



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

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Judgment reserved on: December 21, 2023

Judgment pronounced on: February 06, 2023

+ **FAO(OS) (COMM) 244/2023, CM APPL. 57267/2023, CM APPL. 57269/2023**

RAHUL DILIP SHAH

..... Appellant

Through: Ms. Poojam Saigal with Mr. Varun Garg, Mr. Prashant Jain, Ms. Kriti Bhardwaj, Ms. Nitya Prabhakar Advocates.

versus

CATALYST TRUSTEESHIP LIMITED & ORS. Respondents

Through: Mr. Amit Agrawal, Mr. Rahul Kukreja, Ms. Sana Jain, Advocates for R- 1.

Mr. Kotla Harshavardhan, Ms. R. Arora, Ms. Gayatri Gupta, Advocates for R-2.

Mr. Munawwar Naseem and Ms. Namrata Lahgade, Advocates for R-3.

CORAM:

HON'BLE MR. JUSTICE SURESH KUMAR KAIT

HON'BLE MS. JUSTICE SHALINDER KAUR

J U D G M E N T

SHALINDER KAUR, J.

1. The present first appeal under Section 13 of the Commercial Courts Act, 2015 read with Section 10 of the Delhi High Court Rules emanate from the Order dated 20.10.2023 (hereinafter referred as 'impugned order') passed by the learned Single Judge of this Court in CS (COMM) No. 108 of 2022.



2. Vide the impugned order, the learned Single Judge dismissed the Application, I.A no. 16191 of 2023 under Section 151 of the Code of Civil Procedure, 1908 (hereinafter referred as 'CPC'), whereby the appellant sought ad interim directions permitting him to exercise his voting rights with respect to his 32,82,720 equity shares ('Pledged Shares') in the respondent no. 3 Company, in the proposed meeting of the equity shareholders of respondent no. 3 scheduled on 27.10.2023.

3. In order to effectively deal with the issue as stated by the appellant, it would be necessary to elaborate on the facts of the present case.

4. The Appellant is a citizen of the USA and claims ownership of the 32,82,720 equity shares ('Pledged Shares') amounting to 26% of the total paid up capital of the Respondent No. 3.

5. The Respondents No. 1 & 2 are companies incorporated under the Companies Act, 2013 and are duly registered as a Debenture Trustee under the Securities Exchange Board of India (hereinafter referred to as 'SEBI').

6. A Debenture Trust Deed (hereinafter referred to as 'DTD') was executed between Respondent No.1 and Respondent No.3 on 07.08.2017, for a loan of Rs. 75,00,00,000/-. By means of the DTD, respondent no. 3 issued secured, taxable, redeemable Non-Convertible Debentures (hereinafter 'NCD') in the favor of Respondent No. 2. At a subsequent time, respondent no.2 proceeded to transfer these debentures to various third parties in its capacity of a Debenture Holder. A majority amount of the said loan was to be utilized by Respondent No.3 to acquire Nova Techset



Limited (hereinafter referred to as 'Nova') and the balance amount was to be utilized for general corporate purposes.

7. The Appellant, to secure debt of the Respondent No.3 as per the DTD, pledged 26% of his shares in the company as collateral, acting in the capacity of promoter and managing director of the Respondent No.3. To secure the same, the Appellant and the Respondent No.1 entered into a 'Unattested Share Pledge Agreement' (hereinafter referred as 'SPA') on 08.08.2017. Debt was also secured by Hypothecation and charge created over the Bank accounts of Respondent No.3, hypothecation and charge created over the Bank accounts of Nova and also by way of pledge of Respondent No.3's shareholding in Nova. Pertinently, Nova is a subsidiary of Respondent No.3, which holds 99.98% of shareholding in Nova.

8. It was pointed out in the appeal, the Respondent No.3 had not defaulted in making timely payments in accordance with DTD towards the loan advanced by respondent no. 1 up until 2019 but due to a severe liquidity crunch, Respondent No.3 lacked sufficient funds to pay the second and third instalments which were due on 30.09.2019. To avoid a default in payment due to the same, the Respondent No.3 entered into an amendment to the DTD on 27.09.2019 ('First DTD Amendment'). Subsequently, Respondent No.3 and Respondent No.1 executed a second amendment to the DTD on 21.08.2020 ('Second DTD Amendment') whereby the repayment schedule was revised and the time for repayment was extended from 30.10.2024 to 31.10.2025.



9. Thereafter on 13.01.2022, The Respondent No.1 addressed a Notice of 'Event of Default' to the Respondent No.3, stating the instances of default as committed by the said Respondent. By the said notice, Respondent No.1 asked Respondent No.3 to repay the amount of INR 59,42,94,919/- in lieu of the outstanding principal amount, interest and default interest under the DTD, along-with future interest thereon until repayment. On the same day, i.e. 13.01.2022, the Appellant tendered his resignation from the managerial and directorial position in the Respondent No.3 company as well as all its subsidiaries. The Respondent No.1 thereafter issued an Invocation Notice dated 03.02.2022, invoking the pledged shares i.e the Pledge created by the Appellant over the pledged shares under the SPA and the pledge created over the NOVA pledged shares under Section 176 of the Indian Contract Act 1872 (hereinafter referred to as 'The Act'). These shares were thereafter transferred to the Demat accounts of Respondent No.1.

