



Sharayu & Kavita & Jitendra

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION**

INTERIM APPLICATION (L) NO. 29574 OF 2021

IN

COMMERCIAL SUIT NO. 189 OF 2022

World Crest Advisors LLP **...Applicant/Plaintiff**

Versus

Catalyst Trusteeship Limited & Ors. **...Defendants**

And

J.C. Flowers Asset Reconstruction Private Limited **...Respondent
(Proposed Defendant)**

Mr. Navroz Seervai, Senior Counsel, Ms. Gulnar Mistry, Mr. Manish Desai, Mr. Subit Chakrabarti, Ms. Shreni Shetty, Ms. Khushnumah Banerjee and Ms. Antara Kalambi i/by ANB Legal for the Applicant/Plaintiff.

Mr. Indranil Deshmukh, Ms. Gathi Prakash, Ms. Nidhi Asher, Ms. Arushi Poddar i/by Cyril Amarchand Mangaldas for the Defendant No. 1.

Mr. Darius Khambata, Senior Counsel a/w Mr. Shyam Kapadia, Mr. Ammar Faizullabhoy, Mr. Indranil Deshmukh, Ms. Gathi Prakash, Ms. Nidhi Asher, Ms. Arushi Poddar i/by Cyril Amarchand Mangaldas for the Defendant Nos. 2 and 10.

Mr. Zal Andhyarujina, Senior Counsel a/w Ms. Maithili Parikh, Ms. Tanya Mehta, Ms. Vaibhavi Bhalerao i/by DSK Legal for the Defendant No. 3.

Mr. Sayeed Mulani a/w Ms. Shobhana Waghmare i/by Mulani & Co. for the Defendant Nos. 4 to 9.

CORAM : R.I. CHAGLA J

Reserved on : 25 April 2023

Pronounced on : 04 September 2023

JUDGMENT :

1. By this Interim Application, the Applicant/Plaintiff has sought an injunction restraining Defendant No. 2-Yes Bank Limited (for short 'Yes Bank') and Defendant No. 10-J.C. Flowers Asset Reconstruction Private Limited (for short "JCF") from exercising rights including voting rights in respect of the suit shares. Further injunction is sought restraining the Yes Bank Limited and JCF from transferring, alienating, creating any third party rights in respect of the suit shares. Consequential relief is sought by way of injunction restraining the Defendant/Respondent Nos. 1 and 2 and the Defendant/Respondent No. 10 – JCF from interfering and/or seeking to participate in the management and affairs of the Defendant/Respondent No. 3 by claiming rights under the suit shares.

2. The Plaintiff is a holder of 9,52,100/- (0.05%) shares of

Defendant No. 3-Dish TV India Limited (“**Dish TV**”) and Pledgor of 44,00,54,852 shares of Dish TV. The Plaintiff is admittedly a part of the Promoter Group of Dish TV i.e. Jawahar Lal Goel Group.

3. Defendant No. 1-Catalyst Trusteeship Limited (for short “**Catalyst**”) is a Pledgee and security trustee for the beneficial interest of Yes Bank Limited. Defendant No. 2-Yes Bank Limited was the single largest shareholder of Dish TV, holding 25.63% shares (including 0.85% through IDBI Trusteeship Services Limited) till 21st December 2022, after which Yes Bank transferred its share holding in Dish TV to JCF, pursuant to assignment of its stressed asset portfolio aggregating upto INR 48,000 Crores (approx.) to JCF together with the underlying security created thereof. Defendant No. 3-Dish TV India Limited (“**Dish TV**”) is a public limited company of which Jawahar Lal Goel (the brother of Subhash Chandra) is a former Managing Director of Dish TV, holder of 0.01% shares of Dish TV. Defendant Nos. 4 to 9 Essel Group Entities are collectively referred to as ‘Borrowers’ of Yes Bank Limited who had advanced loans to the Borrowers amounting to INR 5,270 Crores (referred to as “the loan transaction”). The Plaintiff had in turn pledged 44,00,54,852 shares of Dish TV for securing these loans. Defendant No. 10 JCF is a

company to whom Yes Bank has assigned its stressed asset portfolio aggregating to INR 48,000 Crores including as claimed by Yes Bank, the said loans advanced to the Borrowers. JCF is stated to be presently the single largest shareholder of Dish TV with 25.63% shares [held by itself, through IDBI Trusteeship Services Limited and through Yes Bank (in its capacity as the agent of IDBI Trusteeship Services Limited)].

At the outset, a brief background of facts is necessary.

4. Between the period November 2015 and April 2018 Yes Bank advanced loans, amounting to INR 5,270 Crores to the Borrowers (i.e. Defendant Nos. 4 to 9, PAN India Infraprojects Pvt.Ltd. and RPW Projects Pvt. Ltd.).

5. Catalyst was appointed as Yes Bank's security trustee under various Security Trustee Agreements in respect of the loans during the period January 2018 to July 2018. One of the Security Trustee Agreements has been annexed at Exh.A to the Plaint. The Plaintiff is not a party to the Security Trustee Agreement and has no privity of contract with the parties thereto.

6. The Plaintiff and Catalyst executed two Pledge Deeds dated 5th July 2018 and 6th May 2019 whereby the Plaintiff pledged a total of 44,00,54,852 shares of Dish TV in favour of Yes Bank as security for Loans of INR 4,210 Crores on 5th July 2018 and 6th May 2019. The relevant clauses of the said Pledge Deeds are referred to are as under :-

- (i) the Plaintiff pledged all of its rights (including voting rights in or rights to control or direct the affairs of Dish TV) and interest in the Suit Shares to the Pledgee [Clause 2.1(b)];
- (ii) during the currency of the Pledge Deeds and even prior to any default, the Plaintiff was required to vote on the Suit Shares in a manner that is not prejudicial to the interest/ rights of the Pledgee and/or Yes Bank (the Lender) and/or not inconsistent with the Transaction Documents [Clauses 10.3(d) & 5(b)];
- (iii) upon default, the Pledgee is entitled to exercise voting rights in relation to the Suit Shares to the exclusion of the Plaintiff [Clause 7.1 (g)];
- (iv) upon default, the Pledgee is entitled to enforce the security interest and take possession of or dispose of all or any part of the Suit Shares in any manner permitted by Law upon such terms as the Pledgee determines and to cause all or any part of the Suit

Shares to be transferred into its name or its nominees
[Clause 7.1(a) and (c)];

- (v) the Pledgee, under its powers of realization upon enforcement of security, is entitled to transfer or cause any of the Suit Shares to be transferred to and registered in the name of any of the Pledgee's successors, assigns or transferees. [Clause 4.1(b)]
- (vi) the Plaintiff has undertaken not to stop or attempt to stop any transfer of Suit Shares in the name of Pledgee or its nominee [Clause 10.3(b)].
- (vii) Clauses 12 (i) and (iii) under Pledge Deed dated 5th July 2018 (identical to Clauses 12 (i) and (iii) of the Pledge Deed dated 6th May 2019) provide as follows:

"12. Power of Attorney

(i) Power of attorney

Without prejudice to the Pledgor's rights under Clause 5, each Pledgor hereby irrevocably appoints the Pledgee as the attorney of such Pledgor on its behalf and in the name of such Pledgor to do all acts and things and execute all documents which such Pledgor could itself do in relation to any of the Security Assets or in connection with any of the matters provided for in this Deed.

...

(iii) General delegation

The Pledgee shall have full power to delegate the powers, authorities and discretions conferred on it or him by this Deed (including the power of attorney) to any Person on such terms and conditions as it or he shall see fit which shall not preclude exercise of those powers, authorities or discretions by it or him or any revocation of the delegation or any subsequent delegation.”

7. On 25th January 2019, Subhash Chandra in an open letter stated that his recommendation made to his brother Jawahar Goel to buy D2H from Videocon was one more key error, which costed both, him and Jawahar Goel, a fortune. In the said letter, Subhash Chandra has not denied the debts owed to its various lenders, including Yes Bank.

8. The Plaintiff had pursuant to the said Pledge Deeds and as provided there:- executed Powers of Attorney dated 1st May 2019 and 6th May 2019 in favour of Catalyst, and in respect of the suit shares. These Powers of Attorney empowered Catalyst and/or its authorized representatives *inter alia* : (i) exercise all rights and privileges which pertain to the suit shares upon occurrence of a default; (ii) exercise voting rights in respect of the suit shares on the

occurrence of a default; (iii) do any act to perfect and maintain the security created *vide* the Pledge Deeds; and (iv) delegate such powers to any other Person. The said Power of Attorney dated 1st May 2019 is annexed to the Pledge Deed dated 5th July 2018.

9. In July 2019 Yes Bank, through its security trustee, i.e. Catalyst, invoked the pledges as per the provisions of the Pledge Deeds and retained the suit shares as collateral security in terms of Section 176 of the Indian Contract Act, 1872. Notices of sale were issued to the Borrowers under the said provision. Catalyst stated that there was a default on the part of the Borrowers and payment of the entire overdue sum was sought within one day of the date of the said Notice. It was further stated by Catalyst that failing payment, the suit shares would either be sold or taken into Yes Bank's own depository account without further notice.

10. The Plaintiff addressed a letter dated 24th July, 2019 to Catalyst *inter alia* acknowledging and admitting the creation of pledge of over 44,00,54,852 shares of Dish TV i.e. the suit shares in favour of Yes Bank.

11. The then CEO and Managing Director of Yes Bank, Mr. Rana Kapoor was arrested by the Enforcement Directorate on 8th March 2020 on allegations of large-scale fraud by the top management of Yes Bank. The top management of Yes Bank was subsequently changed.

12. On 13th March 2020, Yes Bank was reconstructed under a Central Government Mandated Scheme. The Scheme had been necessitated on account of Yes Bank's significant exposure to Non-Performing Assets ("NPAs"). At or around this time, the Essel Group's total outstanding dues to Yes Bank were to the tune of INR 7,698 Crores out of which, INR 6,789 Crores (i.e. 90% of Yes Bank's exposure to the Essel Group) was classified as NPAs by Yes Bank.

13. On 29th May, 2020 Catalyst transferred the suit shares of Dish TV into its own account which the Plaintiff claims is without intimation to them and which Catalyst claims to have been done in accordance with the terms of the Pledge Deeds.

14. A disclosure under the SEBI (Substantial Acquisition of Shares and Takeovers) Regulations, 2011 ("Takeover Code") was

made on 1st June 2020 to SEBI, on account of the fact that the suit shares are held in a listed company, namely Dish TV. Reserve Bank of India (“**RBI**”) was thereafter informed by Yes Bank on 2nd June 2020 that there had been a transfer of the suit shares *inter alia* under the Pledge Deeds.

15. Subhash Chandra, claiming to be the Mentor of the Essel Group, filed a criminal complaint (“Subhash Chandra Complaint”) against *inter alia* former officers and employees of Yes Bank, with the Deputy Commissioner of Police, Crime Branch, Uttar Pradesh alleging *inter alia* that the financial facilities advanced by Yes Bank were utilised to square off outstanding dues of a third- party entity (namely Videocon), which was not a part of the loan transaction secured by the pledge of the suit shares. The allegation made was that the loan was routed through the Borrowers for collateral purposes and to circumvent extant RBI regulations. In September 2020, Price Waterhouse Cooper (PWC) was appointed to conduct the forensic audit into the said loan accounts. Subhash Chandra in the complaint has alleged that the Borrowers had been induced and pressurized into availing the loans by Yes Bank, and the same were obtained by false promises.

