NATIONAL COMPANY LAW APPELLATE TRIBUNAL NEW DELHI

Company Appeal (AT) (Insolvency) No. 1220 of 2019

IN THE MATTER OF:

India Power Corporation Ltd.
Plot X-1, 2&3, Block – EP, Sector V,
Salt Lake, Kolkata – 700091. ...Appellant

Versus

1.Meenakshi Energy Ltd.
405, Saptagiri Towers,
Begumpet, Secunderabad- 500016
Through Resolution Professional,
Sri R. Ravi Shankar Devarakonda.

2. State Bank of India
Stressed Asset Resolution Group,
21st Floor, Maker Tower 'E'
Mumbai- 400005.

3. PTC India Limited.
(Formerly known as Power Trading
Corporation of India Ltd.)
2nd Floor, NBCC Tower,
15 Bhikaji Coma Place,
New Delhi- 110066 ...Respondents

With

Company Appeal (AT) (Insolvency) No. 1450 of 2019

IN THE MATTER OF:
Debasish Som
S/o Shri Narayan Chandra Som,
Working as Independent Director of

Meenakshi Energy Limited,
Age: 59 Years, Religion: Hindu
Resident of 53/2 Ballygunge Place,
Ballygunge, Kolkata- 700019

...Appellant

Versus

1.Meenakshi Energy Ltd.
405, Saptagiri Towers,
Begumpet, Secunderabad- 500016
Through Resolution Professional,
Sri R. Ravi Shankar Devarakonda.

2. State Bank of India
Stressed Asset Resolution Group,
21st Floor, Maker Tower 'E'
Mumbai- 400005.
Sri R. Ravi Shankar Devarakonda & Ors.

3. India Power Corporation Limited,
Plot X-1, 2&3, Block – EP, Sector V,
Salt Lake, Kolkata- 700091.

...Respondents

Present:

For Appellant : Mr. S. N. Mookherjee, Senior Advocate with Mr. Abhijeet Sinha, Mr. Arijit Mazumdar, Mr. Rishav Banerjee, Mr. Kumar Anurag Singh and Mr. Shambo Nandy, Advocates

For Respondent : Mr. Ramji Srinivasan, Senior Advocate with Mr. Bishwajit Dubey, Ms. Surabhi Khattar, Mr. Aditya Marwah, Advocates for SBI (Committee of Creditors)

Mr. Ravi Kishore and Ms. Rajshree Chaudhary,

Advocates for R-3
Mr. P.V. Dinesh and Mr. Ashwini Kumar and Mr. Mukund P. Unni, Advocates for R.P.

JUDGEMENT

Jarat Kumar Jain. J

The Appellant, India Power Corporation Ltd. (in short IPCL) and Debasish Som being a Shareholder and Independent Ex-Director of Meenakshi Energy Ltd. (in short MEL) (Corporate Debtor) respectively, filed these Appeals under Section 61 of Insolvency and Bankruptcy Code, (In Short I&B Code) against the order dated 07.11.2019 passed by the Ld. Adjudicating Authority (National Company Law Tribunal), Hyderabad Bench, Hyderabad. Whereby, admitted the Application under Section 7 of I&B Code and initiated Corporate Insolvency Resolution Process against the Corporate Debtor. These Appeals were heard together and disposed of by this common Judgment.

2.1 Brief facts of the case is that Meenakshi Energy Ltd. Respondent No. 1 (referred as Corporate Debtor) had availed term loan and working Capital facilities from time to time from a consortium of lenders including State Bank of India, State Bank of Hyderabad, State Bank of Bikaner and Jaipur, State Bank of Mysore and State Bank of Travancore (SBI and the Associate Banks) Respondent No. 2 (referred as Financial Creditor) in two different phases to set up a 300 MW coal based power project (phase I) and 700 MW coal based thermal power project (phase II) respectively, in terms of Common Loan Agreement dated 10.07.2009 and 01.10.2010

respectively, at Thamminapatnam village, Nellore District (Andhra Pradesh).