10. Aggrieved by the above mentioned actions of the Respondent No.1, the Appellant filed a suit, CS(COMM) 108 of 2022, seeking a permanent injunction restraining the Respondents No.1 and Respondent No.2 from selling, disposing of or creating any third-party rights in terms of the pledged shares. Vide order dated 16.02.2022, the Respondents were directed to maintain status quo with respect to the Appellant's pledged shares. The Respondent No.1 then preferred an appeal against the said order, FAO(OS)(COMM) No.56 of 2022 which was allowed vide order dated 04.03.2022 and the order dated 16.02.2022 was set aside.

11. Furthermore, the Respondent No.3 had also filed a suit, CS(COMM) 138 of 2022 in relation to the invocation of pledged shares of NOVA, which



have been pledged by the Respondent No.3 to Respondents No. 1 & 2 as collateral for the amounts payable under the DTD dated 07.08.2017. The parties of the said suit were however able to arrive at an amicable solution and the suit was withdrawn by the Respondent No.3 on 15.11.2022. As per appellant that vide communication dated 06.05.2023, respondent no. 3 forwarded a copy of consolidated financial statements of the company for the financial year 2021-2022 alongwith the report of the independent auditor, that appellant came to know that restructuring of the DTD has taken place with effect from 01.08.2022.

12. On 14.08.2023, the Appellant in his capacity of a shareholder in the Respondent No.3 company, received a notice for convening the meeting of equity shareholders of the Respondent No.3 company pursuant to the orders dated 01.06.2023 and 03.08.2023 passed by the learned NCLT, Mumbai. As per the notice, the agenda of the meeting was to get the consent of 75% of the total equity shareholders by the way of E-voting in order to consider and pass a resolution to approve the 'Composite Scheme of Arrangement' between Respondent No.3, NOVA and Panacea Infotech Pvt Ltd (a third party transferor company). In the said scheme, it was stated that Respondent No.3 and Respondent No.2 (through Respondent No.1) entered into a Term Sheet dated 31.01.2023 for restructuring the debt under the DTD.

13. Pursuant to the said notice, the Appellant on 23.08.2023, filed I.A No.16191 of 2023, inter alia, seeking urgent ex-parte ad-interim orders/directions permitting the Appellant to exercise voting rights in relation to his equity shares, in the meeting to be held on 15.09.2023 as well as any other proceedings connected to the same arrangement. The Respondents No.1 & 2



filed their replies to the same and also placed on record, the Term Sheet dated 31.01.2023.

14. Furthermore, the learned NCLT, Mumbai, on an application moved by the Appellant challenging the meeting, ordered fresh notice dated 26.09.2023 to be issued regarding the meeting to be held on 27.10.2023. On an appeal filed by the Appellant Group, Company Appeal (AT) No.208 of 2023, the learned NCLAT vide its order dated 20.10.2023, directed that the meeting of equity shareholders which was to be held on 27.10.2023 be held after the next date of hearing before the learned NCLAT i.e. 21.11.2023

15. It is the case of appellant in CS (COMM.) No. 108/2022 before the learned Single Judge of this Court that 'Composite Scheme of Arrangement' entered into between the defendant no. 3, Nova and Panacea Infotech Pvt. Ltd. is highly detrimental to his interest as the decision of defendant no. 3 to hive off its E-Business Solutions Division to Nova would result in devaluation of his pledged shares to only about Rs. 12 lakhs. Accordingly, the appellant preferred the IA No. 16191 of 2023, being desirous of opposing the 'Composite Scheme of Agreement', for ad-interim relief, which was dismissed. It was in said circumstances, present appeal has been preferred.

Submissions of Appellant:

16. Ms. Poojam Saigal, learned counsel for the appellant has submitted that appellant has pledged his 26% shares in the respondent no. 3 company only as a collateral security and has not in any manner extended any guarantee for repayment of the amount under DTD, which is evident from



SPA and any right in respect of the pledged shares could be claimed by respondent no. 1 and respondent no. 2 only upon a default in the repayment of the loan. Moreso, there is no default as on date and 'Event of Default' including the one leading to the invocation of the Appellant's pledged shares admittedly stood cured. The debt in connection to which the shares had been pledged by the Appellant has been restructured and regularized with effect from 01.08.2022 and there is no 'Event of Default' any longer. Learned counsel submits that respondent no. 1 under the directions of respondent no. 2 had invoked the pledged shares on 04.02.2022, the position has since changed as respondent no. 3 is no longer defaulter and thus, the voting rights in the aforesaid pledged shares ought to be restored to the appellant and respondent no. 1 and respondent no. 2 cannot exercise any right over the pledged shares.