16. It is necessary to note that on 12th September 2020 the Subhash Chandra Complaint resulted in a First Information Report (“FIR”) being registered at the Gautam Buddh Nagar Police Station, Greater Noida, Uttar Pradesh, against *inter alia* former officers of Yes Bank.

17. In July 2020, Yes Bank proceeded to recall all loan facilities extended to the Borrowers in accordance with the terms of the said loan agreements and called upon the Borrowers to repay the debt owed to Yes Bank. On 29th July 2020, Yes Bank called upon some of the Borrowers to show cause as to why they should not be declared Willful Defaulters under the RBI’s Master Circular on Willful Defaulters (“SCN”).

18. Pursuant to the said SCN’s issued by the Yes Bank, the Borrowers filed Suits before the Saket District Court, New Delhi for quashing of the SCN’s. The Borrowers relied upon the Subhash Chandra’s criminal complaint dated 22nd June 2021 and FIR dated 12th September 2021. By an *ex parte ad-interim* order dated 13th October 2020, the Saket Court restrained Yes Bank from selling 44,53,48,990 shares of Dish TV. The order operated for over nine

months, until the Saket Court proceedings were withdrawn on 3rd August 2021 with the Borrowers seeking liberty to file proceedings before the appropriate forum.

19. On 26th April 2021, a One Time Settlement (“OTS”) proposal was furnished to Yes Bank by the Essel Group, *inter alia* acknowledging the legitimacy of the loans and the Pledge Deeds. It is stated therein that the funds have been utilized for the actual purpose for which the loan was sanctioned and there is no diversion of funds. The said OTS was thereafter, rejected by Yes Bank vide letter dated 14th June 2021. Thereafter, the Essel Group had in response dated 15th June 2021, once again called upon Yes Bank to consider its settlement offer and copied the said letter to the officials of the RBI.

20. Catalyst on 7th August 2021 transferred the suit shares in Dish TV to Yes Bank which Yes Bank claims that this was in accordance with the terms of the Pledge Deeds. Relevant public disclosures in this regard were made by Yes Bank.

21. On 12th August 2021, Dish TV issued a notice with a

proposal to conduct its Annual General Meeting (“**AGM**”) on 27th September 2021.

22. On 21st September 2021, Yes Bank issued a Notice under Section 100 of the Companies Act, 2013 formally requisitioning an Extraordinary General Meeting (“**EGM**”) of Dish TV.

23. Yes Bank filed a complaint on 24th September 2021 with the Economic Offences Wing, Mumbai (“**EOW**”) against the Borrowers [Defendant Nos. 5, 7 to 9 as also RPW Projects Private Limited (which is under liquidation) and Pan India Infraprojects Private Limited (which is under a moratorium and an application for insolvency is pending before the National Company Law Tribunal)] under the RBI Master Directions on “*Frauds-Classification and reporting by commercial banks and select FIRs*” dated 1st July 2016 (updated as on 3rd July 2017) (“**the RBI Directions**”) reporting fraud in the mis-utilizing of loans of approximately Rs.4820 Crores advanced to the borrowers (hereinafter referred to as “**EOW Complaint**”). The EOW complaint was filed pursuant to a forensic audit of eight Essel Group Borrower entities (Defendant Nos. 4 to 9, RPW Projects Private Limited and Pan India Infraprojects Private

Limited) carried out by an independent auditor appointed by Yes Bank. The forensic audit concludes that out of total funds of INR 4820 Crores an amount of INR 448205 Crores remain outstanding.

24. The Plaintiff has stated that EOW Complaint was included in the larger complaint, also made by the Yes Bank, to the Ministry of Corporate Affairs (“**MCA**”) sometime in November 2021. The Plaintiff received copies of the MCA complaint from Dish TV. It is the Plaintiff’s case that upon receipt of the complaint, on closer inspection of the EOW complaint revealed that the allegations in the EOW complaint were similar to Subhash Chandra complaint on behalf of the Borrowers in June 2020. In the EOW Complaint, Yes Bank has excluded amounts that were diverted to pay off the loan of a third party, namely the Videocon Group.

25. It is necessary to note that EOW by letter dated 21st April 2022 addressed to Yes Bank informed Yes Bank that the Preliminary Enquiry No. 203 of 2021 dated 3rd August 2021 was closed.

26. On 5th November 2021, the Crime Branch, Gautam

Buddh Nagar, issued Notices under Section 102 of the Code of Criminal Procedure, 1973 (“CrPC”), to Yes Bank and National Securities Depository Limited (NSDL), in furtherance of the Subhash Chandra Complaint and ensuing FIR. Pursuant to the Section 102 Notices, Yes Bank was restrained from dealing in or exercising its rights over 44,53,48,900 equity shares of Dish TV till the completion of the investigation on the Subhash Chandra Complaint or further orders.

27. Yes Bank had thereafter, adopted proceedings i.e. Company Petition No. 411 of 2021 filed on 22nd November 2021, referred to as an Oppression & Mismanagement Petition, against Dish TV, its Board of Directors and its Promoter/Promoter Group shareholders, including the Plaintiff, before NCLT, Mumbai. Yes Bank has referred to the EOW complaint in the Company Petition.

28. Yes Bank had also challenged the Section 102 Notices before the Allahabad High Court in writ proceedings being Criminal Miscellaneous Writ Petition No. 11135 of 2021. By an order dated 25th November 2021, the Allahabad High Court dismissed the Writ Petition. Yes Bank filed a Special Leave Petition being Special Leave

Petition (Crl.) No. 9192 of 2021 before the Supreme Court. The Supreme Court stayed the operation of the Section 102 Notices and stayed further proceedings in connection with the Subhash Chandra Complaint and the FIR. It is necessary to note that by subsequent order dated 24th January 2023, the Supreme Court set aside the impugned order dated 25th November 2021 of the Allahabad High Court and restored the proceedings before the Allahabad High Court for fresh disposal on merits. The Supreme Court had directed that its interim order dated 30th November 2021 shall continue until the disposal of the writ proceedings.

29. On 5th December 2021, Dish TV issued notice of its AGM held on 30th December 2021. On 8th December 2021, the Plaintiff addressed a letter to Dish TV stating that though the custody of the suit shares is with Yes Bank, the Plaintiff is entitled to exercise its voting rights as per “*extant laws and regulations*” since suit shares continued to be part of security package for Yes Bank; and the Plaintiff requested Dish TV to facilitate the exercise of voting by the Plaintiff in the upcoming AGM.

30. Dish TV by letter dated 12th December 2021 stated that

each shareholder would be entitled to vote on shares held in its custody / demat account at the AGM scheduled on 30th December 2021. Dish TV informed the Plaintiff that it was not in a position to accede to the Plaintiff's request in its letter dated 8th December 2021.

31. The unamended Suit was filed by the Plaintiff challenging the transfer of the suit shares from Catalyst to Yes Bank and praying for declarations viz. that the Plaintiff is the Owner of the suit shares and is solely entitled to all rights thereunder; the transfer of suit shares from Catalyst to Yes Bank is illegal, contrary to the Security Trustee Agreements and law and therefore void; and the only right that Catalyst has with respect to the suit shares is the right of sale of the suit shares. Thereafter, an amendment application being Interim Application (L) No. 5268 of 2022 was taken out which was allowed by order dated 8th April 2022. Further prayers were added including for an order and declaration that the pledge of suit shares by the Plaintiff including the pledge contracts and the action by the Defendants under such pledges are all void, illegal and vitiated by and fraud for Yes Bank to restore the suit shares in favour of the Plaintiff. Further amended prayer was sought for damages against

Catalyst and Yes Bank. Therefore, further amendment was sought and allowed by order dated 17th January 2023 passed in Interim Application No. 1512 of 2022. The Plaintiff by the further amendment had added prayers including for Yes Bank and JCF to restore the suit shares in favour of the Plaintiff and claim for Damages against JCF, apart from Catalyst and Yes Bank.

32. The present Interim Application filed on 16th December, 2021 was heard for *ad-interim* relief by this Court on 23rd December 2021. This Court was not inclined to grant any *ad-interim* relief and upon request made by the learned Senior Counsel for the Plaintiff, this Court directed that the results / outcome of the AGM to be held on 30th December 2021 will abide by the decision in the Interim Application. The learned Senior Counsel for the Plaintiff accordingly stated that the Plaintiff is not challenging the rejection of ad-interim reliefs, by filing any appeal and hence the Court need not given any reasons. In view of this statement, no reasons are recorded for rejection of the prayer for ad-interim relief.

33. On 30th December 2021, Dish TV held its 33rd AGM. However, Dish TV did not declare, disclose and implement the results

of its 33rd AGM. Instead it chose to make a statutory disclosure that in order to comply with this Court's direction by way of order dated 23rd December 2021, Dish TV had requested the scrutinizer to place all the information relating to the e-voting along with his Report, in a sealed cover and hand over to the Company Secretary and Compliance Officer of the Company, who shall in turn place the same before this Court for further directions. The Scrutinizer has confirmed that he has submitted all the information relating to e-voting along with his Report pertaining to the results of the voting conducted at the AGM in a sealed cover. Dish TV had moved suitable application before this Court in order to place the same before this Court. It is necessary to note that the result of the 33rd AGM was finally declared only on 8th March 2022.

34. In a counter Affidavit dated 25th January 2022 filed by the Subhash Chandra in SLP (Cr.) 9192 of 2021 which challenged the order of the Allahabad High Court dated 25th November 2021 passed in Criminal Miscellaneous Writ Petition No. 11135 of 2021, Subhash Chandra claimed that the whole transaction was shown to be a beneficial business transaction which would be within the contours of law and since the investigation under the FIR filed by the Respondent

No. 3 was underway, on 3rd August 2021, the Essel entities, upon advice, withdrew the Suit filed in the Saket District Court with liberty of the learned Trial Court. In the Affidavit in Reply filed by the Borrowers i.e. Defendant Nos. 4 to 9 in the captioned Interim Application, it was mentioned that it had recently come to the knowledge of the Borrowers that the Chief Vigilance Officer of Yes Bank had made a complaint before the EOW. Particulars of the claim have been mentioned and upon which it has been stated that if the FIR is investigated and found to be correct, it would vitiate the entire transaction including the Pledge. The suit shares which formed the subject matter of the present dispute is also directly linked with the commission of offence.

35. The Plaintiff has claimed that in view of the discovery that the consideration for the pledge and the objective of the loan transaction was illegal, fraudulent and therefore void *ab initio* under Section 23 of the Indian Contract Act, 1872, which the Plaintiff learnt in February 2022 from the EOW complaint, correspondence was addressed on 16th February 2022 by the Plaintiff to Yes Bank to produce the annexures to the EOW Complaint and in particular, Annexure 11.

