

**IN THE NATIONAL COMPANY LAW TRIBUNAL, NEW DELHI**  
**PRINCIPAL BENCH**

**C.P. 439(ND)/2017**

**IN THE MATTER OF:**

SGGD Projects Developers Private Limited & Ors..... Applicant/petitioner  
v.  
Religare Enterprises Limited & Ors. .... Respondents

**Order under Section 59 of the Companies Act**

**Order delivered on 21.12.2017**

**Coram:**

**CHIEF JUSTICE (Retd.) M.M.KUMAR**  
**Hon'ble President**

**Ms. Deepa Krishan**  
**Hon'ble Member (T)**

For the Applicant/petitioner: Dr. Abhishek Manu Singhvi, Senior Advocate  
Mr. Tishampati Sen, Advocate  
For the Respondent: Mr. Amit Chaddha, Senior Advocate  
Mr. Somesh Dhawan, Ms. Vatsala Kak & Ms.  
Sristhi Govil, Advocates for Respondent No. 1

**ORDER**

Petition mentioned.

Learned counsel for the petitioner at the outset states that advance notices of the petition were sent on 19.12.2017 to all the Respondents. In response to the advance notice Respondent No. 1 is represented. However, no one has put in appearance on behalf of other Respondents. Respondent Nos. 2 to 5 are the contesting respondents as respondent No. 2 in his capacity as a pledgee has transferred the shares belonging to petitioner-pledgor by sale to Respondent Nos. 3 to 5.

Dr. Singhvi, learned Senior counsel for the pledgor-pawnor has raised two issues. Firstly, it has been argued that the pledgee/pawnee-Respondent No. 2 has elected to file Commercial Suit No. 486/2017 on 05.09.2017 before

the Bombay High Court on Original Side and sought declaration that Respondent No. 2 has the voting right and the petitioner-pledgor-pawnor has no voting right. It was also prayed that the resolution passed by the Board of Directors with the participation of petitioner-pledgor-pawnor be stayed. The application for issuance of interim order was refused by the Bombay High Court vide order dated 13.09.2017. Thereafter the pledgee-pawnee filed another proceedings being O.A. No. 1209/2017 on 24.11.2017 before the Debt Recovery Tribunal, Delhi.

It has further been pointed out that the shares were sold on 07.12.2017 and 14.12.2017 by the pledgee/pawnee-Respondent No. 2 to Respondent Nos. 3 to 5 illegally. It is submitted that one day notice for sale was given on 01.06.2017 and then a letter was sent on 11.08.2017 (page 295).

Dr. Singhvi has argued that apart from the bar created by doctrine of election the pledgee/pawnee-Respondent No. 2 could not have initiated proceedings by filing a suit/and Original Application before Debt Recovery Tribunal; and could not have then resorted to sale of those shares. According to the learned counsel the aforesaid course adopted by the pledgee/pawnee-Respondent No. 2 is absolutely illegal in view of the law laid down by Hon'ble the Supreme Court in the case of **Lallan Prasad v. Rahmat Ali & Anr.**, (1967) 2 SCR 233; AIR 1967 SC 1322. Reliance has been placed on the observations made in para 16 and 17. The aforesaid view has also been followed by the Delhi High Court in the case of **Bank of Maharashtra v. Racmann Auto (P) Ltd.**, 1991 SCC Online Del 232; (1992) 74 Com Cases 752 (Delhi). The rationale for the principles laid down in these cases is that

the pledgee/pawnee-Respondent No. 2 could either sue for recovery of the debt and retain the goods/shares as security. It cannot however sell the share as the sale would amount to undue enrichment of having the sale proceeds of the share and also make recovery for the amount of the share.

The other argument is that no sufficient notice of sale has been given. With regard to the first notice dated 01.06.2017, it has been argued that it was abandoned on account of negotiations that followed the notice. Thereafter another letter was issued on 11.08.2017 and in the aforesaid letter it was contemplated that a notice might be issued in accordance with the terms of pledge agreement which has never happened as no instructions were issued for serving any such notice. On the aforesaid basis Dr. Singhvi has prayed that voting on the pledged share by the Respondent Nos. 2 to 5 and further transfer of the share to anyone else be stayed.

On behalf of the Respondent No. 1-Company there is hardly any opposition to the interim prayer.

Having heard the learned counsel for the parties we are of the view that prima-facie case is made out for issuance of interim directions as the basic criteria of granting interim order stands fulfilled. In view of the provisions of Section 176 of the Contract Act and the judgment of Hon'ble the Supreme Court and Delhi High Court which support the submissions of the learned counsel for the petitioner. We are prima-facie of the view that pledgee-pawnee cannot sue for recovery of amount in lieu of the pledge and sell the share by retaining the sale proceeds. Therefore, transfer of such share in the register of the respondent company would not be lawful. There



is ready support to aforesaid view available to the proposition of law in the observations made by Hon'ble the Supreme Court in the case of **Lallan Prasad** (supra). Likewise, on the question of issuing notice the view of Delhi High Court in case of **GTL Limited v. IFCI Limited & Ors.**, 2011 (126) DRJ 394 is available. Therefore, we grant the interim prayer and restrain Respondent Nos. 2 to 5 from undertaking any voting on the pledged shares without specific permission from this Tribunal in that regard. We also restrain them from transferring or creating any encumbrances on the pledged shares to anyone else.

Reply by respondents may be filed within four weeks with a copy in advance to the learned counsel for the petitioner.

Rejoinder, if any, be filed within two weeks thereafter with a copy in advance to the learned counsel for the respondents.

List for further consideration on 22.02.2018.

Sd-  
(CHIEF JUSTICE M.M.KUMAR)  
PRESIDENT

Sd-  
(DEEPA KRISHAN)  
MEMBER(TECHNICAL)

21.12.2017  
VINEET