17. The learned counsel pointed towards the amended Term Sheet dated 31.01.2023, wherein it is provided that *except for the 'Event of Default' leading to the restructuring of the NCDs and which have since been cured, no other 'Event of Default' has occurred and is continuing on the date of the transaction.* It is also submitted that a similar condition was incorporated in the third amendment deed providing that the period between 01.08.2021 to 31.07.2022 is to be treated as the interim moratorium period during which non-payment of debenture amount or interest was not to be considered as a default and therefore there can be no 'Event of Default' existing as on date. Furthermore, even if there was any 'Event of Default' against the company post the Term Sheet or the Third DTD Amendment, as per the provisions of the DTD, Lenders are required to issue a fresh 'Event of Default' Notice.



Admittedly, no such notice was issued post the execution of the Term Sheet and Third DTD Amendment.

18. It was next submitted that the reliance placed on Section 176 of the Act is misplaced and inapplicable to the circumstances of the present case since Section 176 refers to cases where the pawnor is the debtor/borrower, which is not the present case. Learned counsel drew our attention to the judgments of the Hon'ble Supreme Court reported as ***Vistara ITCL (India) Ltd & Ors vs. Dinkar Venkatasubramanian & Anr.*** [(2023) 7 SCC 324] & ***PTC India Financial Services Ltd vs Venkateswarlu Kari & Anr*** [(2022) 9 SCC 704] and submitted the issue stands largely answered in principle by the Apex Court that in situations where the pledgor is not the borrower or guarantor, the liability of the pledgor is merely restricted to the value of the pledged shares. It was submitted that respondent no. 1 despite having invoked the pledged shares of which appellant continues to be owner, cannot claim any right in the pledged shares. To further consolidate the submissions, reliance was placed on the case of ***Ajoy Khanderia vs. Barclays Bank and Anr.*** (2021) SCC Online Del. 3740.

19. The learned counsel has sought to refer to Clause 17.9 of the SPA to contend that the Appellant is liable to pay the entire amount is untenable. The said clause does not provide that the liability of the pledgor will continue post the invocation of pledged shares and would be contrary to the legal position as settled by the Apex Court. Learned counsel further submits that appellant is not a party to the DTD and therefore his liability is only limited to the pledged shares and not beyond that. In case of any occurrence of 'Event of Default', as mentioned in Schedule IV, the company i.e. KSSL



will be in default and not the Appellant. The 'Event of Default' may be triggered by a promoter, key managerial personnel or by operation of law but the 'Event of Default' will always be that of the company.

20. It was submitted that the impugned order refers to a 'continuing event of default'. It would be incongruent to suggest that the 'Event of Default' will somehow continue for the Appellant when he is not even a party to the DTD and has no financial obligation to the same except to the extent of his pledge.

21. The learned counsel questioned the correctness of the recitals as appearing in the impugned order and more particularly submitting that in the impugned order, two 'Events of Default' have erroneously presumed by the learned Single Judge to be continuing 'Events of Default'. The first being the resignation of the Appellant as a director of the Respondent No. 3 company, however, the said fact was known to Respondents No, 1 & 2 as recorded in letter dated 14.01.2020 but not been treated as an 'Event of Default'. Secondly, the Appellant has not shown to be a promoter by the Respondent No.3 in its financial statement and the Third amendment to DTD which records that the appellant was a promoter, however, since appellant is not a promoter now, him being a willful defaulter or not, would not trigger an 'Event of Default'.

22. It is further submitted that the fact that the Appellant ceases to be a Director of KSSL on account of resignation cannot be held against him as the management of the Respondent No.3 company was going to remove the Appellant from its management. In order to save himself, the embarrassment



on account of the oppressive act of the majority shareholder, the Appellant resigned from the management control of KSSL.

23. The appellant further submits that the 'Composite Scheme of Arrangement' is illegal and grave prejudice would be caused to the Appellant, if he is not allowed to exercise his voting rights in connection with the same. The Scheme, which is sought to be approved by KSSL in collusion with respondent no 1 & 2, if passed would cause irreparable financial loss to the Appellant as the entire business of KSSL which is worth Rs.300 Crore will be hived off to Nova Techset Limited whilst the valuation of Respondent No.3 will be considered a mere Rs.53.2 Lakhs. The said valuation has been approved by Respondents No. 1 & 2, therefore, the entire scheme of arrangement is fraud, being played on the shareholders of respondent no. 3 company. This Scheme states that the 75 Crore Non-Convertible Debentures issued by KSSL will get transferred to NOVA and the 1.54 Crore equity share held by KSSL in NOVA will get cancelled. This would result in NOVA ceasing to be a subsidiary of KSSL and NTL will allot redeemable preference shares with no voting rights to the shareholders of KSSL.

24. The Appellant further states that even after raising an amount of 75 Crores through the DTD out of which 62 Crores were used for acquiring NOVA, the Valuation of the Respondent No.3 company is sought to be put merely to Rs.53 Lakhs. As per this valuation, the value of 26% pledged shares of the Appellant would approximately be Rs.13.83 Lakhs, if that is the case, the Appellant is willing to pay for it.