36. The Plaintiff filed Interim Application (L) No. 4788 of 2022, wherein the Plaintiff sought relief restraining Yes Bank from transferring and/or selling, acting upon, using and/or exercising any rights in respect of the suit shares. Further relief was sought restraining Catalyst and Yes Bank from exercising any rights including voting rights in respect of the suit shares and/or interfering and/or seeking to participate in the management of Dish TV. The Plaintiff's Interim Application was disposed of on the very same day of its filing i.e. on 17th February 2022 as infructuous upon the statement made by the learned Senior Counsel for the Plaintiff that review of the order dated 23rd December 2021 is sought and that he does not desire to press Interim Application (L) No. 4788 of 2022 at this stage.

37. The Plaintiff has filed Review Petition (L) No. 5303 of 2022 on 22nd February 2022 in the present Interim Application seeking review of the Order dated 23rd December 2021. It is necessary to note that the Review Petition was disposed of, as withdrawn by subsequent order dated 17th January 2023, in view of the subject matter of the review being brought on record by way of amendment to the Plaint. This was pursuant to the application for

amendment of the Plaint filed by the Plaintiff to place on record the EOW complaint by stating that it was suppressed by Yes Bank. This application was allowed vide order dated 8th April 2022.

38. The Plaintiff filed Interim Application (L) No. 13155 of 2022 seeking the disclosure and production of the Annexures to the EOW Complaint in furtherance to the notice to produce dated 16th February 2022.

39. During the pendency of the proceedings, the Supreme Court delivered its judgment in *PTC India Financial Services Ltd. Vs. Venkateswarlu Kari & Anr.*¹ (“*PTC India*”).

40. In May-June 2022, Dish TV issued notice for Extra Ordinary General Meeting to be held on 24th June 2022 inter alia of the shareholders’ approval for reappointment of the Managing Director, the Whole Time Director and a Non-Executive Independent Director of the Defendant No. 3, made on 25th March 2022. An Application being Interim Application (L) No. 17730 of 2022 was filed by the Plaintiff seeking a restraint against Yes Bank from voting

1 2022 SCC Online SC 608 Judgment dated 12th May 2022

at the EGM.

41. This Court after hearing the parties on 14th June 2022, 15th June 2022 and 16th August 2022 by order dated 17th June 2022 found that *inter alia* no *prima facie* case had been made out by the Plaintiff for grant of *ad-interim* relief sought for by the Plaintiff in Interim Application (L) No. 17730 of 2022.

42. The Plaintiff filed Commercial Appeal (L) No. 19252 of 2022 against order dated 17th June 2022 passed by the learned Single Judge in Interim Application (L) No. 17730 of 2022. The Plaintiff also filed Interim Application (L) No. 19253 of 2022 in the said Commercial Appeal. By the Interim Application, the Plaintiff sought *inter alia* that pending hearing and final disposal of the Suit, Catalyst and Yes Bank be restrained from participating in the EGM dated 24th June 2022 and/or exercising any rights including voting rights in respect of the suit shares at the said EGM and that the Plaintiff be allowed to exercise its voting rights in respect of the suit shares at the said EGM.

43. The Division Bench of this Court by judgment dated 23rd

June 2022, after examining the decision of the Supreme Court in **PTC India. (*supra*)** dismissed Commercial Appeal (L) No. 19252 of 2022.

44. Dish TV held its EGM on 24th June 2022 and disclosed the results on the same day.

45. The Special Leave Petition (Civil) No. 14796 of 2022 filed before the Hon'ble Supreme Court by the Plaintiff challenging the judgment dated 23rd June 2022 in Commercial Appeal (L) No. 19252 of 2022 was dismissed by the Supreme Court by an order dated 12th September 2022. The Supreme Court in the said order clarified that the observations in the impugned order of this Court are confined to the issue as to whether the Single Judge was justified in declining to exercise the discretion in an application for the grant of *ad-interim* relief.

46. On 26th September 2022, Dish TV held its 34th AGM and disclosed the results on the same day.

47. Assignment Agreement was executed between Yes Bank and JCF on 16th December 2022 as per Section 5 of the

Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (“**SARFAESI Act**”) for transfer of the loans extended to the Borrowers. Yes Bank by the said Agreement assigned its stressed asset portfolio aggregating upto INR 48,000 Crores approx. to JCF together with the underlying security created therefore stated to be under the provisions of the SARFAESI Act.

48. Pursuant to the Assignment Agreement, e-mails were addressed by the Company Secretary of Yes Bank and representative of JCF on 20th December 2022 making disclosures as to the purported transfer.

49. A letter dated 3rd January 2023 was addressed by JCF to the Plaintiff, intimating them of the purported transfer of all rights and interest in the financial asset pertaining to Essel Corporate Resources Private Limited together with security created thereto i.e. the pledge of Dish TV shares.

50. By a second application for amendment filed by the Plaintiff, which was allowed by this Court, JCF was impleaded as

party to the present Suit and Interim Application on 17th January 2023.

51. Dish TV held EGM on 3rd March 2023 and disclosed results on the same day. It is necessary to note that had Dish TV taken into account the Plaintiff's votes over the suit shares (presumably cast in favour of all proposed resolutions), the result would still have been the same i.e. all proposed resolutions would have been rejected by Dish TV's shareholders.

52. On 16th March, 2023 Yes Bank / JCF tendered a Closure Report dated 21st April 2022 by which EOW had closed its investigation into the EOW complaint made by Yes Bank on account of the investigation being conducted in respect of the offence by the Gautam Buddha Nagar Police Station in Uttar Pradesh.

53. Mr. Navroz Seervai, learned Senior Counsel appearing for the Applicant/Plaintiff has submitted that though the suit shares were pledged by the Plaintiff as Pledgor to Catalyst as Pledgee, they have changed hands and though the rights thereunder were enjoyed by Yes Bank and JCF respectively, the value of the shares and their

enjoyment taken into account towards the reduction of Yes Bank's loan exposure and neither have the suit shares been sold to third parties. This has resulted in a situation where Yes Bank (and now JCF) have asserted that they are shareholders (members) of Dish TV in their own right, and not as Pledgees, and have, to all intents and purposes, started running and managing Dish TV through the illegal exercise of voting rights at the company's general meetings. Yes Bank has also asserted rights as a minority shareholder by filing proceedings before the National Company Law Tribunal ("NCLT") under Sections 241 and 242 of the Companies Act, 2013. i.e. operation and mismanagement and under Section 98 of the Companies Act, 2013, invoking the jurisdiction of the NCLT to call an Extra Ordinary General Meeting ("EOGM") of Dish TV. Yes Bank has purporting to act in the capacity of a shareholder of Dish TV, issued notice under Section 160 of the Companies Act, 2013 for appointment of Directors. These actions belie the protestations of both Yes Bank and JCF that they are mere Pledgees enforcing their right only in that capacity.

54. Mr. Seervai has submitted that contrary to the statutory law and judicial pronouncements which hold that a Pledgee has only

a “*special interest*” in the pledged goods, Yes Bank has repeatedly sought to exercise rights of ownership, including voting rights in respect of the shares.

55. Mr. Seervai has submitted that prior to addressing the issue with regard to the Pledgee having only a “*special interest*” in the pledged goods, and independent of the illegality of the conduct of Yes Bank and JCF in respect of the shares, the pledge is vitiated as fraud and thus, the pledge is void ab initio.

56. Mr. Seervai has submitted that a reading of the criminal complaints made by Yes Bank on the one hand and the Borrowers on the other (through Subhash Chandra) reveals that both parties namely, the lender and borrower entered into a transaction knowing that the stated purpose of the loans advanced by Yes Bank was not the real purpose. Mr. Seervai has submitted that it is sufficient at the interim stage for the Plaintiff to make out a *prima facie case* in respect of the allegations of fraud. He has submitted that the documents on record make out a very strong, demonstrable *prima facie case* that justifies the grant of interim reliefs by this Court pending the hearing and final disposal of the Suit. He has submitted

that while the ostensible purpose of the loans was to fund development projects undertaken by the borrowers, the real purpose was to reduce Yes Bank's exposure in the Videocon account and resuscitate its loans. The real purpose, namely to circumvent applicable regulations of the Reserve Bank of India ("RBI") *inter alia* against evergreening of loans, was only achievable by routing monies through the Borrowers. He has placed reliance upon Subhash Chandra Complaint filed on 22nd June 2020 with the Gautam Budh Nagar Police Station in Uttar Pradesh and EOW complaint of Yes Bank in this context.

57. Mr. Seervai has submitted that the EOW complaint revealed that the amounts received by Yes Bank for repayment of Yes Bank's exposure in Videocon to the tune of Rs.1,474.19 Crores were excluded from the alleged fraud amount. He has submitted that this does not erase the fraudulent nature of the transaction at inception. The fact that Yes Bank has shown an amount of Rs.1,474 Crores as being excluded from the alleged fraud speaks eloquently of the fact that Yes Bank itself is an active party to the fraud, if not the party who conceived and instigated this fraudulent transaction.

58. Mr. Seervai has further submitted that though the Yes Bank produced the Subhash Chandra Complaint, it actively suppressed its own EOW Complaint, which makes allegations that are in substance the same as that of the Subhash Chandra Complaint. He has submitted that the suggestion of Yes Bank that it did not produce the EOW Complaint because it did not think that it was material to the present case, has only to be stated to be rejected as an argument of desperation to cover up the active suppression of the EOW Complaint.

59. Mr. Seervai has submitted that the EOW Complaint encloses various Annexures that contain detailed findings for individual Borrowers and also, in particular, Annexure 11, being *“Detailed Analysis of Submissions made by the Business Team and Risk Team”*. He has submitted that the Plaintiff despite made efforts made to obtain Annexure 11 of the EOW complaint from Yes Bank as well as by a notice to produce, finally a copy of the Annexure 11 was tendered during oral arguments in rejoinder. He has submitted that Annexure 11, reveals that while Tranche I of the loan amounts were disbursed in 2016-2017, further disbursements were approved on 29th December 2016 with an additional amount of Rs.2,510 Crores

being disbursed thereafter with full knowledge of the true nature of the transaction and its real purpose. He has submitted that from Clause 1.3.2., which is 'Disbursement of Funds' in Annexure 11, it is mentioned that in December 2016 and January 2017, Rs.1,700 Crore were disbursed to three entities, out of which Rs.500.00 Crore was to be used for reduction of Yes Bank exposure in Videocon. He has further relied upon Clause 1.2 of Annexure 11, which mentioned that Yes Bank expected the Videocon - Essel Merger deal to have a large cash component which would help reduce Yes Bank's exposure in Videocon. Further, in Clause 1.3.2., it is mentioned that the said transaction was then approved on 29th December, 2016.

60. Mr. Seervai has submitted that though the aforementioned Clauses of Annexure 11 were referenced at great length in oral arguments urged by the Plaintiff in Rejoinder, this was not be dealt with at all by Counsel for Yes Bank/JCF during sur-rejoinder.

61. Mr. Seervai has placed reliance upon the statement of objections filed by the State of Uttar Pradesh in SLP (Cr.) 9192 of 2021 before the Supreme Court, wherein they have stated that there

are grounds to suspect that the entire transaction was structured by the former management of Yes Bank with a view to offload the debt owed by the financially stressed Videocon Group to Yes Bank (which debt was in danger of default), to the companies in the Essel Group (which had a much stronger credit history). The net effect of the transaction is that Yes Bank has illegally routed fresh funds to the Videocon entities in danger of default through the Essel Group with a view to bypass extant regulatory framework against evergreening of loans. The allegations in the Complaint and FIR as well as the investigation so far leads to a legitimate suspicion that the Borrower entities of Essel Group was induced to part with shares in question in Dish TV in a manner that makes out the offences of *inter alia* cheating under Section 420 and criminal breach of trust by a banker under Section 409 IPC.