2.2 The Corporate Debtor has also availed working capital facilities in accordance with the terms of Working Capital Consortium Agreement dated 18.09.2012 and the latest Working Capital facility sanctioned by Financial Creditor is captured under the Renewal cum Enhancement Sanction Letter dated 17.11.2015 issued by SBI. For Security of Loan the Corporate Debtor pledged shares of the Corporate Debtor held by IPCL.

2.3 The Corporate Debtor has defaulted in timely servicing of the principal repayments and interest payments for the facilities in relation to phase I project from 31.07.2017. Therefore, the Account of Corporate Debtor was classified Non-Performing Asset since, 28.10.2017. The SBI (Financial Creditor) vide its notice dated 07.08.2018 demanded the repayments for the outstanding as on 31.07.2018 and on account of failure in making such payments by the Corporate Debtor. The SBI has accelerated/recalled the facilities availed by the Corporate Debtor and the entire exposer of SBI in Phase I Project and Phase II Project is due and payable by the Corporate Debtor. The total amount claimed to be defaulted is as under:-

	Principal	*Interest*	*Default Interest*
Phase I	*Rs. 350,54,21,828.61/-*	*Rs. 86,01,62,898.55/-*	*10,52,65,286.49/-*
Phase II	*Rs. 1018,74,68,307.81/-*	*Rs. 58,64,80,646.26/-*	*6,70,90,682.52/-*
Working Capital Facilities	*51,54,45,583.07/-*	*12,40,70,422.41/-*	*2,30,60,712.52/-*

2.4. The Corporate Debtor is unable to pay its debts. Therefore, Financial Creditor filed an Application under Section 7 of I&B Code, for initiating CIRP. The Application was filed by the SBI on behalf of the SBI and the Associate Banks as the Associate Banks have merged into SBI with effect from 01.04.2017.

3. The Corporate Debtor resisted the Application on various grounds. The amount claimed by the Financial Creditor was secured by pledge of valuable security in the form of shares of the Corporate Debtor. The Financial Creditor has suppressed material fact that the shares of the Corporate Debtor have already been invoked and transferred by the Financial Creditor to the Demat Account of SBI CAP Trustee. Thus, the Financial Creditor became owner of 95.2% shares of the Corporate Debtor and the entire debt of the Corporate Debtor stood discharged. The Financial Creditor being a majority Shareholder of the Corporate Debtor, cannot maintain this Application as a Financial Creditor. The Financial Creditor has also mis-led the Ld. Adjudicating Authority by failing to disclose the pending legal proceedings before various forums. The Financial Creditor has filed this Application as a counter blast to the proceedings initiated by the Corporate Debtor and IPCL against the Financial Creditor in various forums. The Application is barred by Limitation. There does not exist any debt as on date, thus, there is no question of default in respect of the Financial Creditor. The Application under Section 7 of I&B Code is filed in consonance with the RBI Circular dated 12.02.2018 and such circular has been struck down by the Hon'ble

Supreme Court. Therefore, the Financial Creditor has no cause of action to institute the proceeding.

4. After hearing Learned Counsel for the parties, Learned Adjudicating Authority having satisfied with the submission put forth by the Financial Creditor held that there exist default on the part of Corporate Debtor, for which the Corporate Debtor liable to pay. Hence, admitted the Application and ordered for initiation of CIRP and also declared moratorium from the date of order till completion of CIRP under Section 14 of I&B Code. Being aggrieved with this order, the Appellants being Shareholder and independent Director of the Corporate Debtor have filed these Appeals.

5. Learned Senior Counsel for the Appellants submitted that the debt owed by Corporate Debtor was secured by pledge of shares of the Corporate Debtor held by the IPCL. The Financial Creditor after invocation of pledge and subsequent transfer of shares in the name of SBI CAP Trustee Company Ltd, now holds 95.2% of shares in the Corporate Debtor. The Financial Creditor admitted in form No. 1 the value of the pledged shares is Rs. 5,475 Crores and thus, the entire debt of the Financial Creditor stood discharged and there is no default. This Appellate Tribunal in the case of PTC India Financial Services Ltd. (in short PFS) Vs. Mr. Venkateshwaralu Kari and Mandava Holdings Pvt. Ltd. Company Appeal (AT) (Ins) No. 450 of 2018 held that once shares are transferred to the Financial Creditor, the Financial Creditor becomes the owner of the shares and in such a situation there is no debt due to the Financial Creditor as the dues stand satisfied by way of shares. Ld.