25. Finally, the Appellant states that in the event of him not being able to exercise his voting rights, the scheme would be approved by the majority shareholder in respondent no. 3 company. Respondent No 1&2 are working with KSSL which is being managed by the majority group and will cast a vote in favor of the scheme. Even if the Respondents No.1 &2 do not vote, the scheme would be approved by the majority share holder. Post the approval of the scheme, nothing substantial would be left in the KSSL and the subject matter will be eroded. This will cause grave loss to the appellant. With the debt being restructured and the 'Event of Default' being cured and the final settlement date being 31.10.2026, there is no loss that has been caused to the Respondent No.2 as on date. It was thus, submitted that impugned order be set aside and permit the appellant to exercise voting rights in relation to the 32,82,720 equity shares owned by the appellant in respondent no. 3 in the meeting of the equity shareholder of the respondent no. 3 company in connection with the 'Scheme of Arrangement'.

Respondent's submissions:

26. The Respondent No.1 is a SEBI registered intermediary acting for the interest of over 600 retail investors who are to be refunded monies. The Respondent No.1 contends that the learned Single Judge has committed no illegality in the impugned order, as long as a default exists, the Respondent No.1 is entitled to deal with the shares as if it is the owner thereof.

27. The Respondent No.1 submits that the debt has been reconstructed, however, that does not imply that the 'Event of Default' on behalf of the appellant does not continue to exist. In such event, the Respondents are to deal with the shares as if it were their own.



28. The Respondent No.1 also states that the parties had themselves agreed that if the Appellant ceases to be a director and is declared a willful defaulter, it would amount to an 'Event of Default'. Rights of the parties are governed by the terms of the DTD and parties are bound by the same. Learned counsel submits that this position stands expressly recognized by Clause 16 of the Schedule IV of the DTD, which clearly defines 'Events of Default' and despite the loan account of the respondent no. 3 having been regularized, the appellant continuous to be a defaulter as per Clause 16(a) and 15(g) of the abovementioned Schedule.

29. Having placed reliance on the judgment of the Apex Court, ***Maharashtra State Electricity Distribution Company Ltd vs. Maharashtra Electricity Regulation Commission and Ors*** (2022) 4 SCC 657, wherein the Apex Court observed that Courts cannot rewrite a contract mutually executed between the parties. It was submitted, the judgment states that courts cannot substitute their own view and presumed understanding of commercial terms by the parties if such terms are explicitly mentioned. The learned counsel thus submits, the 'Event of Default' indicated when the promoter seized to be a director in the company and when the pledgor is declared a wilful defaulter by any bank. The appellant has not only been declared a 'wilful defaulter' by Yes Bank but he also ceases to be a Director in respondent no. 3 company for having resigned. Thus, apparently 'Events of Default' continues to subsist and rights of voting rightfully reside with respondent no. 1.

30. Learned counsel further submits that since the 'Event of Default', the Respondent No.1 has been exercising voting rights in terms of the pledged



shares since February 2022 without any objection from the appellant. The pledged shares stood invoked in February, 2022 as per Clause 2.3.1 of the SPA, the Respondent No.1 has been exercising all voting rights in terms of the said pledged shares. The appellant was entitled to exercise voting rights until the occurrence of an 'Event of Default', in terms of clause 2.5.1(c) of SPA, the voting rights in terms of the pledged shares would be vested in the debenture trustee, irrespective of them being transferred to the Respondent No. 1 or not, therefore, respondent no. 1 is entitled to exercise the voting rights.

31. Further, although the invoked shares may not be sold, it would not come in the way of exercising voting rights. The rights accrued and vested in the Respondent No.1 cannot be taken away on the grounds that the interests of the appellant are likely to be affected. It was, therefore, submitted that the impugned order does not suffer from any illegality and no interference by this Court is needed.

32. On due consideration of the rival submissions of the parties recorded before the learned Single Judge and on appreciating the record, the learned Single Judge proceeded to observe as follows:-

“21. In my view, when the parties had themselves agreed in clause 16 (h) & of Schedule IV to the DTD that an 'Event of Default' would also encompass a situation where a person does not remain a Director of the Company as also a situation where he is declared as a wilful defaulter, the plaintiff's plea that there is no existing 'Event of Default' has to be rejected. Once the plaintiff admits that he is no longer a Director in the defendant no.3 Company, this act in itself would, in my considered view, amount to an 'Event of Default' in terms of clause 16 (j) of the DTD noted hereinabove. The plaintiff has also not denied, that as urged by the defendants, he has been declared a wilful defaulter by Yes Bank Limited. This factual position would also fall



within the ambit of the term 'Events of Default' as prescribed in clause 16 (h) of the Schedule IV to the DTD. In the light of these specific provisions of the DTD, the plaintiff cannot be permitted to urge that the "Event of Default", which had occurred in February, 2022, stands cured on account of the restructuring of the loan advance to defendant no. 3. As has rightly been urged by the learned counsel for the defendant nos.1 & 2, the 'Events of Default' envisaged under the DTD would not mean only the default in paying the debenture amount and/or interest but would also include other events as well, including the events set down in Clauses (a) to (j) of clause 16 of the Schedule IV. The rights of the plaintiff have to be governed by these specific terms of the DTD as it is on the terms of this DTD dated 07.08.2017 that the plaintiff had pledged his shares. The plaintiff would therefore be bound by the terms of this DTD as also the SPA executed in 2017 and cannot urge this Court to hold that there is no 'Event of Default' as on date. Once, as per terms of the DTD, the 'Events of Defaults' are continuing, this Court cannot merely on account of the restructuring of the loan hold that the 'Event of Default' stands cured.