62. Mr. Seervai has submitted that when faced with the said statement of objections, Yes Bank sought to contend that it is merely the opinion of the investigating officer and is not conclusive. He has submitted that it has never been the Plaintiff's case that the statement of objections is conclusive evidence. However, it does along with Annexure 11 of Yes Bank's EOW Complaint, make out an

overwhelming *prima facie* case as to the fraud that vitiates the loan transaction.

63. Mr. Seervai has submitted that the loan transaction is vitiated by fraud under Sections 23 and 24 of the Contract Act. He has submitted that under Sections 23 of the Contract Act, it provides that the consideration or object of an agreement is lawful unless it is, amongst other things, forbidden by law, defeats the provisions of any law or is fraudulent. Under Section 24, if the consideration for one or more objects is unlawful, the agreement is void. He has submitted that in the present case, the loan transaction is void, being for an unlawful object and consideration (namely the circumvention of applicable law on evergreening and the commission of offences under criminal laws).

64. Mr. Seervai has submitted that the consideration for the Pledge Deed is the loans extended by Yes Bank to the Borrowers. In view of the fact that the loan transaction being for an unlawful object and consideration and routed in a manner that constitutes a criminal offence under penal statutes, is *ex facie* vitiated by fraud, the secondary or collateral transaction, being the pledge of shares, is also

vitiated by fraud and void *ab initio*.

65. Mr. Seervai has placed reliance upon the English case of *Lazarus Estates Ltd. Vs. Beasley*². The Court of Appeal had considered a case arising out of justification of increase in rent basis a declaration by the landlord under the Housing Repairs and Rents Act. A 28 day period was contemplated by law to challenge such declaration. The tenant did not challenge it within this period, but also did not pay the increased rent. The landlord contended that once the statutory period had passed, a Civil Court could not venture into the question of fraud at all. The Court held that “*if this argument is correct, the landlords would profit greatly from their fraud. The increase in rent would pay the fine many times over. ... No Court will allow a person to keep an advantage which he has obtained by fraud.... Fraud unravels everything. The Court is careful not to find fraud unless it is distinctly pleaded and proved; but once it is proved, it vitiates judgments, contracts and all transactions whatsoever.*”.

66. Mr. Seervai has submitted that it was only upon a consolidated reading of the Subhash Chandra Complaint and Yes

2 1956 1 QB 702

Bank's EOW Complaint that the complete illegality of the transaction at inception becomes apparent and demonstrable.

67. Mr. Seervai has placed reliance upon the decision of the Supreme Court in *Ramesh B. Desai & Ors. Vs. Bipin Vadilal Mehta*³, wherein it is held that while Order VI Rule 4 of the Code of Civil Procedure, 1908 requires that complete particulars of fraud be pleaded, these particulars will depend on the facts of a given case. Where a transaction takes place in circumstances where a third party may not have knowledge of the transaction unless informed by a party in the know, an assertion by such third party stating that they came to know about it subsequently cannot be said to be an insufficient pleading. He has submitted that in the present case, by the second amendment to the plaint, based as it is on the Subhash Chandra Complaint and the EOW Complaint, sufficient particulars of the fraud are pleaded.

68. Mr. Seervai has thereafter, referred to Section 65 of the Contract Act, which provides that where a contract is discovered to be void or becomes void, any person who has received any advantage

3 2006 5 SCC 638, para 22

under such agreement or contract is bound to restore it, or to make compensation for it to the person from whom he received it. He has submitted that Yes Bank has acquired a pledge of the shares and derived a benefit under the Deeds of Pledge that have subsequently been discovered to be void. Consequently, the Plaintiff is entitled to restitution of the shares from Yes Bank and its successor-in-interest, JCF. These shares are required to be protected by an interim injunction from further transfers or sales pending the hearing and final disposal of the Suit.

69. Mr. Seervai has submitted that where a document is void *ab initio* (and not voidable), arguments as to prior knowledge or waiver or election are irrelevant, and are arguments of desperation. The Agreement is treated as a matter of law as though it never existed, being void *ab initio*, i.e. at the inception. In the present case, the Plaintiff never had knowledge of the EOW Complaint beforehand and hence, the question of election does not arise.

70. Mr. Seervai has thereafter, addressed the issue of the nature of a pledge and rights/interest of a Pledgee. He has submitted that assuming *arguendo* that the Pledge Deeds are valid and

enforceable, the law of pledge (both under statutory provisions and case law) does not contemplate the rights sought to be exercised by Yes Bank and JCF, namely the entire gamut of ownership rights including voting rights in the case of dematerialized shares.

71. Mr. Seervai has submitted that the provisions of the Contract Act apply to a pledge of goods, including securities such as shares. A pledge is a type of “*bailment*”, defined under Section 148 of the Contract Act as “*the delivery of goods by one person to another for some purpose, upon a contract that they shall, when the purpose is accomplished, be returned or otherwise disposed of according to the directions of the person delivering them*”.

72. Mr. Seervai has referred to Section 172 of the Contract Act, which defines “*pledge*” as constituting a particular species of bailment, namely “*the bailment of goods as security for payment of a debt or performance of a promise*”. The bailor in the case of a pledge is called the “*Pawnor*” and the bailee the “*Pawnee*”. He has submitted that the law applicable to pledges is codified under Sections 172 to 180 of the Contract Act. He has further submitted that the general provisions pertaining to bailment of goods under Sections 149 to 171

do not apply to a pledge, which is a bailment for a particular purpose ie. to stand security for payment of a debt or performance of a promise.

73. Mr. Seervai has submitted that the provisions pertaining to pledge provide statutorily for limited rights that a Pledgee/Pawnee derives. In that context, he has referred to Section 176 which provides the right of a Pawnee/Pledgee in whose favour a Pledge is created. In the case of a debt, if the Pawnor/Pledgor defaults in payment of the debt in respect of which the goods were pledged, the Pledgee may bring Suit against the Pledgor upon the debt and retain the goods pledged as collateral security or he may sell the pledged goods upon giving the Pledgor reasonable notice of sale. Should the proceeds of the sale be less than the amount due, the Pledgor is liable to pay the balance, if the proceeds exceed the amount due, the Pledgee is to pay over the surplus to the Pledgor.

74. Mr. Seervai has submitted that it is well settled that a pledge creates a species of "*special property*" (more accurately and appropriately termed "*special interest*") in the pledged goods, which allows the Pledgee recourse to the security, even while the ownership

of the pledged goods continues to vest in the Pledgor. A pledge does not envisage or contemplate the enjoyment by the Pledgee of the general property in the pledged goods; the indicia of ownership and the power to exercise proprietary rights remains at all times (i.e. throughout the period of the pledge) with the Pledgor.

75. Mr. Seervai has relied upon decision of the Supreme Court in *Lallan Prasad Vs. Rahmat Ali & Anr.*⁴, wherein the Supreme Court has held that a Pawnee has only a 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 Pledgee only so far as is necessary to secure the debt. In this sense a pawn or pledge is an intermediate between a simple lien and a mortgage which wholly passes the property in the thing conveyed.

76. Mr. Seervai has also relied upon *Balkrishna Gupta Vs. Swadeshi Polytex Ltd.*⁵ wherein the Supreme Court had referenced an earlier decision viz. *Bank of Bihar Vs. State of Bihar*⁶. The Supreme

4 1967 2 SCR 233, paras 16 to 17

5 1985 2 SCC 167, para 33

6 1972 3 SCC 196

Court found that in *Bank of Bihar (supra)*, it was held that a Pawnee had a special property which was not of ordinary nature on the goods pledged and so long as his claim was not satisfied no other creditor of the Pawnor had any right to take away the goods or its price. Beyond this no other right was recognized in a Pawnee in the above decision.

77. Mr. Seervai has also relied upon the decision of the Division Bench of this Court in *Official Assignee of Bombay Vs. Madholal Sindhu*⁷, which held that it is open to parties “to incorporate into any contract any incident which is not contrary to or inconsistent with any provision contained in the Act. But they can only override a specific provision contained in the Act provided the particular section dealing with the provision contains a saving clause in respect of special contracts to the contrary. If one looks at the various sections of the Indian Contract Act, one finds that some of them specifically mention “in the absence of a contract to the contrary”. There is no such saving clause in Section 176, and in my opinion its provisions are mandatory, and it is not open to the parties to contract themselves out of those provisions.”.

⁷ ILR 1948 Bom 1, pages 39 to 41

78. Mr. Seervai has submitted that the grant of ownership rights would be clearly inconsistent with the rights contemplated under Section 176 of the Contract Act, which is to sue whilst retain the shares or to sell and recoup the monies loaned.

79. Mr. Seervai has submitted that this position of law continues even after the enactment of the Depositories Act, 1996. He has submitted that prior to the enactment of the Depositories Act, a pledge of shares held in physical form was created by depositing the shares and signed blank transfer forms in the custody of the Pledgee to allow the Pledgee to effectuate their sale upon invocation. After the introduction of dematerialized holding of shares in fungible form, the provisions of the Depositories Act read with SEBI (Depositories and Participants) Regulations, 2018 (“**DP Regulations**”) prescribe requirements for the creation of a pledge of dematerialized shares. He has submitted that under the Depositories Act and the DP Regulations, an owner of physical shares enters into an agreement with the depository to hold shares in a fungible form; the depository, then becomes the “*registered owner*” while the owner of shares is the “*beneficial owner*.” Section 12 of the Depositories Act, mandates that a beneficial owner who creates a pledge must provide intimation of

such pledge to the depository, who is then required to make entries in the records accordingly. He has then referred to Regulation 79 of the DP Regulations (in *pari materia* with the erstwhile Regulation 58 of the 1996 Regulations) which provides a mechanism for effectuating a pledge, including the requirement that upon invocation the depository shall register the Pledgee as the beneficial owner of such securities and amend its records accordingly. He has submitted that under the Depositories Act and DP Regulations, a Pledgee cannot transfer the pledged shares held in dematerialized form without being reflected as the “*beneficial owner*” in the records of the depository.

80. Mr. Seervai has submitted that when a pledge is invoked, the Pledgee is transposed as the “*beneficial owner*” for the limited and sole purpose of effectuating a prospective sale upon the invocation of the pledge. Neither the Depositories Act nor the DP Regulations envisage or contemplate the exercise of proprietary rights by a Pledgee upon invocation of a pledge, since the recording as “*owner*” is only for the purpose of effecting the sale. Furthermore, the provisions of the Depositories Act are not contrary to or in derogation of the law that applies to pledge transactions under

Sections 172 to 180 of the Contract Act.