Adjudicating Authority erroneously held that the Judgment of this Appellate Tribunal in PFS (Supra) has been stayed by the Hon'ble Supreme Court, in fact further proceedings are stayed. Thus, as per the Judgment in PFS the entire debt of the Financial Creditor stood discharged.

6. Learned Counsel for the Appellants submitted that the Learned Adjudicating Authority failed to appreciate that the Financial Creditor has become the beneficial owner of the Shares as per Regulation 58 of the Securities Exchange Board of India (Depositories and Participants) Regulations, 1996. Hon'ble High Court of Delhi in the case of Tendril Financial Services Pvt. Ltd. & Ors. Vs. Namedi Leasing & Finance Ltd. & Ors. 2018 SCC Online Delhi 8142 held that under the Depositories Regulations the moment the shares are transferred to the account of beneficiary after invocation of shares pledged, such transfer amounts to sale and transferee in whose name, the shares are transferred becomes the beneficial owner of the shares.

7. Learned Counsel for the Appellants further submitted that the Application under Section 7 of I&B Code was filed under the RBI Circular dated 12.02.2018 (In Brief 'RBI Circular'). Such RBI Circular has been declared ultra vires and struck down by the Hon'ble Supreme Court in the case of Dharani Sugar & Chemicals Ltd. Vs. Union of India & Ors. reported in (2019) 5 SCC 480 Hence, the Application under Section 7 of I&B Code, should have been rejected at the threshold as not maintainable.

8. It is also submitted on behalf of the Appellants that after invocation of pledge and transfer of shares. The Financial Creditor in collusion and connivance with all the erstwhile lenders have been siphoning of the funds from the Corporate Debtor. Therefore, the Appellant (IPCL) had filed an Application under Section 241 & 242 of the Companies Act, against the Financial Creditor. However, Learned Adjudicating Authority has erroneously admitted the Application under Section 7 of I&B Code. Hence, the order deserves to be set aside.

9. On the other hand, Learned Counsel for the Financial Creditor (Respondent No. 2) submitted that the Appellants have wrongly contended that the invocation of pledge amounted to transfer of shares or discharge of debt. The Pawnee's rights are governed by the Section 176 of Indian Contract Act, 1872, when Pawnor makes default the Pawnee does not have a right to appropriate and transfer ownership to itself of the pledged goods. The Pawnee's remedies are limited to sue for debt and retain the pledged goods or sell the pledged goods on giving the Pawnor reasonable notice of the sale and appropriate the proceeds. For this preposition, place reliance on the Judgment of Hon'ble Supreme Court in the case of Balkrishna Gupta Vs. Swadesi Polytex Ltd. (1985) 2 SCC 167. Wherein Hon'ble Supreme Court has held that even after the pledge is enforced, the legal title in the shares pledged would not vest in the pledgee and the pledgee has only a special interest/property to retain the shares as a collateral or sell them in accordance with Section 176 of the Indian Contract Act. Hon'ble Bombay High Court in the case of United Breweries (Holdings) Ltd. & Ors. Vs. State Bank of India & Ors. (order dated

02.04.2013) in notice of Motion (L) No. 718 of 2013 in Suit (L) NO. 263 of 2013 held that invocation of pledge and transfer of pledged securities to the pledgee's Demat Account did not violate the Section 176 of the Indian Contract Act and did not result in the pledgor being divested of their rights to the pledged shares. The same view has been taken by this Appellate Tribunal in MAIF investments India Pvt. Ltd. Vs. M/s Ind. Bharath Energy (Utkal) Ltd., (Company Appeal (AT) (Ins) No. 597 of 2018). Thus, the invocation of pledge in itself does not amount to transfer of shares or discharge of debt. This Appellate Tribunal in the case of PFS held that invocation of pledged of shares amounts to discharge of debt. However, Hon'ble Supreme Court has stayed the proceedings. Therefore, this Judgment does not help the Appellants.