23. In the light of the aforesaid, there can be no doubt about the fact that despite the loan account of defendant no.3 having been regularised as on date, the question whether an "Event of Default" continues to exist has to be seen in the context of the definition of the said term as set out under clause 16 of Schedule IV of the DTD, which defines 'Events of Default'. Once it is evident that the case of the plaintiff clearly falls within sub clause (j) & (h) of clause 16 of the Schedule IV to the DTD, this Court has no other option, but to hold that an "Event Default" continues in accordance with the terms and conditions agreed between the parties. The plaintiff is, therefore, bound by the terms of clause 16 of the DTD and cannot be permitted to urge that the "Event of Default" must be confined to a default in payment of the loan amount/debenture interest by defendant no.3. I am, therefore, unable to agree with the plaintiff that the "Event of Default" is not continuing as on date.

25. From a perusal of the aforesaid clause, it is evident that the parties had agreed that as long as there was no "Event of Default", it was the pledgor, i.e the plaintiff, who alone was entitled to exercise all voting rights and other consequential rights pertaining to the pledged shares, except the right to sell, transfer, assign or encumber these shares. It was further agreed between the parties that after the occurrence of an "Event of Default", the debenture trustee i.e. defendant no.1, would be authorised to exercise voting rights in respect of these pledged shares. In the present case, it is an admitted case of the parties that after the "Event of Default" occurred in



February, 2022, the defendant no.1 has, in accordance with clause 2.3.1 of the SPA, been exercising all voting rights in respect of the shares pledged by the plaintiff. The plaintiff's plea that the position has now changed and there is no continuing "Event of Default" has already been rejected hereinabove and, therefore, I am unable to appreciate as to how in the light of clause 2.3.1, the plaintiff can be permitted to urge that the defendant no.1 is not entitled to exercise voting rights qua these pledged shares which already stand invoked in February, 2022 itself.

27. Even this clause of the SPA makes it clear that upon the occurrence of an "Event of Default", the voting rights in respect of all the pledged shares irrespective of whether they stand transferred in the name of the debenture trustee or not, would be exercised only by the debenture trustee as if it were the outright owner thereof. In the present case, once an 'Event of Default' had taken place in February, 2022, the defendant no. 1 being the debenture trustee therefore became entitled to exercise the voting rights in respect of shares pledged by the plaintiff. Merely because these pledged shares though already invoked by defendant no. 1 have not yet been sold, would not in my view come in the way of the defendant no. 1 in exercising the voting rights in consonance with clause 2.5.1(c) of the SPA."

33. The learned Single Judge finally recorded the following conclusion and dismissed application:-

"The plaintiff having voluntarily agreed that once an 'Event of Default' occurs, it is the defendant no. 1 which will have the voting rights, cannot be now permitted to urge that these rights continue to vest in him. I may also note that as per the terms of the agreement, on account of the plaintiff having been declared a wilful defaulter by the Yes Bank Limited and his no longer being a Director of defendant no. 3, the 'Events of Defaults' in terms of the DTD continue to subsist as on date and therefore, the rights of voting rightfully vest with defendant no. 1."

Analysis

34. Aggrieved by the aforesaid order dated 20.10.2023, the appellant has approached this Court by means of the present First Appeal.



35. We have examined the principles governing the pledge of shares under the contract between the parties in the given factual scenario and in the conspectus of the submissions of the counsels for all the parties.

36. As noted herein above, it is undisputed that respondent no. 3 company and respondent no. 1, being the Debenture Trustee have entered into a DTD on 07.08.2017, was amended by the First Amendment deed dated 27.09.2019 and again amended by Second Amendment deed dated 21.08.2020. The appellant herein pledged 32,82,720 equity shares constituting 26% of the paid-up share capital of the respondent no. 3 held by him in favour of respondent no. 1. It is further not disputed that loan extended to respondent no. 3 has been restructured. As per the appellant, the 'Event of Default' which had led to the invocation of appellant's pledged shares by respondent no. 1 on 04.02.2022 stands cured and therefore, there is no existing 'Event of Default', thus, respondent no. 1 is debarred from exercising voting rights regarding shares. Apart from this, the appellant firmly relied upon Clause 2.7 of the Third amendment to the DTD and Amended Term Sheet. Per contra, the case of respondents is that by restructuring of the loan, would not imply that 'Event of Default' on the part of appellant does not continue to exist, therefore, in the situation when 'Event of Default' continues, their right to deal with shares as if they are the owners thereof is in the terms of the SPA remains uncurbed.