81. Mr. Seervai has thereafter, dealt extensively with the decision of the Supreme Court in *PTC India (supra)*. He has submitted that in **PTC India's** case the Supreme Court has considered the effect of the Depositories Act and the SEBI (Depositories and Participants) Regulations, 1996 on a pledge of dematerialized shares made under the Act. He has referred to the facts of the **PTC India's** case where the loan was extended by *PTC India (supra)* in favour of Nagapatnam Power and Infratech Limited ('NSL') to secure the loan, a pledge was created by Mandava Holdings Pvt. Ltd. ("*MHL*") in favour of *PTC India (supra)*. NSL defaulted on the loan, resulting in the invocation of pledge by *PTC India (supra)*. Insolvency proceedings in respect of NSL were instituted before the NCLT, Hyderabad and an IRP was appointed. MHL made a claim before the IRP stating that as *PTC India (supra)* was conferred the status of a "*beneficial owner*" MHL no longer had any title over the pledged shares and had accordingly stepped into **PTC India's** shoes as a creditor of NSL. *PTC India (supra)*, in turn, made a claim for the amount due and payable by NSL without accounting for the pledged shares. Both claims were rejected, and the decision was challenged before the Adjudicating

Authority. The Adjudicating Authority thereafter, disposed of the challenge, accepting MHL's claim. The Adjudicating Authority's decision was challenged before the NCLAT, New Delhi. The NCLAT disposed of the Appeal finding that *PTC India (supra)* had exercised rights under the Pledge Deed and had consequently, become the owner of the pledged shares; notwithstanding the fact that *PTC India (supra)* had not sold the shares. It was held that *PTC India (supra)* could realise its dues and could not rely upon Section 176 of the Contract Act to "reclaim" the debt. In an Appeal filed by *PTC India (supra)* against the NCLAT's Order, the Supreme Court overruled the decision of the NCLAT finding that *PTC India (supra)* had rightly made a claim as a financial creditor. The Supreme Court has also definitively laid down the law on the interplay of the provisions of the Contract Act and the Depositories Act and DP Regulations in a pledge of dematerialized shares, finding that the two statutes are to be construed harmoniously. The Supreme Court was also at pains to distinguish between a pledge and a mortgage, clearly delineating the legal incidents of each.

82. Mr. Seervai for the purpose of distinguishing a pledge and a mortgage relied upon *PTC India (supra)*. The Supreme Court in

PTC India (supra) relied upon the distinction between mortgage and pledge enunciated in Halsbury's Laws of England, which is that the mortgage conveys the whole legal interest in the chattels; whereas the pledge or pawn conveys only a special property, leaving the general property in the Pledgor or Pawnor; the Pledgee or Pawnee never has the absolute ownership of the goods but has a special property in them coupled with a power of selling and transferring them to a purchaser on default.

83. The Supreme Court in *PTC India (supra)* has held that unlike a Pledgee, a mortgagee acquires general rights in the thing mortgaged subject to the right of redemption of the mortgagor.

84. Mr. Seervai has submitted that the Supreme Court in *PTC India (Supra)* has held that the Pledgee has merely a special interest in the pledged goods and never—at any time—holds an absolute interest in the property pledged.

85. Mr. Seervai has submitted that the arguments urged by Yes Bank/JCF to the contrary obliterate the distinction between a pledge and a mortgage, treating the two as virtually interchangeable,

but nevertheless seeking to take the benefit of the procedure set out under the Depositories Act, which is applied solely to pledges.

86. Mr. Seervai has thereafter, referred to the decisions which have also drawn distinction between a pledge and mortgage namely *Md. Sultan Vs. Firm Rampratap Kannayalal*⁸, *Shatzadi Begum Vs. Girdharilal*⁹, *Maharashtra State Co-op Bank Vs. Assistant Provident Fund Commissioner*¹⁰ and *The Odessa*¹¹. He has submitted that in *Shatzadi Begum (supra)*, the judgment in *The Odessa (supra)* was cited with approval, stating that the latter emphasized “*the notion of enjoyment is excluded from the concept of pledge and if something more than mere possession of shares is given to the creditor it ceases to be a pledge*”.

87. Mr. Seervai has submitted that a Pledgee as beneficial owner cannot assert rights as a shareholder. If a transaction is to retain the character of a pledge one cannot include within it contractual clauses that take it outside the ambit of a pledge. A

8 1963 SCC Online AP 214

9 AIR 1976 AP 273

10 2009 10 SCC 123

11 1915 AC 145

Pledgee's right extends solely to possession and sale upon notice, and not to the right to disposition in full as a concomitant of ownership rights.

88. Mr. Seervai has submitted that the Pledge Deeds are void inasmuch as they contain provisions such as (amongst others) clauses 7.1(g), 10.3(d), 12(i) and 12(iii) that travel beyond the contours of the law of pledge. It has been submitted, if these clauses are valid and the Pledge Deed enforceable, the transaction is in substance, a mortgage and recourse cannot be as per the provisions of the contractual law of pledge and the Depositories Act to enforce the transaction.

89. Mr. Seervai has thereafter, made submissions with regard to the transfer of the Pledged shares to JCF. He has submitted that it is the case of JCF that its entitlement to exercise rights as a Pledgee was premised solely on the provisions of Section 5 of the SARFAESI Act and the judgment in *UV Asset Reconstruction Company Vs. Union of India & Ors.*¹².

12 2023 (2)96 DLT 33

90. Mr. Seervai has submitted that the case of JCF was sought to be bettered only in Sur-Rejoinder by referring to clauses of the Assignment Agreement. The disclosures made by JCF to SEBI expressly refer to the transfer of invoked equity shares from Dish TV under Section 5 of the SARFAESI Act. He has submitted that the arguments in Sur-Rejoinder premised on the Pledge deeds are no more than an afterthought.

91. Mr. Seervai has submitted that under Clause 2.1.2 of the Assignment Agreement dated 16th December 2022 executed between the Yes Bank and JCF, the assignee, viz. JCF has a right to enforce such security interests, pledges and to exercise all other rights in relation to such security interests, pledges under the Applicable Laws. Under Clause 2.1.3, the assignor, namely, Yes Bank is required to execute all documents as may be necessary for the purpose of perfecting the assignee's interest and therefore, such a document is essential for any assignment of the pledge as none of the clauses contemplate a direct transfer of the pledged shares. No assignment as contemplated under Clause 2.1.3 has been executed between JCF and Yes Bank.

92. Mr. Seervai has submitted that the Pledge Deeds have not themselves been transferred or assigned in favour of JCF by Yes Bank. The “*Pledgee*” under the Pledge Deeds continues to be Catalyst and Yes Bank has claimed to exercise rights under the Pledge Deeds as a Constituted Attorney/Proxy of the Plaintiff or a nominee of Catalyst in conjunction with being recorded as a beneficial owner. He has submitted that none of these puts Yes Bank into the shoes of Catalyst as a Pledgee or assignee of the pledge. Therefore, it is inconceivable that without an intervening assignment of the pledge from Catalyst in favour of Yes Bank and a subsequent assignment of the pledge from Yes Bank in favour of JCF, JCF can ever be said to have stepped into the shoes of Catalyst as Pledgee. In addition to this, no clause under the Assignment Agreement envisages a direct transfer of shares, being the underlying security for the loans, to Yes Bank. Any attempt, therefore, to claim rights in the shares without such transfer is impermissible in law.

93. Mr. Seervai has thereafter, referred to Section 31(b) of the SARFAESI Act which provides that the SARFAESI Act shall not apply to a pledge of movables within the meaning of Section 172 of the Indian Contract Act, 1872. While a pledge is included within the

definition of the term “*financial asset*” of Section 2(l), no recourse can be had to the provisions of Section 5(3) in relation to a pledge in view of the embargo under Section 31(b). Section 5(3) itself opens with the words “*Unless otherwise provided under the Act...*”. Further a pledge is also specifically excluded from the definition of “*security interest*” under Section 2(zf) of the SARFAESI Act which means “*right, title or interest of any kind, other than those specified in Section 31...*”.

94. Mr. Seervai has submitted that acquisition of a “*financial asset*” under Section 5 is entirely different from the enforcement of a “*security interest*” under Section 13 of the SARFAESI Act. Section 13(4) deals only with the enforcement of a “*security interest*”, which term expressly excludes a pledge under Section 31. The import of the exclusion of a pledge from Section 31 is that while pledged goods may be secured by retaining the underlying shares, a pledge cannot be enforced under the provisions of the SARFAESI Act.

95. Mr. Seervai has submitted that a direct transfer of the underlying asset is envisaged only under Section 5(2-A) of the SARFAESI Act, which provides that the same is permissible where a

bank or financial institution has financed the purchase of the asset in question. This is admittedly not the case in these proceedings.

96. Mr. Seervai has submitted that in the first instance, it was impermissible to Yes Bank to transfer the pledged share to JCF; and thereafter, for JCF to exercise voting rights over the shares. In so doing, JCF, which is an Asset Reconstruction Company (“ARC”), is violating the provisions of Sections 9 and 10B of the SARFAESI Act, which provides that an ARC can take measures for the management of the business of a borrower only for the purposes of asset reconstruction. Dish TV, the company, whose shares have been pledged, is not even a “*borrower*” under the expanded definition in Section 2(f) of the SARFAESI Act. Mr. Seervai has submitted that while an acquisition of financial assets under Section 5(1)(b) may be permissible, the automatic transfer of shares in favour of the acquirer (viz. JCF) is impermissible in the case of a pledge.

97. Mr. Seervai has submitted that there is no case made out by Yes Bank/JCF in their arguments in Sur-Rejoinder that there are difficulties in the sale of the shares pledged. These excuses urged for the first time in Sur-Rejoinder should not deter this Court from

granting the reliefs prayed for by Plaintiff. It is well settled that a party cannot take advantage of its own wrong. This is precisely what Yes Bank and JCF seek to do. He has submitted that acceding to these submissions would amount to this Court putting a premium on the illegal acts of commission and omission committed by Yes Bank/JCF. He has submitted that the excuses made out for the first time by Yes Bank/JCF that percentage of shareholding pledged carries a “*special value*” can never be an excuse not to sell the suit shares and insisted continue to illegally assert rights of ownership, which are antithetical to the status of a Pledgee.

98. Mr. Seervai has submitted that in view of the law set out above and the Plaintiff admittedly being owner of the shares, relief sought for in the Interim Application be granted and the Plaintiff be allowed to vote in all future meetings of Dish TV. He has submitted that this Court in order dated 23rd December 2021, expressly made the result/outcome of the AGM, subject to the decision in the present Interim Application, which is now being heard finally by this Court. Needless to say the results of subsequent General Meetings at which Yes Bank / JCF have voted must also be subject to the decision in this Interim Application. In view of the overwhelming case made out by

the Plaintiff, this Court ought to direct, (if it so deems fit) that the depository's records should reflect that the shares are held by JCF as a Pledgee and that the Plaintiff continues to be the beneficial owner. Such an outcome would balance equities as JCF would be recognized as a Pledgee and the Plaintiff would be permitted to act in its capacity as owner and shareholder. This is without prejudice to Plaintiff's case on fraud. Accordingly, this Court be pleased to grant the relief sought for in the Interim Application.