10. Learned Counsel for the Financial Creditor (Respondent No. 2) further submitted that the Regulation 58(8) of the Securities and Exchange Board of India (Depositories and Participants) Regulations 1996 deals with the invocation of pledge and it states that it is subject to the provisions of the pledge document. In the present case, the Share Pledge Agreement dated 23.09.2016 at Clause 6.1 provides that upon invocation of pledge and after giving 7 days' notice to the pledgor the Security Trustee can "sell or dispose of all or any part of the Collateral and shall apply the net proceeds of any such sale or disposition pro-rata amongst the lenders towards the obligations then due and payable under the Finance documents and Financing documents." Thus, upon invocation of pledge, SBI CAP Trustee cannot become the owner of the Shares. Clause 6.1 does not grant the phase I Lenders right to

appropriate the shares or become owners of the shares upon invocation. Therefore, in the light of clause 6.1 of Share Pledge Agreement Regulations 58(8) is not applicable. For the sake of argument that the entity which invokes the shares becomes the owner of the shares then in this case since SBI CAP Trustee Company Ltd. has invoked the shares, then it is the owner of the shares not the Financial Creditor.

11. Learned Counsel for the Financial Creditor (Respondent No. 2) submitted that the Application under Section 7 of I&B Code, has been filed independently and not pursuant to the directions given under the RBI Circular dated 12.02.2018 which directed that Insolvency Proceedings must be commenced under the I&B Code, if the amount specified therein continues to be in default for a period of 180 days from the date specified therein. In the Present case, internal approvals for filing the Application under Section 7 of I&B Code, was sought on 04.08.2018 which was prior to the ending of the period specified in RBI Circular.

12. Learned Counsel for the Financial Creditor (Respondent No. 2) further submitted that the Corporate Debtor has suppressed issuance of Additional shares as a result the substantial reduction in the voting rights of the initially pledged shares i.e. from 97.58% available earlier to 3.75% available now, after issuance of Additional shares. The Corporate Debtor (MEL) issued Additional shares with a malafide intention to reduce the voting rights of the Respondent No. 2 (Financial Creditor) in this regard there is clear finding of the Hon'ble High Court of Telangana at Hyderabad in the order dated 23.01.2019 and Appeal before the Division Bench has been dismissed. Thus, the finding attained finality.

13. Learned Counsel for the Financial Creditor (Respondent No. 2) lastly submitted that after invocation of Shares the Corporate Debtor (MEL) had itself sent an acknowledgement of debt vide letter dated 16.02.2018 and also sent settlement proposals vide letters dated 25.05.2018 and 11.06.2018. These letters clearly show that the Corporate Debtor itself admits that the debt due has not been discharged. Thus, the Appeals deserves to be dismissed.

14. After hearing Learned Counsel for the parties, we have perused the record.

15. The following two issues are crop up in these Appeals.

> (a) Whether the Application under Section 7 of I&B Code, filed pursuant to the RBI Circular dated 12.02.2018?
> (b) Whether the liability of the Corporate Debtor stood discharged in view of the invocation of the pledged shares by the Financial Creditor.

Issue No. 1

16. Learned Counsel for the Appellants have raised an objection that the Application under Section 7 of I&B Code, is filed pursuant to the RBI Circular dated 12.02.2018 and Hon'ble Supreme Court in Dharani Sugar & Chemicals Ltd. (Supra) has struck down the Circular. Therefore, the Application is not maintainable. For appreciating the argument, we would like to reproduce the relevant portions of the RBI Circular dated 12.02.2018, which is as under:-

> **"D. Timelines for Large Accounts to be Referred under IBC**
> 8. In respect of accounts with aggregate exposure of the lenders at Rs. 20 billion and above, on or after March 1, 2018 ('reference date'), including accounts where resolution may have been initiated under any of the existing schemes as well as accounts classified as

> restructured standard assets which are currently in respective specified periods (as per the previous guidelines), RP shall be implemented as per the following timelines:
> (i) If in default as on the reference date, then 180 days from the reference date.
> (ii) If in default after the reference date, then 180 days from the date of first such default.
> 9. If a RP in respect of such large accounts is not implemented as per the timelines specified in paragraph 8, lenders shall file insolvency application, singly or jointly, under the insolvency and Bankruptcy Code (IBC) within 15 days from the expiry of the said timeline."