37. The relevant clauses for the purpose of present proceedings of Unattested Share Pledge Agreement dated 08.08.2017 executed by and between the appellant, the respondent no. 1 and respondent no. 3 are as under:-



“2.3 Voting Rights

2.3.1 Subject to Section 2.3.2 below, on and after the Effective Date but until the occurrence of an Event of Default, the Pledgor shall be entitled to exercise any and all voting and other consequential rights pertaining to the Pledged Shares except the right to sell, transfer, assign, or encumber the Pledged Shares and for all or any part thereof for any purpose not in violation of or inconsistent with any of the terms of this Agreement or the Debenture Documents provided that the Pledgor agrees that he will not vote in any manner which contravenes the terms and provisions of this Agreement and the Debenture Documents or which would give rise to an Event of Default, and will not vote in favour of any resolution which would have the effect of altering the rights of the Finance Parties hereunder or under the Debenture Documents or the terms of the Pledged Shares or any rights attached to the Pledged Shares in any way. All such rights of the Pledgor to vote shall cease forthwith upon the occurrence of an Event of Default and the provisions of Section 2.5 of this Agreement shall apply.

After the occurrence of an Event of Default, the Pledgor hereby irrevocably authorizes the Debenture Trustee to attend any general meeting of members or meeting of any class of members or meeting of creditors of the Pledgor, exercise the voting rights in respect of the Pledged Shares in any manner as the Debenture Trustee may deem fit, or take any other action in terms of the Applicable law at any time as the lawfully constituted attorney of the Pledgor. To enable the Debenture Trustee to exercise voting rights as aforesaid, the Pledgor shall on the Effective Date register this Agreement with the Pledgor with the instructions that as and when any intimation is received from the Majority Debenture Holders in this behalf, the Debenture Trustee should be permitted to attend and exercise the voting rights in respect of the Pledged Shares on any matter at any meeting of the members of the Pledgor. The Pledgor shall also forward copies of the notices of the meeting to the Finance Parties and the Debenture Trustee as and when such notices are issued to the shareholders. The Pledgor shall execute and deliver to the Finance Parties all proxies and such other instruments as the Debenture Trustee may require for exercising such voting and other rights.”

“2.5 Remedies on an Event of Default

2.5.1 The Pledgor agrees that at any time after the occurrence of an Event of Default, the Finance Parties and/or the Debenture Trustee shall have the right, upon notice to the Pledgor, (subject to the provisions of the Debenture Trust Deed and subject to obtaining the



prior instructions of the Majority Debenture Holders) to exercise all the rights, powers and remedies vested in it (whether vested in it by this Agreement or any Debenture Documents or by Applicable Law) for the protection and enforcement of its rights in respect of the Collateral, and the Debenture Trustee (after obtaining such prior instructions of the Majority Debenture Holders) shall be entitled, without limitation, to exercise any or all of the following rights, as often as it deems fit:

(a) to receive all amounts payable in respect of the Collateral or otherwise payable under Section 2.4 above to the Pledgor; “

Clause 3. CONTINUING SECURITY

3.1 This Agreement and the Security Interest created hereunder, are and shall be a continuing Security and shall remain in full force and effect until the Final Settlement Date notwithstanding any insolvency or any incapacity of the Pledgor.

... ..

Upon occurrence or existence of an Event of Default, this. pledge may be enforced against the Pledgor without first having recourse to any other rights available to the Debenture Holders pursuant to the terms of the Debenture Documents.”

38. The unattested Share Pledge Agreement dated 08.08.2017 is accompanied by a Power of Attorney executed by the appellant. The relevant clause of the Power of Attorney reads as under:

4. at any time after an Event of Default occurs:

- (a) to vote at all or any meetings of the Shareholders of the Pledgor or otherwise to act as the Pledgor's attorney or attorney's representative(s) or proxy(ies) in respect of the Shares; and
- (b) to appoint any proxy(ies) to represent the Pledgor at all or any meetings of the shareholders of the Pledgor with full authority to vote at such meetings in such manner as the Attorney may deem fit.

39. The ‘Events of Default’ and consequences thereof is provided in Clause 14 read with Schedule 4 of the Debenture Trustee deed dated 07.08.2017, which clause has remained unamended:



14. EVENTS OF DEFAULT AND CONSEQUENCES

14.1 Each of the events or circumstances set out in Schedule 4 (Events of Default) is an event of default {"Event of Default"}.

14.2 The Company shall notify the Debenture Trustee of any Event of Default (and the steps, if any, being taken to remedy it) promptly upon becoming aware of its occurrence.

14.3 Promptly upon a request by the Debenture Trustee, the Company shall supply to the Debenture Trustee a certificate (in such form as may be required by the Debenture Trustee) signed by two of its directors or senior officers on its behalf certifying that no Event of Default is continuing (or if an Event of Default is continuing, specifying the Event of Default and the steps, if any, being taken to remedy it)."

14.4 Acceleration and other consequences of Events of Default

14.4.1 If, in the opinion of the Debenture Holders, an Event of Default has occurred and which Event of Default has not been cured by the Company within the applicable cure periods, if any, specified for such Event of Default, then in addition to any other rights and remedies available to the Debenture Holders and/or the Debenture Trustee under any contract, agreement or Applicable Law, including ability to file for winding-up and/or liquidation of the Company, each Debenture Holder shall, severally, be entitled to exercise any one or more of the following rights at any one time, or at different times.

