

ORDER SHEET

OC-1

APOT/66/2022
WITH CS/67/2022
IA NO:GA/1/2022

IN THE HIGH COURT AT CALCUTTA
CIVIL APPELLATE JURISDICTION
ORIGINAL SIDE

IN THE MATTER OF:
MANAV INVESTMENT AND TRADING COMPANY LIMITED
VS.
DBS BANK INDIA LIMITED
.....

BEFORE:

The Hon'ble JUSTICE I. P. MUKERJI

The Hon'ble JUSTICE ANIRUDDHA ROY

Date : 11th April, 2022

*Mr. Dhruvo Ghosh, Sr. Adv.,
Mr. Anirban Ray, Mr. Rajashi Dutta, Mr. V.V. Sastry,
Mr. Debjoyti Saha, Mr. Pankaj Agarwal,
Ms. Paramita Maity, Advs..for appellant.*

*Mr. Jishnu Saha, Sr. Adv.,
Mr. Sakabda Roy, Ms. Trisha Mukherjee, Advs...for respondent.*

The Court : We do not want to keep this appeal pending. We have heard it out, dispensing with all formalities.

The appellant is the pledgor of shares of Birla Tyres Ltd. [BTL] today, worth about Rs.14 crores. These shares were pledged with the respondent bank to secure their loan from the bank.

By a notice dated 23rd February, 2022 the appellant was given time to pay Rs.15,87,50,000/- by noon of 16th March, 2022. In default, the respondent would proceed to sell the shares. By another notice of the same date the appellant was called upon to pay the entire outstanding amount of Rs.70,17,15,582.20 by noon of 16th March, 2022, failing which the remaining pledged shares would be sold.

The very short question which arises in this appeal is whether the notices of invocation of the pledge dated 23rd February, 2022 can be construed as reasonable notice to sell the pledged goods as provided in section 176 of the Indian Contract Act, 1872 ?

Sections 176 and 177 of the said Act enact as follows :

“176. Pawnee’s right where pawnor makes default.—If the pawnor makes default in payment of the debt, or performance; at the stipulated time or the promise, in respect of which the goods were pledged, the pawnee may bring a suit against the pawnor upon the debt or promise, and retain the goods pledged as a collateral security; or he may sell the thing pledged, on giving the pawnor reasonable notice of the sale.

If the proceeds of such sale are less than the amount due in respect of the debt or promise, the pawnor is still liable to pay the balance. If the proceeds of the sale are greater than the amount so due, the pawnee shall pay over the surplus to the pawnor.

177. Defaulting pawnor’s right to redeem.—If a time is stipulated for the payment of the debt, or performance of the promise, for which the pledge is made, and the pawnor makes default in payment of the debt or performance of the promise at the stipulated time, he may redeem the goods pledged at any subsequent time before the actual sale of them, but he must, in that case, pay, in addition, any expenses which have arisen from his default.”

Mr. Ghosh, learned senior counsel appearing for the appellant submitted that by the aforesaid notices time was extended by the bank to make the aforesaid payment by noon of 16th March, 2022. If payment was made by his client by that time, it would be taken that the right to redeem had been exercised. If there was failure reasonable time ought to have been given to the appellant from 16th March, 2022 to make the payment. By the above notices the respondent sought to exercise their right of sale immediately upon the default of the appellant at noon of 16th March, 2022.

Sections 176 and 177 of the said Act recognizes two rights. The first is the right of the pledgee to sell the article pledged upon reasonable notice to the pledgor. This is independent of the right of the pledgor to redeem the goods pledged at any point of time before sale is effected by the pledgee. In our view, the said two notices issued by the pledgee/respondent are exercise of the first right and at the same time an opportunity given by them to the pledgor to exercise the second right. In other words, the notice is that the sale would be effected at any point of time after noon of 16th March, 2022 and that the pledgor would have the option to redeem the shares before that time. We find nothing wrong or irregular in the said notices.

However, for whatever reasons the shares of the appellant are with the respondent for some period of time. Since the complaint of the appellant/pledgor is only with regard to the reasonableness of the notice and to be more specific the

length of the notice, we direct that provided the price of shares which is prevailing today at this point of time [Rs.23.95] does not fall, the pledgee shall refrain from selling the shares till 21st April, 2022 to give an opportunity to the appellant for the last time to redeem the pledged shares. If there is fall in the share price to Rs.23.50 or below, the respondent would be free to sell them in terms of the agreement between the parties.

Provided further that if the appellant, at any point of time before the sale of shares is able to furnish an automatically renewable bank guarantee of Rs.14 crores in favour of the respondent and to their satisfaction, the respondent would refrain from giving effect to the earlier part of this order and retain the bank guarantee with the pledged shares.

At this point of time Mr. Saha, learned senior counsel for the respondent submits that his client be given the liberty of encashing the bank guarantee furnished. We are of the view that encashment of the bank guarantee would tantamount to granting the final relief in the suit or part of the final relief in the suit. However, Mr. Saha's client would be at liberty to encash the bank guarantee provided an automatically renewable counter guarantee of the same amount is furnished with the learned Registrar, High Court, Original Side before encashment of the bank guarantee furnished by the appellant.

Any observation made in this appeal shall be taken only as an observation disposing of an interim application finally.

The impugned judgment and order is substantially affirmed and modified by the above order.

The appeal and the stay application are disposed of accordingly.

(I. P. MUKERJI, J)

(ANIRUDDHA ROY , J)