17. In the case in hand NPA was declared on 28.10.2017 internal approval for filing the Application under Section 7 of I&B Code, sought on 04.08.2018 and the Application was filed on 23.01.2019. In the Application there is no reference that the Application is filed in pursuant to the RBI Circular. As per RBI Circular the Application under Section 7 of I&B Code, is required to be filed on or before 15 days from expiry of 180 days' time period from reference date 01.03.2018, it means, in this case the Application would have filed on or before 12.08.2018 whereas it is filed on 23.01.2019. Therefore, there is no ground to presume that the Application under Section 7 of I&B Code, is filed pursuant to the RBI Circular. Learned Adjudicating Authority in Para 12 of the impugned order has also rejected this objection.

Issue No. 2

18. According to the Appellants after invocation of the pledged shares the Financial Creditor became 95.2% shareholder of the Corporate Debtor and the entire dues of Corporate Debtor stood discharged. In support of this submissions Learned Counsel for the Appellants cited two Judgments one of this Appellate Tribunal in the case of PTC India

Financial Services Ltd. (Supra) in which it is held that once shares are transferred to the Financial Creditor, the Financial Creditor became the owner of the shares. The another Judgment of Hon'ble High Court of Delhi in the case of Tendril Financial Services Pvt. Ltd. (Supra) in this Judgment it is held that as per the Regulation 58 of Security Exchange Board of India (Depositors and Participants) Regulations, 1996, the moment the shares are transferred to the Demat Account of the beneficiary after invocation of pledge shares, such transfer amounts to sale and transferee became the beneficial owner of the shares.

19. Learned Counsel for the Respondent No. 2 (Financial Creditor) submits that Regulation 58(8) of the Debentures Regulations is subject to the terms of Share Pledge Agreement and the pledge is governed by the Indian Contract Act.

20 In the present case the whole controversy arises when SBI CAP Trustee Company Ltd. issued a notice of invocation of pledge shares dated 20.12.2017. (Annexure 8 Page 240 of Reply of Respondent No. 2 (Financial Creditor)). In such a situation we are considering the effect of invocation of pledge shares.

21. Admittedly the Loan Document for phase I lenders and phase II lenders are different and default has been committed by the Corporate Debtor in respect of both phases. In the present case the share pledge by the Corporate Debtor were invoked by the SBI CAP Trustee Company Ltd. on the instruction of phase I lenders in relation to phase I facility agreement.

22. There is Share Pledge Agreement dated 23.09.2016 by the Appellant (IPCL) and MEL in favour of SBI CAP Trustee Company Ltd. When the Corporate Debtor committed default then at the instruction of the Financial Creditor, the SBI CAP Trustee Company Ltd. issued notice of invocation of pledged shares dated 20.12.2017, relevant portion of the notice is reproduced here:-

> "This constitutes an Event of Default as defined in the Common Loan Agreement and the IPCL Pledge Agreement. In terms of the IPCL Pledge Agreement, you the Pledgor have agreed that in the event of any default on part of the Borrower in payment of the outstanding amount, the Phase I Security Trustee shall be entitled to exercise their rights over the pledged shares as specifically provided for in the said Agreement.
> In view of the above, we hereby call upon you to pay the sums as per the details mentioned in the Annexure within 7 days from the date of this notice. In case, you fail to make the payments as mentioned in the Annexure, the Phase I Security Trustee shall exercise its available rights as the Pledgee by way of invocation of the pledge over the Pledged Shares and shall be entitled to inter alia transfer and/or sell the pledged shares on the expiry of 7 days from the date of this letter for realizing the dues as per the details mentioned in the Annexure at your own risks as to the costs and consequences thereof.
> This notice is being issued to you without prejudice to our rights and remedies against the Borrower. Nothing contained in this letter will be construed as a waiver (in full or part) of any or rights or remedies under the Financing Documents or defaults thereunder. The Lenders and other Secured Parties expressly reserve the right to declare further defaults or invoke security from time to time."