SCHEDULE 4

EVENTS OF DEFAULT

1. Payment Default

The Company does not pay to the Debenture Holders any amounts payable to them on any due date for payment of such amounts including any Interest, Redemption Instalment, Default Interest and liquidated damages, etc. unless such failure is a result of an administrative or technical error and continues un-remedied for a period of 15 (Fifteen) Business Day from the relevant due date.

2. Escrow Account Balance

The Company fails to maintain the required balance in the Company Escrow Account as required under this Deed and the Escrow Agreement.

... ..

13. Non-Submission of Reports



Any failure to submit reports as required under this Deed by the Company or/and the Reference Entity.

40. The respondent no. 1 issued the notice of 'Events of Default' dated 13.01.2022 wherein it, while referring to three specific instances of non-compliance of default by the company of provisions of DTD as under:-

(a) In terms of the provisions of Clause 5 of the DTD, the repayment of the principal amount of the NCDs and the payment of the interest and default interest, if any, thereon has to be made to the Debenture Holders as per the timelines stated in the DTD. The Company has delayed various payments to the Debenture Holder from time to time.

Further, the Company has not paid the monthly instalments due towards the NCDs since August, 2021, despite the same being brought to the notice of the Company and cure period of 15 days provided to cure the same having been lapsed. In terms of the provisions of Clause I of Schedule 4 of the DTD, the non-payment of the amounts towards the NCDs constitutes an Event of Default.

(b) In terms of Clause 7 of the DTD, the Company is required to deposit all receivables and proceeds in respect of the Company in the Company Escrow Account and the Reference Entity deposits its receivables and proceeds in the Reference Entity Escrow Account. We understand that neither the Company nor the Reference Entity are depositing their receivables and the proceeds in their respective escrow account. In terms of the provisions of Clause 2 of Schedule 4 of the DTD, the failure of the Company to maintain the required balance in the Escrow Account as required under the DTD and the Escrow Account amounts to an Event of Default.

(c) In terms of the various provisions of the DTD, the Company is required to furnish various reports and information, on a timely basis, to the Debenture Trustee. However, the Company has not been furnishing the same, even after being sought by us. In terms of the provisions of Clause 13 of Schedule 4 of the DTD, the failure of the Company to submit reports as required under the DTD by the Company and I or the Reference Entity amounts to an Event of Default.



The above are a few of the instances of the non-compliance in default by the Company of the provisions of the DTD, which have resulted in the occurrence of Events of Default by the Company.

Accordingly, we hereby declare occurrence of an Event of Default in terms of the DTD and hereby accelerate all the Secured Obligations and thus, all the Secured Obligations and all other amounts accrued and outstanding under Debentures Documents have now become immediately due and payable.

41. Consequently, the respondent no. 1 issued Notice of Invocation of pledge to sell, amongst other, 32,82,720 shares of respondent no. 3 as under:

Kindly take note that as a consequence of the said Events of Default and in accordance with the terms of the DTD, in the event you i.e. the Company and / or the Pledgors fail to make an unconditional repayment towards the outstanding amounts payable on the Debentures on or before; we shall, at any time after invoke, sell and transfer the Pledged Shares of Katalyst Software Private Limited and Nova Techset Private Limited. This is a 'notice for invocation' as required under the terms of the Transaction Documents. This notice constitutes a notice for invocation of collateral pledged shares for the purpose of Section 176 of the Indian Contract Act, 1872.

42. In the context of the submissions made and aforesaid clauses from various documents of the parties reproduced herein above, it is to be noted that Hon'ble Supreme Court in ***PTC India Financial Services Ltd vs Venkateswarlu Kari & Anr (Supra)*** has observed as under:

“(ii) Pawnee has a special and not general right in the pledged property.

5.1 This Court, in *Lallan Prasad v. Rahmat Ali and Another*, observes that under the common law, a pledge is a bailment of personal property as security for payment of debt or engagement. The two essential ingredients of pledge are (i) the pawn i.e., the property pledged should be actually or constructively delivered to the pawnee and (ii) a pawnee has only special property in the pledge but the general property therein remains in the pawnor and wholly reverts to him on discharge of the debt. The right to property vests in the pawnee



only as far as is necessary to secure the debt. A pawn or pledge is an intermediate between a simple lien and a mortgage, which wholly passes the property. A pawnor has an absolute right to redeem the pledged property upon tendering the amount advanced but that right would be lost if the pawnee in the meantime has lawfully sold the pledged property. If the pawnee sells, he must appropriate the proceeds of the sale towards the pawnor's debt, for the sale proceeds are the pawnor's monies to be so applied and the pawnee must pay the pawnor any surplus after satisfying the debt.....”

43. It is abundantly clear that the entire case of the appellant is based on the events subsequent to the ‘Event of Default’ and ‘Invocation of Pledge’ based on the Consolidated Financial Statements of Respondent No. 3 company, that there had been a restructuring of the DTD dated 07.08.2017 and that DTD had been restructured and Respondent No. 3 company has agreed to reschedule the same with the Lender. The appellant has relied on the Third amendment deed to the DTD dated 22.04.2023 in this respect.