99. Mr. Zal Andhyarujina, learned Senior Counsel appearing for Defendant No.3/Dish TV has supported the submissions of Mr. Seervai, learned Senior Counsel for the Plaintiff. He has submitted that there are limited rights conferred on the Pledgee by Section 176 of the Contract Act and which rights are referred to as "*special property*" in the Pledged Goods. He has submitted that the Privy Council in *The Odessa (supra)* observed that "*If it were not for the somewhat unfortunate peculiarity of English Terminology involved in the established use of the words "special property" when "special interest" would seem better....*". Mr. Andhyarujina has submitted that the reasoning of why "special interest" was more appropriate, the *Privy Council (supra)* observed that *(i) the expression 'special*

property' excludes the notion of general property, which is the badge of ownership; (ii) the Pledgee holds possession only for the purpose of securing himself for the advance made; and (iii) the Pledgee cannot use the goods as his own.

100. Mr. Andhyarujina has submitted that in regard to the meaning of “*special property*” or “*special interest*” in the pledged goods, it is the right to property in the pledged goods only so far as is necessary to secure the debt advanced. In this context he has relied upon the decision of the Supreme Court in ***Maharashtra State Cooperative Bank Limited (supra)*** at Paragraphs 49 and 54 as well as the decision of the Supreme Court in ***Lallan Prasad (supra)*** at paragraph 16. He has submitted that it is the right that exists so that a Pledgee can compel the payment of the debt due. In this context he has relied upon the decision of the Supreme Court in ***Bank of Bihar (supra)*** at Paragraph 5. He has submitted that it is the right of possession of pledged goods as security and in case of default, the right to bring a Suit against the Pledgor as well as to sell the goods after giving reasonable notice of sale. In this regard he has relied upon the decision of the Supreme Court in ***PTC India (supra)*** at Paragraph 31. He has submitted that it is the right in the pledged

goods which is higher than the mere right of detention of goods but lesser than the general property rights in the goods. He has relied upon *PTC India (supra)* at Paragraph 35 in this context. He has further submitted that while there is “*no jus in re in favor of the Pledgee*”, it “*gives him no more than a jus in rem such as a lienholder possesses, but with this added incident that he can sell the property moto proprio and without any assistance from the Court.*” In this context he has relied upon the *Odesa (supra)* at Page 159.

101. Mr. Andhyarujina has submitted that the “special property” or “special interest” of the Pledgee is distinct from the general property in the pledged goods, which continues with the Pledgor/owner i.e., in this case, the Plaintiff and which wholly reverts to the Pledgor/owner on discharge of the debt. In this context he has relied upon *Bank of Bihar (supra)* at Paragraph 5 and *Maharashtra State Co-operative Bank Limited (supra)* at Paragraph 54.

102. Mr. Andhyarujina has submitted that even the right to sell the pledged goods provided for in Section 176 of the Contract Act is on account of the implied authority of the Pledgor. In this context

he has relied upon the decision of the Supreme Court in *Lallan Prasad (supra)* at Paragraph 16.

103. Mr. Andhyarujina has submitted that it is this “*special property*” that is characteristic of a pledge and distinguishes a pledge from mortgage, lien, hypothecation, ownership, and etc. In this context he has relied upon *Md. Sultan and Others (supra)* at Paragraph 16.

104. Mr. Andhyarujina has also referred to the decision of the Supreme Court in *PTC India (supra)* which has drawn a comparison between pledge, mortgage, and ownership. In that context he has referred to Paragraph 29 and 30 of *PTC India (supra)*. He has submitted that the Supreme Court in *PTC India (supra)* has held that “*unlike a Pledgee, a mortgagee acquires general rights in the things mortgaged In comparison, a Pawnee has only the special rights in the goods pledged.*” The Supreme Court in *Maharashtra State Co-operative Bank Limited (supra)* has at paragraph 49 considered the “special property” to be a crucial ingredient of a pledge and makes a pledge “*an intermediate between a simple lien and a mortgage which wholly passes the property in the thing conveyed*”.

105. Mr. Andhyarujina has submitted that the rights of a Pledgee does not include the right to enjoyment of property but only the right of possession and this has been held in the case of ***Md. Sultan (supra)*** and ***Shatzadi Begum Saheba (Supra)***. It is further held by the Andhra Pradesh High Court in ***Shatzadi Begum Saheba (supra)*** at paragraph 23 and 29 that where the Pledgees were allowed to *inter alia* exercise rights of a shareholder, vote on shares, lodge shares with the company, the rights were more than what could vest in a Pledgee and the transaction could *not* be a pledge but was, in fact, a mortgage.

106. Mr. Andhyarujina has submitted that in ***PTC India (supra)*** the Supreme Court has held that that the right to enjoyment is a right arising from ownership and not from a pledge [Paragraph 29 of ***PTC India (supra)***].

107. Mr. Andhyarujina has submitted that in the decision of the Supreme Court in ***PTC India (supra)*** it has been held that the sale of pledged goods by the Pledgee to itself is not conceived [(Paragraph 64 of ***PTC India (supra)***)] and does not constitute an ‘*actual sale*’ under Section 176 of the Contract Act and amounts to conversion

[Paragraph 63 of *PTC India (supra)*].

108. Mr. Andhyarujina has made submissions on right to vote on shares being inseparable (unless context otherwise requires) from the ownership of shares itself. Such rights *inter alia* are “*privileges incidental to the ownership of shares*”. In this context he has relied upon the decision of Supreme Court of *Chiranjit Lal Chowdhuri Vs. The Union of India (UOI) and Others*¹³ at Paragraph 83. It has been held in *Chiranjit Lal Chowdhuri (supra)* that “*personal rights flowing from the ownership of the shares and cannot by themselves be acquired, disposed of, or taken possession of*”.

109. Mr. Andhyarujina has referred to the decision of this Court in *E.D. Sasoan & Co. Ltd. Vs. K.A. Patch*¹⁴, where it has been held that the right to vote is a property annexed to the share and is personal to the shareholder. He has accordingly submitted that it is well settled that the right to vote cannot be decoupled from the shares and it is a right that flows from and is incidental to ownership of the shares. Mr. Andhyarujina has submitted that the owner may

¹³ *AIR 1951 SC 41*

¹⁴ *(1943) 45 Bom LR 46*

vote pursuant to an arrangement at the behest of another or delegate another as a proxy to vote on his behalf. However, these arrangements do not decouple the right to vote from the share or assign the right to vote and, in fact, is an assertion that only the owner of the share/shareholder has the right to vote. In this context, he has relied upon the decision of Supreme Court in ***Vodafone International Holdings BV Vs. Union of India and Anr.***¹⁵ at Paragraph 273.

110. Mr. Andhyarujina has referred to the Amended and Restated Deed of Pledge dated 17th December 2018 in particular clause 7.1(g) thereof, wherein it is provided for voting, even on default of the debt by the Pledgor, by way of proxy. He has submitted that this is reiteration of the position that the right to vote remains with the owner of the shares/shareholder and does not pass on to the Pledgee in any circumstances. He has further referred to the Power of Attorney dated 1st May 2019 which has consciously provided for voting, in case of default of the debt by the Pledgor, by appointing proxy(ies) to attend meetings and vote as is evident from clause 3 of the same.

¹⁵ (2012) 6 SCC 613

111. Mr. Andhyarujina has submitted that to the extent to which the Pledge Deed provides that voting rights stand pledged namely clause 2.1 (b) of the Pledge Deed, the same is ineffective as it is contrary to and inconsistent with the very concept of the '*special property*' in the goods pledged and to the settled law that voting is a privilege incidental to ownership of shares. He has accordingly submitted that the Pledgee with limited rights being '*special property*' would not be entitled to vote on the shares.

112. Mr. Andhyarujina has submitted that a security over shares with the right to vote/enjoyment is not a pledge but a mortgage of movables. In this context, he has relied upon *Shatzadi (supra)* and *Md. Suptan (supra)* wherein it is held that there is no enjoyment of goods in the case of a pledge. He has submitted that a Pledgee has only limited rights or '*special property*' in law, on default, the Pledgee can only either bring a suit or sell with notice. As such, the Pledgee is not entitled to vote on shares or act as an owner of the shares.

113. Mr. Andhyarujina has submitted that the controversy in the present case has arisen from the fact that the pledged goods in

question are dematerialized shares and the arguments that have been sought to be created by Yes Bank on the basis of Depositories Act & Depositories Regulations. He has submitted that neither the Depositories Act nor the Depositories Regulations have changed the position of the law of pledges or the Pledgee's rights under the Contract Act. This has been well settled by the Supreme Court, in *PTC India (supra)*, after considering both the Depositories Act and the Depositories Regulations in detail. He has drawn reference to Paragraph 75 and 81 to 85 of *PTC India (supra)* in this context. He has further submitted that in Paragraph 82 of *PTC India (supra)*, the Supreme Court has held that "*Section 176 and 177 are not obliterated, in so far as they would equally apply to pawned dematerialized securities as they apply to other pawned goods*".

114. Mr. Andhyarujina has submitted that the Supreme Court in *PTC India (supra)* has acknowledged that there is only one area of conflict between the Depositories Act (and its bye-laws, regulations, and etc.) and the law of pledges where the Pledgor would be entitled to redeem the dematerialized shares from the third party on the ground that reasonable notice under Section 176 of the Contract was not given. He has drawn reference to Paragraph 85 of *PTC India*

(supra) in this context, wherein the Supreme Court has held that “the dictum in *Madholal Sindhu [Official Assignee of Bombay Vs. Madholal Sindhu, 1946 SCC OnLine Bom 47 : AIR 1947 Bom 217]* and *Nabha Investment [Nabha Investment (P) Ltd. Vs. Harmishan Dass Lakhmi Dass, 1995 SCC OnLine Del 239]* , that the Pawnor has a right to redemption against third parties when the Pawnee does not give reasonable notice under Section 176 of the Contract Act, would not apply to listed dematerialised securities which are sold by the Pawnee in accordance with the provisions of the Depositories Act, bye-laws and rules. The Supreme Court has further held in the said paragraph that “The Pawnee cannot make the sale of dematerialised securities without being registered as a “beneficial owner”, which is a step that a Pawnee must take before he proceeds to sell the pledged dematerialised securities.”

115. Mr. Andhyarujina has submitted that the decision of *PTC India (supra)* makes it clear that the transfer of dematerialized shares from the dematerialized account of the Pledgor into the dematerialized account of the Pledgee is merely a step in aid of an immediate sale to be made to a third party.

116. Mr. Andhyarujina has also relied upon Paragraph 86 of *PTC India (supra)* which held that “do not see any disharmony between these provisions and Section 176 and 177 of the Contract Act. They can be read harmoniously without nullifying or altering their effect, subject to the exception in case of sale of listed securities to third parties...They apply independently without hindering and obstructing their application as the field and subject-matter of Sections 176 and 177 of the Contract Act differ from the subject-matter and the object of Sections 7, 10 and 12 of the Depositories Act and sub-regulation (8) of Regulation 58 of the 1996 Regulations.”

117. Mr. Andhyarujina has submitted that the registration of the Pledgee as a “beneficial owner” does not make the Pledgee “the beneficial owner” in the true meaning of the term as generally under the Depositories Act and Depositories Regulations, but only accords it such status for the sale of the dematerialized shares and for procedural compliances. This is evident from the fact that the right to redemption of a Pledgor continues even after the Pledgee has been registered and acquired status as “beneficial owner” and only ceases on actual sale to a third person. In this context, he has relied upon

Paragraph 84 of *PTC India (supra)*.

