



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

% Date of Decision: 18.09.2023

IN THE MATTER OF:

+ **O.M.P.(I) (COMM.) 296/2023, CAV 468/2023 and I.A. 17626/2023 (exemption)**

DLF LIMITED Petitioner

Through: Mr. Rajiv Nayar, Sr. Advocate with Ms. Ruby Singh Ahuja, Mr. Pravin Bahadur, Mr. Vishal Gehrana, Mr. Isham Gaur, Ms. Manjira Dasgupta, Ms. Aakriti Vohra, Ms. Kanika Gumber, Mr. Saurabh Kumar and Ms. Megha Dugar, Advocates

versus

PNB HOUSING FINANCE LIMITED & ORS. Respondents

Through: Mr. Parag Tripathi, Sr. Advocate, Mr. Dayan Krishnan, Sr. Advocate, Mr. Jayant Mehta, Sr. Advocate with Ms. Vasundhra Bhakru, Mr. Rajat Juneja, Mr. Vijay Nair, Mr. Arpit Dwivedi, Advocates for respondent No.2
Mr. Arun Kathpalia, Sr. Advocate with Mr. Nirav Shah, Ms. Aneesa Cheema, Mr. Nishant C., Mr. Sajit S., Mr. Varun Kalra and Mr. Krishan Kumar, Advocates for respondent No.4

+ **O.M.P.(I) (COMM.) 297/2023, I.A. 17633/2023 (exemption) and I.A. 17634/2023 (permission to file lengthy synopsis)**

CHINSHA PROPERTY PRIVATE LIMITED Petitioner

Through: Dr. Abhishek Manu Singhvi, Sr. Advocate, Mr. Sandeep Sethi, Sr. Advocate with Mr. Jasmeet Singh, Mr. Divjot Singh Bhatia,



Mr.Pushpendra S. Bhadoriya, Mr. Saif Ali,
Ms.Rusheet Saluja, Mr. Vijay Sharma and
Mr.Arshad Malik, Advocates

versus

PNB HOUSING FINANCE LIMITED & ORS. Respondents

Through: Mr. Parth Goswami, Sr. Advocate with
Mr. Ashish K. Singh, Mr. Shantanu Sagar,
Advocates for respondent No.1

Mr. Parag Tripathi, Sr. Advocate,
Mr. Dayan Krishnan, Sr. Advocate, Mr. Jayant
Mehta, Sr. Advocate with Ms. Vasundhra Bhakru,
Mr. Rajat Juneja, Mr. Vijay Nair, Mr. Arpit
Dwivedi, Advocates for respondent No.2

Mr. Rajiv Nayar, Sr. Advocate with Ms. Ruby
Singh Ahuja, Mr. Pravin Bahadur, Mr. Vishal
Gehrana, Mr. Isham Gaur, Ms. Manjira Dasgupta,
Ms. Aakriti Vohra, Ms. Kanika Gumber, Mr.
Saurabh Kumar and Ms. Megha Dugar, Advocates
for respondent No.4

Mr. Arun Kathpalia, Sr. Advocate with Mr. Nirav
Shah, Ms. Aneesa Cheema, Mr. Nishant C., Mr.
Sajit S., Mr. Varun Kalra and Mr. Krishan Kumar,
Advocates for respondent No.5

CORAM:

HON'BLE MR. JUSTICE MANOJ KUMAR OHRI

JUDGMENT

MANOJ KUMAR OHRI, J. (ORAL)

1. By way of present petitions filed under Section 9 of the Arbitration and Conciliation Act, 1996 (hereinafter, referred to as '*the A&C Act*'), the petitioners i.e., DLF Ltd. (hereafter, '*DLF*') and Chinsha Property Private Limited (hereafter, '*Chinsha*'), as shareholders in Joyous Housing Ltd.-



Respondent No. 3 (hereafter, '*JHL*'), have sought certain interim protection, as prayed for in their respective petitions.

2. The grounds raised in the two petitions are common, hence, the same are dealt with through this common order.

3. DLF, Chinsha and Respondent No.4 (hereafter, '*Hubtown*') are three shareholders in JHL holding its entire shareholding. Amongst them, DLF, Chinsha and Hubtown hold 37.5%, 37.5% and 25% shares of JHL respectively.

4. The dispute pertains to a construction finance loan facility availed of by JHL from Respondent No.1 - Punjab National Bank Housing Finance Limited (hereafter, '*PNB*') for a slum development project undertaken by JHL at Tulsiwadi, Mumbai (hereafter, the '*Project*'). JHL availed of the loan facility of Rs.800 Crores from PNB under a Loan Agreement-cum-Mortgage Deed dated 20.12.2017, later modified vide Supplementary Loan Agreement dated 27.08.2020. Petitioners are not parties to the Loan Agreement however they are defined as "Promotors" in Schedule B of the Agreement.