23. A bare perusal of the notice of invocation shows that the pledge had been invoked only on behalf of the phase I lenders. This notice was issued without prejudice to the rights and remedies against the borrower under the Financing Documents. This notice also specifically mentioned that

the lenders and other secured parties expressly reserving the right to declare further default or invoke security from time to time.

24. Now, we would like to refer some material events taken place after issuing this notice:-

(i) After receiving the notice the Corporate Debtor has not made any payment.
(ii) On 26.12.2017 the Corporate Debtor issued additional shares 10,02,34,109 with differential voting rights of 1,000 votes per share. Which resulted in reduction of voting rights of the SBI CAP Trustee Company Ltd. from 97.58% to 3.75%.
(iii) On 16.02.2018 the Corporate Debtor had itself sent an acknowledgement of debt.
(iv) On 02.05.2018 as per Clause 2.6.2 of the Share Pledge Agreement, in furtherance of pledged invocation the Corporate Debtor transferred 3912402331 shares owned by IPCL, in the Demat Account of SBI CAP Trustee Company Ltd.
(v) On 25.05.2018 the Corporate Debtor had sent settlement proposal.
(vi) On 11.06.2018 the Corporate Debtor had sent settlement proposal.
(vii) On 31.07.2018 IPCL filed W.P. No. 26977/2018 before the Hon'ble High Court of Telangana praying for declaration the invocation of transfer of the entire shareholding of IPCL in SBI CAP Trustee Company Ltd. without carrying out valuation of the pledged shares to be arbitrary and illegal.
(viii) On 21.08.2018 the Corporate Debtor filed W.P. No. 30048 of 2018 before the Hon'ble High Court of Telangana that the Financial Creditor were withdrawing the entire amount standing in the Trust Retention Account of the Corporate Debtor against their interest repayment, while not providing any funds for the running of the plant which ultimately effects intrinsic value of the Corporate Debtor. In this Petition the Corporate Debtor has filed an Applications I.A No. 1 of 2018. For stay all steps/actions by the Financial Creditor pursuant to Total Recall Notice dated 07.08.2018 till pendency of Writ Petition whereas the Financial Creditor has filed an Application I.A. No. 2 of 2018 for vacating the interim order dated 24.08.2018 passed in I.A. No. 1 of 2018.
(ix) On 23.01.2019 Hon'ble High Court of Telangana allowed I.A. No. 2 of 2018 and vacated the interim order passed in I.A No. 1 of 2018.

(x) On 23.01.2019 the Financial Creditor filed an Application under Section 7 of I&B Code before the Tribunal.

(xi) On 17.04.2019 the Division Bench of the Hon'ble High Court of Telangana at Hyderabad dismissed the Writ Appeal No. 203 of 2019 in which the order dated 23.01.2019 of the Single Bench of Hon'ble High Court of Telangana, was challenged.

25. Now, we have considered whether the pledge of dematerialised shares being governed under the Provisions of Section 176 of the Contract Act, or/and Depositories Act, 1996 and Regulations made therein. Hon'ble High Court of Delhi in the case of Tendril Financial Services Pvt. Ltd. (Supra) concurred with the view of Hon'ble High Court of Bombay in JRY Investments Pvt. Ltd. and Puspanjali Tie Up Pvt. Ltd. held that the shares in dematerialised form cannot be pledged in accordance with Section 176 of the Contract Act. The Court observed that the Provisions of the Contract Act require delivery of the goods pledged i.e. physical possession of the goods. However, the dematerialised shares are not capable of delivery by handing over *de facto* possession. Since, the goods in such cases are invisible and intangible, it would be impossible to fix the time and place of delivery. Hence, the requirement for sending a reasonable notice to the Pledgor under Section 176 of the Contract Act, prior to the actual sale is not required in case of sale of dematerialised securities because the provisions of the Contract Act, will not be applicable for enforcing a share pledge. Hence, the Provisions of the Depositories Act, 1996 and Regulations therein shall apply. Hon'ble High Court of Delhi also held that:-

"D. I have no reason to take a view different from that taken by the High Court of Bombay in JRY Investments Private Limited supra and in Pushpanjali Tie Up Pvt. Ltd. (Supra) and respectfully concur with the same and am for the same reasons unable to find the plaintiffs entitled to any interim relief as they have enjoyed for the last 12 years.