44. On this basis, the appellant is thus contending that due to the restructuring of DTD by the respondents, the default under the DTD due to which the shares of the appellant had been invoked by respondent no. 1 has ceased to exist and stands cured. This factum of restructuring has not been disputed by the respondents, which is evident from the Third amendment to DTD dated 07.08.2017 by amendment deed.

45. The crucial question is, whether upon restructuring of the debenture trust deed by the respondents, the appellant is entitled to exercise the voting rights in respect to the pledged shares. In the present case, the appellant under the SPA, authorised the respondent no. 1 to exercise voting rights in respect of the pledged shares on the ‘Event of Default’. Further, Power of



Attorney was executed, under which the appellant appointed respondent no. 1 as its proxy in law, including for the purposes of exercising voting rights.

46. We have to keep in mind the background in which the shares were pledged by the appellant i.e. for securing the repayment of NCD. Admittedly, the 'Event of Default' has set in, which led to the invocation of pledged shares. There is nothing on record placed by the appellant to show that it has made any efforts to repay the amount due to the Lender upon the 'Event of Default'. The appellant has resigned as the whole time Director and Chairman of the Board of respondent no. 3 company w.e.f. 13.01.2022. There was non-compliance with the repayment obligation of the respondent no. 3 company. The management and the control of respondent no. 3 company was thereafter assumed by the new management of respondent no. 3 company. The Board of the respondent no. 3 company has been reconstituted and the new management has undertaken various steps for the revival of the business and operations of the Company and the Reference Entity including restructuring of DTD. The restructuring vide Third amendment to DTD dated 22.04.2023 is based on clause 3 of the said deed, which reads as under:-

“3. OTHER TERMS AND CONDITIONS

3.1 The Parties agree that the Proposed Merger Event is one of the key terms of the restructuring of the Debentures, post the occurrence of the Event of Default on the part of the Company and in case any of the Parties hereto or any shareholder of the Company or the Reference Entity undertakes any steps or takes any action or inaction, which in any respect jeopardizes such Proposed Merger Event, then the step I action I inaction shall be treated as the occurrence of an Event of Default and the Debenture Trustee shall be entitled to all the rights and remedies in terms of the Debenture Documents.”



47. Moreso, by the Third amendment, the invocation of pledge has not been recalled. We cannot lose sight of the fact that amount lent to respondent no. 3 is still outstanding and the appellant is no longer in the management of respondent no. 3 company. The appellant has not made any effort to redeem the pledged property by tendering the amount advanced to respondent no. 1. In the event, the appellant intends to exercise its voting rights, nothing stops the appellant to redeem the pledged property and exercise his voting rights, which right to redeem, the appellant has till such time the pledged property is not sold.

48. The finding of the learned Single Judge that once an 'Event of Default' had taken place in February, 2022, the respondent no. 1 being the debenture trustee, therefore, became entitled to exercise the voting rights in respect of share pledged by plaintiff cannot be faulted. Equally preposterous is the contention of appellant that on account of respondent no. 1 & 2 having executed an amendment to the DTD without his consent, he can no longer be bound by the terms of the pledge, which was made on the basis of the DTD as executed on 07.08.2017. Rather, this contention is contradictory to appellant's own plea that on account of amendment to DTD and consequent restructuring of debenture trust, the appellant is seeking right to cast his vote. The learned Single Judge has rightly held that the actions taken by the respondent no. 1 & 2 are protected under Clause 17.2 and will have no effect on the obligations of the appellant as a pledgor and that the amendment to the DTD executed on 22.04.2023, would not come in the way of exercise of rights, which had already accrued in favour of respondent no. 1 upon the occurrence of 'Event of Default'. Clause 17.2 is reproduced herein under:



17.2 Protective Clauses

The obligations of the Pledgor under this Agreement will not be affected by any act, omission, matter or thing (including whether or not known to the Pledgor) or any act or omission of the Debenture Trustee which would reduce, release or prejudice any of its obligations under this Agreement or prejudice or diminish those obligations in whole or in part including:

17.2.1 any waiver, exercise, omission, compromise, arrangement or settlement with or the granting of any time, concession, consent or indulgence to, the Pledgor under the Debenture Documents;

17.2.2 any variation in the terms, conditions or manner of disbursement of monies under the Debenture Documents; 17.2.3 any amendment to the Debenture Documents; 17.2.4 changes in the obligations of the Pledgor to make payments under the Debenture Documents towards principal, interest, fees and expenses.

49. The appellant being a pledgor, who is guilty of default as per clause 16(j) and (h) of the SPA, cannot be now permitted to urge that voting rights continue to vest in him.

50. As would be manifest from the above discussion, the findings of learned Single Judge does not suffer any illegality, consequently, the appeal is dismissed.

SHALINDER KAUR, J.

SURESH KUMAR KAIT, J.

FEBRUARY 06, 2024/ss