118. Mr. Andhyarujina has thereafter referred to Section 25 of the Depositories Act which empowers the Securities and Exchange Board of India (“SEBI”) to make regulations. This is how the Depositories Regulation came to be passed.

119. He has referred to Regulation 58(8) of the Depositories Regulations, which states :

“Manner of creating pledge or hypothecation

58...

(8) Subject to the provisions of the pledge document, the Pledgee may invoke the pledge and on such invocation, the depository shall register the Pledgee as beneficial owner of such securities and amend its records accordingly”.

120. Mr. Andhyarujina has submitted that Regulation 58(8) of the Depositories Regulations is only machinery for a Pledgee of dematerialized shares to sell these shares to a third person. There is no other way for a Pledgee of dematerialized shares, in the dematerialized regime, to sell the shares without first being registered as beneficial owner. However, this registration as beneficial

owner is only for the purpose of sale.

121. Mr. Andhyarujina has submitted that the reliance placed by the Counsel for Yes Bank Group / JCF on Section 10 (3) of Depositories Act is misplaced as Section 10(3) provides that “*The beneficial owner shall be entitled to all the rights and benefits and be subjected to all the liabilities in respect of his securities held by a depository.*”

122. He has submitted that the provision in a particular statute cannot be read to extend rights and liabilities from other statutes governing other areas of law, namely, voting rights under the Companies Act.

123. Mr. Andhyarujina has submitted that considering that under the dematerialized regime, the “*registered owner*” is always the depository itself and the “*beneficial owner*” is the person whose name is recorded as such, the reference to “*beneficial owner*” in Section 10(3) is to the shareholder / owner of the shares as in all other cases. In this case, the owner of shares would be the Pledgor. It is not a reference to a Pledgee who has been given such status only

for the purpose of sale of such pledged dematerialized shares to a third party. Any other reading would render the entire law of pledges otiose and would be contrary to the decision of the Supreme Court in PTC which in Paragraph 86 has held that there has been no change to the law of pledges.

124. Mr. Andhyarujina has thereafter referred to the definition of “beneficial owner” under Section 2(1) of the Depositories Act, wherein it defines “beneficial owner” as “*a person whose name is recorded as such with a depository*”. He has submitted that Section 2(1) is prefaced with the important words “*(1) In this Act, unless the context otherwise requires*”. In this case, the context does require for the term “*beneficial owner*” to be read differently for pledges.

125. Mr. Andhyarujina has referred to the decision of the Supreme Court in *K.V. Muthu Vs. Angamuthu Ammal*¹⁶, wherein it has been held that the phrase “*unless context otherwise requires*” must be applied and given effect to where the definition or expression is preceded by the words “*unless the context otherwise requires*”. He has submitted that the phrase “*unless context otherwise*

¹⁶ (1997) 2 SCC 53

requires” must be applied, in the present case where the context of pledge is concerned. Any other reading would not only render the entire law of pledges otiose and be contrary to the decision of the Supreme Court in *PTC India (supra)* which has held that there is no change to the law of pledges, but also would render the language “*unless context otherwise requires*” otiose.

126. Mr. Andhyarujina has referred to Section 28 of the Depositories Act which provides that “*The provisions of this Act shall be in addition to, and not in derogation of, any other law for the time being in force relating to the holding and transfer of securities.*” He has submitted that the Depositories Act itself provides that it is in addition to and not derogatory to other laws relating to transfer of securities.

127. Mr. Andhayarujina has further referred to Section 2 of the Companies Act, 2013 which is prefaced with the words “*unless the context otherwise requires*”. He has submitted that the definition of “*member*” as defined by Section 2(55) of the Companies Act has to also be understood in the context of a pledge and more particularly, in the context of status of Pledgee as “*beneficial owner*” for purpose

of sale.

128. Mr. Andhyarujina has submitted that the concept of a “*beneficial owner*” or “*member*” in the context of a pledge of dematerialized shares is, therefore, a qualified concept. The qualification is that the Pledgee does not enjoy all the rights of the “*beneficial owner*” or “*member*”. The Pledgee is not a “*beneficial owner*” or “*member*” for any purpose other than the qualified purpose—consistent to the Pledgee’s limited/qualified rights and ‘*special property*’ to be on the register for an immediate sale to a third-party purchaser of the dematerialized securities.

129. Mr. Andhayarujina has submitted that the shares could not have been transferred from catalyst to Yes Bank and onward. He has submitted that the Pledgee of the Suit shares is admittedly Catalyst. He has submitted that a Pledgee having ‘invoked’ the pledge by sending a Notice under Section 176 of the Indian Contract Act 1972, the only option open to Catalyst was to sell the pledged shares to a third party. There was no option for Catalyst to simply transfer the shares to Yes Bank without consideration (so far as to the knowledge to Dish TV) and such alleged transfer would be contrary

to Section 176 of the Contract Act which provides the Pledgee with only two (2) options on default of the debt by the Pledgor.

130. Mr. Andhayarujina has submitted that Section 176 of the Contract Act is mandatory and its applicability is not curtailed by the words “*in the absence of the contract to contrary*”. The parties cannot contract out of Section 176 of the Contract Act and on default of payment of debt, there were only two (2) options namely to bring the Suit or sell the pledged shares after giving reasonable notice.

131. Mr. Andhayarujina has submitted that shares could not have been assigned by Yes Bank to J.C. Flowers and J.C. Flowers have no rights in the shares.

132. Mr. Andhayarujina has submitted that even given the transfer to Yes Bank is illegal for the reasons set out above, the assignment to J.C. Flowers also fails and J.C. Flowers would have no rights in respect of the Suit shares. Mr. Andhayarujina has submitted that the provisions Viz. Sections 5(2), 5(2A), and 5(3) of the SARFAESI Act, which was relied upon on behalf of J.C. Flowers are not applicable. Section 5(2) of the SARFEASI Act only applies in

cases, where the bank or financial institution is a lender in relation to any financial assets acquired under sub-section (1) by the asset reconstruction company. In the present case, Yes Bank is not a lender in relation to the financial asset, namely, the pledged shares of Defendant No. 3 and is not even a lender to the Pledgee i.e. the Plaintiff in relation to the pledged shares.

133. Mr. Andhayarujina has submitted that Section 5(2) of the SARFEASI Act only applies where the bank “is holding any right, title or interest upon any tangible asset or intangible asset to secure payment of any unpaid portion of the purchase price of such asset or an obligation incurred or credit otherwise provided to enable the borrower to acquire the tangible asset or assignment or licence of intangible asset”. In the present case, Yes Bank has not financed the acquisition of shares. Accordingly, this provision does not apply to the present case and no rights, title, or interest vest in J.C. Flowers even assuming that the shares could have been transferred to Yes Bank.

134. Mr. Andhayarujina has submitted that Section 5(3) of the SARFAESI Act is also not applicable as it is preceded by the words “*Unless otherwise expressly provided by this Act*”. This is significant

in view of Section 31(b) of the SARFAESI Act which provides that the SARFAESI Act does not apply in cases of pledge of movables. Therefore, in view of words preceding Section 5(3) of the SARFAESI Act and the clear prohibition in of Section 31(b) of the SARFAESI Act, it is expressly clear that Section 5(3) would not be applicable to pledge of movables. In the present case, the shares are movable goods and hence, Section 5(3) of the SARFAESI Act does not apply, and it cannot be said that *inter alia* any agreements and Powers of Attorney subsist after assignment in favour of J.C. Flowers.

135. Mr. Andhayarujina has supported the submissions of Mr. Seervai that there is no credible explanation on part of Pledgee for failure to sell the pledged shares immediately. He has submitted that Dish TV is a public listed company and its shares are freely traded on the Bombay Stock Exchange and National Stock Exchange. Accordingly, a market clearly exists for Dish TV's shares to be sold. Despite its obligations in law, Yes Bank and J.C. Flowers chose to squat on the shares, exercises rights of ownership such as the right to vote and participate in management of Dish T.V. by *inter alia* requisitioning of meetings, bringing oppression and mismanagement proceedings and act beyond the scope of a Pledgee, which it cannot

be permitted to do in law. He has accordingly submitted that Yes Bank /J.C. Flowers are not entitled to vote in respect of the pledged shares.

136. Mr. Khambata, the learned Senior Counsel appearing for Defendant No.2 and Defendant No.10 viz. Yes Bank and J.C. Flowers has referred to the provisions under the Contract Act which concerns Pledges. He has submitted that from Section 172 of the Contract Act, it is clear that a Pledge is nothing but a form of bailment. Thus, the provisions constituting setting out the law of bailment viz. Sections 148 to 171, 180 and 181 of the Contract Act would apply to Pledges. He has submitted that since admittedly Section 148 of the Contract Act applies to Pledges and Section 149 to 171 and 180 to 181 of the Contract Act apply to bailments as defined under Section 148 of the Contract Act. It follows that the said provisions also apply to Pledges. Bailment itself contemplates contractual conditions of use and possession of bailed goods which may be prescribed in the contract of bailment. He has submitted that the Pledge Deeds that are the subject matter of the present Interim Application is nothing but contracts of bailment setting out the conditions of use and possession of the Suit Shares i.e. the bailed goods.

137. Mr. Khambata has relied upon the decision of Supreme Court in *PTC India (supra)*. The Supreme Court while discussing the law of pledge observes that Sections 148 to 171 of Chapter IX of the Contract Act lay down the general law pertaining to bailments and pledges are nothing but a “subset of bailments”. The Supreme Court has also referred to the case of *Md. Sultan and Ors.(supra)* which holds that a contract of pledge is a bailment of goods.

138. Mr. Khambata has referred to Section 180 of the Contract Act under which the bailee has the same remedies as that of the owner of the goods in case of deprivation of use or possession of the goods bailed or for any injury to them by a third party. Under Section 181 of the Contract Act, whatever is obtained by way of relief or compensation in any such Suit under Section 180 shall as between the Bailor and Bailee, be dealt with according to their respective interests. He has in this context relied upon the decision of Supreme Court in *Morvi Mercantile Bank Ltd. Vs. Union of India*¹⁷ and *The Bank of Bihar (supra)*, wherein the Supreme Court has applied, both Sections 180 and 181 of the Contract Act, to pledges. He has submitted that even prior to the enactment of the Depositories Act, a

¹⁷ (1965) 3 SCR 254

Pledgee stood on the same footing as an owner as against third parties.

139. Mr. Khambata has submitted that a Deed of Pledge can include terms governing the pledge over and above those in Sections 172-179 of the Contract Act. He has submitted that though under Section 176 of the Contract Act, it is provided that “*If the Pawnor makes default in payment of the debt, or performance, at the stipulated time of the promise, in respect of which the goods were pledged, the Pawnee may bring a suit against the Pawnor upon the debt or promise, and retain the goods pledged as a collateral security; or he may sell the thing pledged, on giving the Pawnor reasonable notice of the sale...*” However, the use of pledged goods by the Pledgee post invocation of pledge but prior to sale is not barred either under Section 176 or any other provision of the Contract Act. This will include exercise of voting rights if the pledged goods are shares.