E. I may however add, that a notice under Section 176 of Contract Act is in derogation of Regulation 58 (Supra). While Section 176 entitles the pledgee/pawnee to, on default by the pledgor/pawnor, sell the thing pledged, —on giving the pawnor reasonable notice of the sale‖, Regulation 58(8) entitles the pledgee to, —subject to the provisions of the pledge document‖ , —invoke the pledge‖ and mandates the depository to —on such invocation‖ i.e. by the pledgee, —register the pledgee as beneficial owner of such securities‖ i.e. the securities pledged and further mandates the depository to —amend its records accordingly‖. There is no place for a prior notice under Section 176, in the scheme of Regulation 58(8). On the contrary, Regulation 58(9) requires the depository to, after so amending its records under Regulation 58(8), inform the participants of the pledgor and the pledgee of the same and mandates the said participants to inform the pledgor and the pledgee. Thus, (a) while Section 176 provides for a notice to pledgor prior to effecting sale, Regulation 58 provides for notice post invocation and on which invocation beneficial ownership of pledged shares changes from that of the pledgor to that of the pledgee and which is equivalent to sale under Section 176. To hold that a prior notice under Section 176 of Contract Act is also required in the case of pledge of dematerialized shares would interfere with transparency and certainty in the securities market, rendering fatal blow to the Depositories Act and Regulations and the object of enactment thereof.

F. The distinction sought to be drawn by the senior counsel for the plaintiffs between —invocation‖ and —sale‖ is also not in consonance with Regulation 58. I may notice that there is no such distinction in Contract Act either. While Section 176 of Contract Act entitles pledgee to, on default of pledgor, sell the pledged thing i.e. transfer title and possession thereof to purchaser, Regulation 58 entitles the pledgee to, on default on pledgor, invoke the pledge by intimating to the depository and mandates the depository to in its records record the pledgee in place of the pledgor as the beneficial owner of pledged shares,

> thereby transferring title as beneficial owner, from the pledgor to pledgee. The only condition imposed on invocation of pledge by the pledgee, under Regulation 58 (8) is of the same being required to be ―subject to the provisions of the pledge documents‖ i.e. of creation of pledge in the manner provided in Regulation 58(1) to 58(6) - of which the participant of the pledgee and the depository have been made aware and with which they are thereby required to comply with. It is not the case of plaintiffs that there was any condition of prior notice in the pledge documents. Though it is not the plea that the Letters of Pledge and Arbitral Award were intimated to the participant or the depository but even they do not provide for prior notice. On the contrary, they provide otherwise. The distinction drawn in the Letters of Pledge aforequoted between invocation of pledge, whereupon the beneficial ownership in pledged shares, under Regulation 58, was to stand transferred from that of pledgor to that of pledgee, and sale of said shares by pledgee, to realize its dues, is only for the purpose of determining the amount which was to be offset from the debt to secure which the pledge was made. However such agreement cannot be interpreted as the pledgor continuing to have title in the shares. The only title in dematerialized shares, under the Depositories Act, is as beneficial owner in the records of the participant and the depository and which beneficial ownership changes on invocation of pledge in terms of Regulation 58. Even otherwise, a plea of a pledgor, of the pledgee, though after notice under Section 176, having sold the pledged thing for less than optimum price cannot be a ground for invalidating the sale. The mere fact that the parties, in terms of Arbitral Award reversed the earlier invocation also cannot change the said position. Such agreement is also not found to be inconsistent with Regulation 58. The quantum of consideration does not affect the transfer of title as beneficial owner."

26. In the light of the Judgement of Hon'ble High Court of Delhi in Tendril Financial Services Pvt. Ltd. (Supra). We are convinced with the arguments of Learned Counsel for the Appellants that the moment the shares transferred to the Demat Account of the SBI CAP Trustee Company Ltd. it became the beneficial owner of the shares as also held by this Appellate Tribunal in the case of PTC India Financial Services Ltd.