5. The Loan was secured by way of mortgage created in favour of PNB. Additionally, the entire shareholding of the three shareholder was pledged in favour of PNB as additional security, under three separate Share Pledge Agreements dated 26.12.2017 (hereafter, '*SPA*') executed by the three shareholders in favour of PNB.

6. Petitioners have specifically assailed the invocation of pledge by PNB under the SPAs. Clause 17.11 of the SPA contains the arbitration agreement between the parties for resolution of disputes by way of arbitration. Present petition, under Section 9 of the A&C Act is filed on the basis of the said arbitration clause.



7. JHL failed to meet its obligations towards repayment of the loan, resulting in its account being declared as Non-Performing Asset on 04.01.2022. PNB initiated action under the SARFAESI Act, 2002 by issuing Demand Notice dated 15.01.2022 under Section 13(2) followed by Possession Notice dated 29.03.2022 under Section 13(4) and Sale Notice dated 25.04.2022 under Rule 9(1) of the SARFAESI Rule in relation to the mortgaged property. Although public notice was issued however, the auction failed as no bids were received. Even the subsequent attempts at auction also failed.

8. PNB also issued a Default Notice dated 02.11.2022 under Clause 6.2.1 and 6.2.2 of the SPA, wherein it indicated its intention to invoke the pledge and sell the pledged shares at enterprise value. Vide the said notice, PNB offered to sell the pledged shares to the existing shareholders of JHL giving them right of first refusal. The reserved price for sale of entire shareholding was fixed at Rs.1075 Crores.

9. DLF, in response to the aforesaid Default Notice, vide their letter dated 10.11.2022 offered to pay a sum of Rs.1450 Crores to acquire control of the entire shareholding in JHL, including those of Chinsha and Hubtown.

10. DLF contended that that there was no response to their aforesaid offer by PNB. While the offer remained pending, the PNB, pursuant to a public notice issued by it on 05.08.2023, assigned the loan in favour of the Respondent No.2- Omkara Asset Reconstruction Company Ltd. (hereafter, 'Omkara') vide assignment deed dated 18.08.2023. The assignment of loan comprised of all the Financial Documents executed by PNB and JHL in relation to the Loan. Consequently, the Share Pledge Agreements, that formed part of the Financial Documents, also came to be assigned in favour



of the Omkara.

11. Omkara, vide letter dated 06.09.2023 informed DLF of it selling the pledged shares held by DLF and Chinsha, to an undisclosed third party for an undisclosed sum, thereby realising the entire outstanding of JHL. The outstanding was settled merely from the sale of 75% shareholding, comprising of DLF and Chinsha pledged shares and the loan account was closed. As no further amount remained to be recovered and payable, JHL was released from its liability including release of securities that were created in respect of the loan account.

12. In these petitions, the petitioners have called into question the assignment of pledged shares by PNB in favour of Omkara and the eventual sale of pledged shares by Omkara to an undisclosed third party. Petitioners have strongly reacted to the manner in which the whole process was concluded and alleged that the sale was not bonafide and was a collusive act between PNB, Omkara and Hubtown, whose pledged shares were conveniently left out from the sale, whereas the petitioners were made to cede their shareholding in the JHL under the garb of the invocation of pledge.

13. It was contended by the DLF that it had accepted PNB's offer and communicated its willingness to purchase 100% of JHL pledged shares at a price of Rs.1450 Crores in its letter dated 10.11.2022. It was further contended that DLF's aforesaid communication amounted to a formation of a concluded contract.

14. DLF has further argued that the assignment was rushed through rather suspiciously. Public notice of sale of financial asset of the bank was issued by PNB on 05.08.2023, wherein the cut-off date for submission of bid from



the prospective bidders was set after mere three days on 08.08.2023. According to the petitioners, it appears that the decision to assign the loan to Omkara had already been taken by the PNB and the issuance of public notice was a mere façade to cover up a collusive sale. Surely, if the intent was to conduct a genuine auction-based sale, PNB would have kept a more relaxed cut-off date to enable a wider participation of bidders in the auction.

15. PNB has outrightly dismissed all the objections of the petitioners and dubbed it as another attempt by the borrowers to frustrate the recovery process pursued by the bank to recover public money. PNB rejected the allegation that the assignment was a rushed decision and no opportunity was granted to the petitioners to redeem the pledge shares. Bank has argued that the recovery process under SARFAESI had been initiated as early as 02.11.2022 by issuance of the default notice. Attempts were made to sell the mortgaged property under SARFAESI however, the attempts did not yield any success. Recovery by way of assignment was pursued as a last resort and throughout the process, the borrower and petitioners were duly notified of the steps taken by the Bank.

