OCD 16

ORDER SHEET
AP-COM/489/2025
IN THE HIGH COURT AT CALCUTTA
COMMERCIAL DIVISION
ORIGINAL SIDE

SREI EQUIPMENT FINANCE LIMITED
VS
KITPLY INDUSTRIED LIMITED

BEFORE:
The Hon'ble JUSTICE SHAMPA SARKAR
Date: 2nd July, 2025.

Appearance:
Mr.Ranjan Bachawat, Sr. Adv.
Mr.Somdutta Bhattacharyya, Adv.
Mr. Bhavesh Garodia, Adv.
Ms. Debomita Sadhu, Adv.
. . .for the petitioner.

Mr. Jaydip Kar, Sr. Adv.
Mr. Suman Kr. Dutta, Sr. Adv.
Mr. S. Biswas, Adv.
Sk. S. Islam, Adv.
. . .for the respondent.

The Court:

1. This is an application under Section 9 of the Arbitration and Conciliation Act, 1996 (hereinafter referred to as the said Act.). The dispute arises out of a rupee loan agreement dated January 24, 2019. The said agreement contains an arbitration clause.
2. The petitioner as a non-banking finance Company had extended a loan facility to the respondent. The amount sanctioned was Rs.130,00,00,000/-. The period of loan was for five years. The period expired on January 28, 2024. The principal became due immediately

after expiry of the period. During the pendency of the loan facility, the respondent was required to service the interest. According to the petitioner, part of the interest was serviced but substantial portion of the interest and the principal had fallen due. The respondent did not pay the amount despite several demands. To secure the loan, a deed of hypothecation dated June 4, 2019 was executed in favour of the petitioner by which charge by hypothecation was created on the assets and properties described in Schedule I of the agreement. Such charge also included the trademark/brand 'Kitply'. The holding company of the borrower Plytinum Marketing Pvt. Ltd., also undertook to secure the loan via pledge of 100% of the subscribed and fully paid up voting equity share capital of the respondent, that was held by it.

3. Mr. Bachawat, learned senior advocate, submits that the respondent filed the relevant Forms of charge creation in favour of the petitioner, with the Registrar of Companies and the Ministry of Corporate Affairs. It is also submitted that other properties which are not part of Schedule IB of the agreement had also been mortgaged to the petitioner. A notice invoking pledge of shares was issued to the respondent. The respondent replied to the said notice on 13th January, 2025. The respondent contended that the petitioner had already taken steps under Section 7 of the Insolvency and Bankruptcy Code 2016 before the National Company Law Tribunal, Guwahati Bench on the selfsame dispute. That, no debt was owed to the petitioner, as the transaction was a sham and had been undertaken at the behest of the Trinity which

was controlling 'Kitply' and both SEFL and SIFL controlled Trinity . Thus, there was no real borrowing. The administrator of SEFL and SIFL, which had undergone a CIRP process had also filed an application under Section 66 of the IBC before the National Company Law Tribunal, Kolkata. In the said proceeding, transaction audit was directed to be held by the NCLT and the reports would indicate that the transactions (alleged loan) were round tripped. Further, a title suit was filed by a Avighnaa Ply Pvt. Ltd. before the learned City Civil Court at Calcutta and the learned 5th Bench had already passed an interim order restraining the respondent and Plytinum from alienating all movable and immovable assets including the shares of the respondent, without the leave of the Court.

4. Mr. Bachawat relies on the averments and the order passed by the learned City Civil Court at Calcutta to assert before the Court that the suit was a collusive one. Avighnaa could not have any claim over the assets as those were already charged to the petitioner. For a claim of Rs.2.5 crores payable to Avighnaa by the respondent, injunction was issued over all the assets of the respondent, which were valued at more than Rs.250 crores.

5. It is apprehended that the suit may be withdrawn at any time and the petitioner will not be in a position to secure the loan which roughly amounts to Rs.243 crores. The copies of the Forms showing creation of charges in favour of the petitioner, as disclosed by the respondent

before the Ministry of Corporate Affairs, have been placed in great detail.

6. Mr. Bachawat submits that the bank accounts should be attached and the respondent should be restrained from alienating the properties which have been narrated in Paragraph 9 of the said application. Other interim protections should also be passed, as prayed for.

7. Mr. Jaydeep Kar, learned senior advocate for the respondent submits that Kitply underwent CIRP process and Plytinum was the successful resolution applicant. Proceedings under Section 66 of the IBC are pending. The independent audit report would indicate that Kitply was a connected party to SEFL and SIFL through shareholding of Srei Multiple Asset Investment Trust-Vision India Fund. IDBI Bank initiated a proceeding under the Insolvency and Bankruptcy Code (IBC) against 'Kitply' before the NCLT, Guwahati. The resolution plan of Rs.175 crores submitted by Vision India Fund under Srei Multiple Asset Investment Trust, was accepted. Plytinum is owned by Vision India and Vision India had nominated Plytinum to take over the assets of 'Kitply'. The structure of 'Kitply' would indicate that SIFL had 100 % shareholding in SEFL and 51% shareholding in Trinity now both SEFL and SIFL is controlled by NARCL which holds 51% shareholding in Trinity. Trinity has substantial control over Srie Multiple Asset and thus over Plytinum.