(Supra). Learned Counsel for the Appellants tried to impress that pursuant to invocation of pledged shares the Financial Creditor became the shareholder of the Corporate Debtor. We are unable to convince with this argument and held that after invocation of pledged shares the SBI CAP Trustee Company Ltd. became the shareholder of the Corporate Debtor, as per the Clause 2.6.2 of the Share Pledge Agreement dated 23.09.2016. The Financial Creditor is not party in the above referred agreement. In the notice dated 20.12.2017 it is mentioned that invocation of pledged shares shall not prejudice the rights and remedies available to the Financial Creditor under the Financing Documents. Therefore, it cannot be said that after invocation of the pledged shares by the SBI CAP Trustee Company Ltd., the Financial Creditor cannot maintain the Application under Section 7 of I&B Code, or the entire dues of the Corporate Debtor stood discharged.

27. It is argued on behalf of the Appellant that after invocation of pledge and subsequent transfer of shares the Financial Creditor held 95.2% shares of the Corporate Debtor. Thus, the entire debt of the Financial Creditor stood discharged. If this is the position, then why the Corporate Debtor after receiving the notice of invocation of pledged shares dated 20.12.2017 sent an acknowledgement of debt on 16.02.2017 (See Annexure 20 of Page 313 Reply of Financial Creditor Vol. II) and after transfer of shares sent letters dated 25.05.2018 and 11.06.2018 for settlement. It shows that even after transfer of shares in the Demat Account of SBI CAP Trustee Company Ltd., there exist a debt of more than Rs. 1 lakh and there is a default on the part of the Corporate Debtor.

28. It is pertinent to note that Hon'ble High Court of Telangana while deciding the Application I.A. No. 1&2 of 2018 in W.P. No. 30048 of 2018 observed that after receiving the notice of invocation of shares on 20.12.2017 the Corporate Debtor issued 10,02,34,109 additional shares on 26.12.2017 with a differential voting rights of 1,000 voting per share which resulted in reduction of voting rights of the SBI CAP Trustee Company Ltd. from 97.58% to 3.75%. Hon'ble High Court of Telangana also observed that while issuing additional shares, the Corporate Debtor *Prima Facie* contravened the Rule 4(1)(e) of the Companies (Share Capital and Debenture) Rule, 2014. Hence, issuance of additional shares does not appear to be bona fide and the Corporate Debtor had defeated the very purpose of the Share Pledge Agreement dated 23.09.2016. These findings of Hon'ble High Court of Telangana is maintained by the Division Bench of Hon'ble High Court of Telangana in Writ Appeal No. 203 of 2019. Thus, these findings attained finality. Learned Counsel for the Appellants has not made any submission as to how the Appellants would over come with these findings.

29. Thus, we are unable to convince with the arguments of Learned Counsel for the Appellants that after invocation of the pledged shares by the SBI CAP Trustee Company Ltd. liability of the Corporate Debtor stood discharged.

30. It is true that after invocation of the pledge, Shares were transferred in dematerialised form in the DP Account of SBI CAP Trustee Company Ltd. and it became the beneficial owner of the shares it does not mean that

the Financial Creditor became the beneficial owner of the shares and it losses the status of Financial Creditor.

31. With the aforesaid, we hold that the Financial Creditor has not filed the Application under Section 7 of I&B Code, in pursuant to the RBI Circular dated 12.02.2018 and even after invocation of the pledged shares by SBI CAP Trustee Company Ltd., the financial Creditor can maintain the Application. Learned Adjudicating Authority has rightly admitted the Application under Section 7 of I&B Code. It is undisputed fact that the Corporate Debtor has committed default in repayment of debt and the amount of debt is more than 1 Lakh.

Thus, we found no ground to interfere in these Appeals. Thus, the Appeals are hereby dismissed. No order as to costs.

[Justice Bansi Lal Bhat]
Acting Chairperson

[Justice Jarat Kumar Jain]
Member (Judicial)

[Shreesha Merla]
Member (Technical)

New Delhi
(10th September, 2020)

SC