16. According to the PNB, assignment of debt is a legal recourse available to the lenders sanctified by the RBI. PNB has further countered the petitioner's submissions on the DLF's offer to acquire the pledged shares, to argue that as per RBI guidelines, the petitioners being the Promoters of defaulting borrower company namely JHL, could not have acquired the pledged shares themselves. According to the PNB, the petitioners could have redeemed the shares only by paying the outstanding debt of JHL and not by making conditional offer to pay subject to the Bank transferring entire pledged shares in favour of DLF.



17. PNB has further argued that even the offer dated 10.11.2022 by DLF fell short on promise. DLF offered to pay Rs.1450 Crores towards clearing all the dues of JHL that it owed to all its lenders. Closely seen, the offer was deceptive since the PNB's dues amounted to Rs.777,99,61,505.84 and DLF claimed that it itself was a lender of JHL having lent a sum of Rs.519 Crores to JHL.

18. PNB has strongly defended its bonafides in conducting the auction process and submitted that Swiss challenge process was adopted, which is considered to be a more efficient way of auctioning of assets in the banking industry.

19. PNB further dismissed the petitioners' allegation that Omkara had already submitted its bid on 01.08.2023 therefore the date of submission of bid set in the public notice as 08.01.2023, shows the collusive nature of the process. PNB has countered this allegation and explained that under Swiss challenge process bids from public are invited to challenge the base bid already received by the bank which explains the submission of Omkara's bid on 01.08.2023 before the 08.08.2023, which was the cut-off date for the challengers to submit their bids.

20. Omkara has contended that having acquired the debt from PNB along with other Financial Documents, it could exercise the right as a pledgee to sell the shares, which was a legitimate action well within the SPAs. Omkara too has dismissed the allegation of collusion as an attempt by the petitioners to frustrate the recovery process.

21. Omkara has refuted the allegation made by the petitioners that the sale of pledged shares has been made to the nominees of Hubtown, a disgruntled shareholder, which had earlier initiated an oppression and mismanagement



petition in NCLT Mumbai, making allegations against the other two shareholders namely DLF and Chinsha. Omkara has even strongly refuted the suspicion raised by the petitioner about the identity of the third-party purchasers, who they allege could be affiliates of Omkara. Upon being prodded by court to disclose the identity of the purchasers, Mr. Parag Tripathi, offered to disclose the identity to the court in a sealed cover supported by an affidavit, however expressed his client's reservations in sharing the said information with the petitioners.

22. Hubtown too made their submissions and refuted the allegations of collusion and on the other hand, alleged collusion by the others. It was contended that Hubtown's 25% shares of JHL were in physical format and were not handed over to the PNB which explains the facts that Hubtown's shares escaped the sale which DLF and Chinsha shares couldn't. Hubtown referred to petition filed by it in NCLT, Mumbai wherein according to it, the conduct of DLF and Chinsha is highlighted, which rather shows collusion between PNB and DLF.

23. In rejoinder, DLF also called into question Hubtown's unconditional withdrawal of its petition before NCLT, Mumbai after Omkara sold the pledged shares of DLF and Chinsha to an undisclosed third party. It was contended that PNB could only appropriate amount owed by JHL and even after adjusting creditor's dues, DLF's offer was more than PNB's dues.

24. In the aforesaid background, this Court is required to examine, if the reliefs claimed in the two petitions, would facilitate the parties to get their disputes adjudicated before the jurisdictional forum i.e., arbitration. Jurisdiction under Section 9 is one for preserving the subject matter of the arbitration, without adjudicating the underlying disputes between the parties.



25. The petitioners have disputed the sale of their pledged shares by Omkara as assignee of the JHL debt by the PNB. By the sale of pledged shares, the petitioners have been deprived of valuable security in the form of shares and also the ownership and control over JHL. The consequences of the actions taken by PNB and Omkara are undoubtedly far reaching in nature and to argue that the petitioners are left with the only remedy of damages, rather than lay a claim to the lost shares and control over JHL, would be undermining the statutory rights of redemption of the petitioners under Section 177 of the Contract Act, as discussed below.

