2015 whereunder, loans of ₹65 crores, ₹65 cores and ₹20 crores, which had been advanced by IHFL to Omaxe Forest Spa and to no other document.

57. Clause 2.1 of the Pledge Agreement, in a similar vein, stated, clearly, that the Pledge Agreement secured the obligations, of the obligors, only under the Loan Documents. Clause 3 further clarified that the Pledge Agreement would remain in force till the Final Settlement Date, and not thereafter.

58. A cumulative reading of the aforesaid covenants of the Pledge Agreement make it apparent that, with the amounts of ₹ 65 crores, ₹65 cores and ₹20 crores having been repaid to IHFL, the Final Settlement Date, for the purposes of the Pledge Agreement had been reached, IHFL was duty bound, therefore, to release the pledged shares, including the shares of Omaxe Ltd., held by the petitioner.

Conclusion

59. The attempt of Guild Builders, to oppose the release of the shares in Omaxe Ltd., held by the petitioner and pledged by the petitioner as security against the loans advanced under the three Loan Agreements dated 29th September, 2015, therefore, has necessarily to fail.

60. In view thereof, IHFL is directed to release, forthwith, the shares in Omaxe Ltd., held by the petitioner and pledged against the loans forming subject matter of the three Loan Agreements dated 29th

September, 2015.

61. I.A. 4942/2020 and I.A. 4943/2020, filed by Guild Builders, therefore, are dismissed, and O.M.P.(I) (COMM.) 142/2020, filed by the petitioner Sunil Goel stands disposed of accordingly, with no orders as to costs.

62. Interim applications, if any, do not survive for consideration and are, accordingly, disposed of.

AUGUST 31, 2020

HJ

kr/dsn

C. HARI SHANKAR, J.



नित्यमेव जयते