8. According to Mr. Kar, a senior Vice President of Trinity had been appointed as a director of kitply. Mr. Kar submits that some of the

properties mentioned under Paragraph 9 belonged to third parties, which did not form part of the hypothecation agreement. An injunction over those properties cannot be passed. In view of the specific findings of round tripping by an independent auditor and as the proceedings before the NCLT, Kolkata, are still pending, the Court should refrain from passing any interim order.

9. Having considered the rival contentions of the parties, this Court is of the view that the question as to whether the money given to 'Kitply' was in effect a loan or a sham transaction and used for round tripping and to meet the expenses of the erstwhile directors or promoters of SEFL is a matter which has to be decided by the learned Arbitrator. The dispute between the parties will have to be resolved in an arbitration proceeding in terms of the clause. The question before this court under in the facts and circumstances narrated hereinabove, is whether any interim protection should be given to the petitioner, till the petitioner approaches the Arbitrator.

10. The interim orders prayed for cannot extend beyond what was secured by the respondent. At best, the petitioner can claim protection of what were charged to it. It is, prima facie, available that the money was lent to 'Kiptly'. 'Kiptly' refers to the transaction as a fraudulent transaction. The resolution plan of Srei Multiple Asset Investment Trust - Vision India Fund was accepted by the NCLT, Guwahati. Trinity is the fund manager of Vision India. SIFL had control over SEFL and Trinity. The submission of Mr. Kar that SEFL took control over 'Kitply'

through Vision India (successful resolution applicant) has some, prima facie, basis. The transactions took place after approval of the resolution plan. However, the issues are required to be gone into in greater detail to understand the nature of the transaction and such determination would be before the arbitrator. For the purpose of grant of interim protection, the court is not required to hold a mini trial.

11. NARCL has substantial control over SEFL and Trinity. Trinity is the fund manager of Srei Multiple Investment Trust-Vision India Fund which in turn controls Kitply through Plytinum. The connection cannot be totally ignored.

12. However, in the facts and circumstances and balancing the convenience and inconvenience, this Court deems it fit to grant an injunction in respect of the properties mentioned under Schedule IB, i.e., the mortgaged properties which were secured in favour of the petitioner and also in respect of the pledged shares appearing under Schedule I at page 179 of this application. The details of mortgaged properties under Schedule-IB are quoted below:

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SL. No.	PARTICULAR	LOCATION	FREE HOLD LAND AREA
1.	ART UNIT MARGHERITA	ART MARGHERITA (ASSAM)	906624 SQ FT.
2.	MUMBAI (GODOWN)	BHIWANDI – THANE	6350.30 SQ FT
3.	MARGHERITA UNIT	MARGHERITA (ASSAM)	67632 SQ MT.

4.	RAIPUR AGRO FORSTRY	CHATTISGARH	1192 ACRES
6.	RAMPUR UNIT	RAMPUR (U.P.)	

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The details of pledged shares under Schedule I is quoted below:

“SCHEDULE I
PARTICULARS OF INITIALPLEDGED SHARES

Name of Shareholder(s)	No. of Shares	Total nominal value (In Rs.)	ISIN No.	DP Name, Address & DP ID	Client ID
Plytinum Marketing Pvt. Ltd.	9,99,994	99,99,940	INE147B01027	Aum Capital Market Private Limited having its registered office at 5, Lower Rowdon Street, Akashdeep, 1st Floor, Kolkata - 700020, DP ID – 12057800	00036299

”

13. The respondent will not alienate, remove, transfer or change the nature and character of the above assets/securities. Injunction on the bank accounts, movable assets of ‘Kitply’ including the brand name ‘Kitply’ is not granted. Such order of injunction if granted, will affect the business and reputation of the brand named ‘Kitply’. Kitply is a going concern. Balance of convenience and inconvenience require that the

business of 'Kitply' should continue. This order is independent of the orders passed in the suit and the suit will proceed on its own merits.

14. This interim order will continue for a period of three months within which time the parties will take recourse to arbitration.

15. The other prayers of the petitioner can be made before the learned Arbitrator at the appropriate stage.

16. All the observations are, prima facie, and the proceedings henceforth will be independent.

17. The application is, accordingly, disposed of.

18. As no affidavits have been called for, the factual allegations are deemed to be denied.

(SHAMPA SARKAR, J.)

SP/B.Pal