26. Prima facie, there is some merit in the grievance raised by the petitioners regarding the manner in which the assignment of debt and subsequent sale of pledged shares was consummated. The process adopted seemed to be unnecessarily rushed and precipitative since there was no response given by PNB to the DLF's offer of redemption made nearly a year ago on 10.11.2022, as discussed above. PNB or assignee, should have given a redemption notice to the petitioner before the sale since the conclusion of sale would have irreversibly prejudiced the petitioners and defeated their rights under Section 177 of the Contract Act. The intent seems to consummate the sale quickly to preclude the petitioners from seeking remedies that they may have had.

27. The submissions made by Omkara that with the sale of pledged shares the petitioners have met with *fait accompli* leaving them to only claim damages, as per petitioners, raises the alleged suspicion about the intent behind giving a three days short notice for submission of bids to close the assignment.



28. As stated above, the action of assignment and consequent sale of pledged shares had serious implications for the petitioners. Without commenting on the correctness of the decisions taken by the PNB, which would be for the learned arbitrator to judge, it is sufficient here to observe that it was incumbent upon the PNB to not only act in accordance with the terms of contract documents, but also seen to have acted in a fair and transparent manner.

29. PNB issued the notice dated 02.11.2022 to the pledgors for redemption of pledged shares, by paying a sum of Rs.1075 Crores, being the PNB's assessed enterprise value of the debt. DLF promptly responded to the aforesaid offer vide its reply dated 10.11.2022 and offered to pay a sum of Rs.1450 Crores. What is puzzling is the fact that the PNB after receiving the offer to repay from DLF did not follow up on the offer nor did it communicate its response to the same. DLF's offer does not seem to be a unilateral offer made by it to distract the PNB to stop them from pursuing a pending sale process initiated by them. The offer was in response to PNB's own notice for redemption, and it is for the PNB to explain, perhaps in the substantive adjudicatory proceedings before the arbitrator, as to why DLF was prevented from redeeming the pledged shares.

30. As per Section 177 of the Contract Act, pawnor's (pledgor of shares) right of redemption is sacrosanct. Pledgee's right to sell pledged shares would be subservient to the pledgor's right to redeem. This right cannot be defeated in a casual manner through the process adopted to conclude the sale at express speed.

31. In PTC (India) Financial Services Limited v. Venkateswarlu Kari and



Anr.¹, the Supreme Court has laid to rest all the diverse views on the interplay of rights of pawnors and pawnees under the Contract Act. The Supreme Court has held that under Section 176 of the Contract Act, in the event of default of repayment of debt, pawnee has a right to either bring a suit to recover the debt from the pawnor or sell the pledged security, upon giving pawnor a reasonable notice of the intended sale. However, Section 177 gives a statutory right to the pawnor, who is at default in payment to redeem the pledged goods at any time before the actual sale by the pawnee.

32. This being the mandate of law, the DLF's letter dated 10.11.2022 offering to repay the debt for redemption of shares is the proverbial foot-in-the-door of DLF, that would prevent the PNB from shutting the door on the pledgors and proceed with the sale of pledged shares.

33. The explanation offered by PNB in these Section 9 proceedings, does not look very convincing. PNB has sought to argue that the sum of Rs.1450 Crores offered by the DLF also included repayment of debt owed by JHL to DLF. However, if the offer of Rs.1450 Crores was more than the enterprise value of Rs.1075 Crores assessed by the PNB, then the aforesaid explanation by the PNB does not stand to reason. In any case, in order to meet the statutory requirement of Section 177, before taking steps towards the sale of pledged shares, it was incumbent upon PNB to deal with the redemption request made by DLF. Reasons must have been assigned and communicated to DLF rather than sitting on the offer. Admittedly, there was no communication sent to DLF by PNB and it remained inert to the redemption request for more than a year and suddenly on 18.08.2023 proceeded to

¹ 2022 SCC OnLine SC 608



assign the debt to Omkara.

34. It is further argued by the PNB that as per RBI's Master Direction (Transfer of Loan Exposures) Directions, 2021 dated 24.09.2021, it could not have offered the defaulting Promoters (Petitioners) to buy back the pledged shares. Without commenting upon the scope of the aforesaid RBI Master Direction, it is noted that if PNB could not have permitted buy-back by the Promoters, then PNB is itself guilty of breach of the RBI Master Direction by issuing notice dated 08.11.2022 and that it should have withdrawn the notice dated 08.11.2022 and issued a fresh notice of redemption without offering buy back of pledged shares. PNB, instead, directly issued notice dated 05.08.2023 invoking the pledge.

35. The petitioners' allegation of collusion between PNB and Omkara appears to be founded on the speed with which assignment and sale has been concluded. Assignment of debt by banks is a legitimate act authorised and regulated by RBI. Law does not countenance any legal challenge by DLF to the assignment *per se* in favour of Omkara or the price at which the debt has been assigned by PNB to Omkara. However, DLF as a pledgor would be well within its rights to question the process of assignment and subsequent sale, if it undermined its right of redemption under Section 177 of Contract Act.

36. As on 05.08.2023, PNB had already received a bid submitted by Omkara on 01.08.2023. If the process of assignment of debt had already been initiated, the purported notice dated 05.08.2023 issued under Clause 9.1 was not required to be issued since it would have been for the successful assignee to issue the required notice, if at all. With the sequence of events followed up to the sale of shares by Omkara, it does prima facie appear that



PNB had pre-decided to assign the debt to Omkara on 05.08.2023 itself and assigned the debt to Omkara with pre-invoked pledge. Omkara acted upon the same invocation letter dated 05.08.2023, to sell the pledged shares to an undisclosed buyer. Omkara in its capacity of assignee only steps into the shoes of the assignor PNB and does not enjoy rights superior to those enjoyed by PNB under the SPA. Omkara succeeded to the rights of PNB along with all the legal limitations that came with it, including the mandatory compliance of Section 177.

37. The entire process ignored the fact that DLF's offer of redemption dated 10.11.2022 had yet not been rejected by the PNB. It would not be unreasonable to conclude that sale of pledged security by Omkara eclipsed the DLF's statutory right under Section 177 and hence illegal.

38. In PTC (Supra), the Supreme Court has observed that courts would not lightly grant injunction against the sale of pledged security by pawnee on the allegation of non-compliance of Section 176. However, the court has further observed that injunction under Section 38 of the Specific Relief Act, may be warranted if compensation is not the adequate remedy against the invasion of the rights of enjoyment of property by a person. Since Section 38 is guided by the provisions of Chapter II of Specific Relief Act (hereafter, 'SRA'), the Court has further referred to Section 10 of SRA, where the courts are mandated to enforce specific performance of contract subject to Section 11, 14 and 16 of SRA. Section 16 states that specific performance of contract cannot be enforced in favour of a person who fails to prove that he has performed or has always been ready and willing to perform the essential terms of the contract which are to be performed by him.



39. Applying the above binding principles, it is seen that DLF has shown its readiness and willingness to redeem the pledged shares as early as 10.11.2022. Further, the loss caused by the sale of pledged shares cannot be compensated in terms of money. Losing shares deprives the person of control and ownership of the company, which right is invaluable given the enormous time and effort it takes to set up a business and the goodwill associated with it. It cannot be equated with any other normal goods or articles that are compensable with money, if lost.

40. In Section 9, the Court's duty is restricted to ensuring preservation of the subject matter of arbitration. Without commenting upon the merits of the contentions of parties, except to the extent necessary to pass orders under Section 9, for the reasons stated above, a case for passing interim orders is made out.

41. In prayer (a) of the petition, petitioners seek a direction for disclosure of the identity of the transferees of shares in question and in prayer (b) petitioners have prayed for an order restraining the transferees from further transferring the shares in question.

42. Prayer (b) is inchoate in view of Prayer (a) since the identity of the transferee is not known yet, in view of which, no order can be passed against the unknown transferees. However, it would be appropriate if pledged shares sold to a third party by Omkara are kept in a suspended animation by directing JHL not to recognise further sale, if any, undertaken by Omkara transferees. If any request is received by JHL by further transferees the same shall not be acted upon by JHL and further transferees shall not be recorded as members (shareholders) in the record of JHL.



43. Omkara is further directed to disclose the identity of the transferees to the petitioners, to whom it has sold the pledged shares, within a period of 7 days for the petitioners to take remedies that are available to them in law, against such transferees. Mr Parag Tripathi, Learned Senior Counsel appearing for Omkara, had expressed his client's reservation in disclosing the identity of the transferee to the petitioners and offered to share the details with this Court in a sealed cover. This offer is being rejected since no purpose is served by disclosing the names to the court and not to the petitioner, who must know the identity of the purchaser for them to satisfy themselves about the bonafides of the sale and if the said information is required by them for the legal action that they may wish to pursue. There is nothing confidential about this information that needs to be protected. Even the price at which the debt has been assigned is not confidential since, as per the settled law, the assignment cannot be challenged merely on the ground that the price at which the debt has been assigned is lower than the original debt.

44. In view of the above, the present petitions are disposed of alongwith the pending applications.

45. It is reiterated that nothing observed in this order shall prejudice the parties regarding their contentions and rights in any legal proceedings that may be pursued by them in future.

(MANOJ KUMAR OHRI)
JUDGE



SEPTEMBER 18, 2023

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