140. Mr. Khambata has submitted that it is a settled position of law that the Contract Act, including on the law of pledge, is not exhaustive. In this context, he has relied upon the decision of the

Supreme Court in *Irrawaddy Flotilla Company Limited Vs. Bugwandass*¹⁸. He has submitted that in the decision of *PTC India (supra)* the Supreme Court has held that the law of pledge must reflect “flexibility” in the “milieu of a transitional and commercial environment wherein significant changes have occurred across the capital market.”

141. Mr. Khambata has also relied upon the decision of this Court in *Madholal Sindhu (Supra)*, wherein it has been held that “The scheme of the Indian Contract Act is that it is competent to parties to incorporate into any contract any incident which is not contrary to or inconsistent with any provision contained in the Act.”

142. Mr. Khambata has submitted that under common law as can be seen from *Chitty on Contracts - Law of Contracts, The Common Law Library, 34th Edition, Volume II.*, “(T)he right of the Pledgee to use the thing pledged will depend upon the agreed terms of the pledge”.

143. Mr. Khambata has submitted that nothing under Section

18 (1891) SCC OnLine PC 11

172-179 of the Contract Act prohibits parties to a pledge from contractually agreeing upon additional terms and conditions, so long as they are not in derogation of mandatory provisions of the Contract Act.

144. Mr. Khambata has submitted that the decision of this Court in *Madholal Sindhu (supra)*, had considered a case, where the pledge document sought to confer rights on a Pledgee to sell the pledged shares without giving reasonable notice of sale. It held that this would be prohibited by the express provisions of Section 176 of the Contract Act and thus void.

145. Mr. Khambata has submitted that the Supreme Court in *PTC India (supra)* has approved of this finding of *Madholal Sindhu (supra)*. Moreover, in *PTC India (supra)*, the Supreme Court holds that the Pawnor has a right of redemption against third parties when the Pawnee does not give reasonable notice under Section 176 of the Contract Act.

146. Mr. Khambata has submitted that the pledged deed which is the subject matter herein has complied with Section 176 of

the Contract Act as they contain a provision mandating reasonable notice be given before sale i.e. Clauses 7.3 and 8 of the Pledged Deed. Further, the Pledgee has issued notice of sale to the Plaintiff and the Plaintiff's right to redeem the Suit Shares from JCF remains intact.

147. Mr. Khambata has submitted that the decision relied upon by Counsel on behalf of Dish T.V. viz. *Shatzadi Begum Saheba (supra)* had differentiated a pledge from a mortgage of movables. However, in that case a vanilla-pledge was compared with a vanilla-mortgage to hold that the case was a mortgage of movables and not of pledge since it involved more than a mere delivery of shares. It does not consider the law on bailment of goods. It is settled law that pledge is a form of bailment and conditions of bailment can allow the use of bailed goods i.e. pledged goods. Conditions of bailment are nothing but a reference to the contract of bailment, which in the present case is the Pledge Deeds. When the law does not prohibit parties from entering into an agreement containing a plain-vanilla pledge and also containing additional contractual rights and obligations with respect to the same goods, it is absurd to suggest that a composite agreement containing all such rights and obligations

(including that of pledge) would be contrary to law, or would lead to conversion, or would amount to a mortgage of movables.

148. Mr. Khambata has referred to the decision of Supreme Court in *PTC India (supra)*, wherein the Supreme Court expressly noted and recognized the contractual rights of the Petitioner-Pledgee to transfer shares into its name or in the name of its nominee and to exercise voting rights over the pledged shares. *PTC India* does not hold that such contractual rights would “convert” the pledge into a mortgage of movables.

149. Mr. Khambata has submitted that the Plaintiff has relied upon the decision of the Calcutta High Court in *Mahamaya Debi (supra)* to contend that only right available to a mortgagee is the right of foreclosure. He has submitted that this contention is misconceived in view of the decision viz. *Arjun Prasad and Ors. Vs. Central Bank of India Ltd.*¹⁹, wherein the Patna Court has held that even a mortgagee has a right of sale. Further, the Madras High Court in *L&T Finance Ltd. Vs. J.K.S. Constructions Pvt. Ltd.*²⁰ has expressed

19 (1891) SCC OnLine PC 11

20 2014 SCC OnLine Mad 302

doubt as to the ratio and correctness of *Mahamaya Debi (Supra)*.

150. Mr. Khambata has dealt with the contention of the Plaintiff and Dish TV's case that a pledge by operation of law creates a species of "special property" or "special interest" in the pledged goods in favour of the Pledgee; whereas the "general property" or "general interest" in the pledged goods (which includes rights of enjoyment of the pledged goods) continues to vest in the Pledgor by virtue of its ownership of the pledged goods. He has submitted that "special property" of a Pledgee is a concept under common law. Sections 172 to 179 of the Contract Act do not talk of any "special interest" or "special property" rights of a Pledgee. Thus, there is no statutory bar under the Contract Act from conferring any additional rights on a Pledgee by contract, save and except any term that violates mandatory provisions of the Contract Act. He has submitted that none of the decisions relied upon by the Plaintiff and Dish T.V. to claim that the Pledgee only has a "special right" or "special interest" in the pledged goods, hold that voting rights cannot be exercised by a Pledgee under a contract of pledge that expressly provides for the same. In none of these cases does the contract (if any) confer any additional rights on the Pledgee, to vote or otherwise (beyond

Sections 172 to 179 of the Contract Act).

151. Mr. Khambata has relied upon the cases where the contracts conferred special rights on the Pledgee, including the right to vote viz. *Infrastructure Leasing and Financial Services Ltd. & Ors. Vs. Anupama Agarwal*²¹; *Sarvopari Investments Pvt. Ltd. & Anr. Vs. Soma Textiles & Industries Ltd. & Ors.*²² and *Bambino Finance Pvt. Ltd. Vs. Spectrum Power Generation Ltd. & Ors.*²³ In not one of these cases was there a finding to the effect that the additional rights conferred on the Pledgee were contrary to provisions of the Contract Act.

152. Mr. Khambata has referred to the decision of the Supreme Court in *PTC India (supra)*, wherein at paragraph 28, the Supreme Court after noting the concept of “special property” in a Pledgee at Paragraphs 32-35 nevertheless held that the contract of pledge can contain any terms governing the pledge. These additional terms could include voting rights.

21 Judgment dt 26.05.2020 in SJ 21/19 in Commercial Suit No. 396 of 2019

22 2003 SCC OnLine Cal 224

23 Jt of Andhra Pradesh High Court dated 27th April 2010 in O.S.A. No. 1 of 2009

153. Mr. Khambata has referred to the decision of Supreme Court in *Lallan Prasad (supra)* which had been relied upon by the Plaintiff and Dish T.V. to contend that that a pledge is an intermediate between a simple lien and a mortgage. He has submitted that in that case, the Supreme Court had considered the issue, whether a Pledgee can sue to recover the underlying debt and also keep the pledged property. In this context, the Supreme Court, while determining the rights of a Pledgee, referred to the Pledgee's "special property" and the Pledgor's general property rights in the pledged goods and held that satisfaction of a debt extinguishes a pledge/pawn and that upon such satisfaction the Pledgee is bound to redeliver the pledged property. He has submitted that in *Lallan Prasad (supra)* there is reference of *Halliday Vs. Holgate*²⁴ which elucidates what special property would mean for a bailee with respect to bailed goods i.e. a Pledgee has the whole present interest in the pledged property until the debt is paid off.

154. Mr. Khamabata has submitted that the express terms of the contract of pledge will prevail and if there are no express terms, the Pledgee may hold or even assign the pledged goods until the debt

24 [L.R.] 3 Exch. 299

is discharged. In this context, he has relied upon *Donald Vs. Suckling*²⁵ at Pages 604, 608 and 613. He has submitted that the Pledgee has a right to protect the pledged goods and its interests therein during the subsistence of the pledge.

155. Mr. Khamabata has submitted that the extent of the “special property” of a Pledgee will depend not only on the provisions of the Contract Act but also on what additional rights are conferred on the Pledgee by the contract of pledge.

156. Mr. Khambata has submitted that it is settled law that only a shareholder listed as a member in the Register of Members of a company is entitled to exercise voting rights over the shares. In this context, he has relied upon decision of the Supreme Court in *Life Insurance Corporation of India Vs. Escorts Ltd. and Ors.*,²⁶ at Paragraphs 84, 95 & 100.

157. Mr. Khambata has submitted that even prior to enactment of the Depositories Act, the shareholder whose name was

25 (1866) LR 1 QB 585

26 (1986) 1 SCC 264

entered in the register of members of the company had the right to vote at meetings of the company. The depositories and the company are statutorily obligated to recognize only a member and only a member is permitted to vote over such shares. He has referred to the decision of the Supreme Court in *Vodafone International Holding BV (supra)* at Paragraphs 271 to 273, wherein the Supreme Court recognized the doctrine against decoupling but nevertheless held voting agreements to be valid and enforceable. Such agreements do not conflict with the doctrine that voting rights cannot be decoupled from the shares.

158. Mr. Khambata has submitted that in the present case, admittedly, JCF is the registered member and beneficial owner of the Suit Shares. Further, the Plaintiff has under the Pledge Deeds authorized the Pledgee *inter alia* to exercise voting rights in respect of the Suit Shares. This is provided for in Clauses 2.1(b), 5(b), 7.1(g), 10.3(d), 12(i) and (iii) of the Pledge Deeds. Further, the Plaintiff has executed the independent POAs under which the Plaintiff has appointed the Pledgee as its proxy in law, including for the purposes of voting at the Dish TV's shareholder meetings.

159. Mr. Khamabata has submitted that a grant of a proxy/Power of Attorney or a contractual obligation to vote in a particular manner is not to be misconstrued as “*decoupling*” the right to vote from the share. He has submitted that post enactment of the Depositories Act, 1996, the Depositories Act and the Depositories Regulations are to be read harmoniously with provisions relating to contracts of pledge under the Contract Act as held in *PTC India (supra)*. Insofar as pledges of dematerialized shares are concerned, upon invocation of the pledge, the Depositories Act requires that the Pledgee’s name be registered as the ‘beneficial owner’ of the dematerialized shares in the records of the depository.

160. Mr. Khamaba has referred to the relevant provisions of the Companies Act, 2013, the Depositories Act and Depositories Regulations on beneficial owner / member. He has submitted that under the 1996 Regulations, upon invocation of the pledge, the depository “*shall register the Pledgee as beneficial owner*”. In the decision of *PTC India (supra)*, the Supreme Court held that “*No person, including the Pawnee, can transfer the pawn held in dematerialised form without being registered as a ‘beneficial owner’*”. This is a “*mandatory*” stipulation which does not seek to curtail or

restrict, but on the other hand respects party autonomy and freedom to decide the terms of the pledge. He has made specific reference to the Paragraph 70 and 79 of *PTC India (supra)* in this context.

161. Mr. Khambata has submitted that the Depositories Act provides for only two categories of owners viz. 'registered owner' who has necessarily to be a depository and a 'beneficial owner' in whom all the rights vest. He has relied upon the decision of the Supreme Court in *PTC India (supra)* at Paragraph 69, wherein it is held that "*The Depositories Act establishes the depository ecosystem and introduces the concepts of a 'registered owner' and 'beneficial owner'... 'The depository', as the registered owner, does not have any voting right or any other right in respect of the securities held by it. 'The beneficial owner' shall be solely entitled to all rights, benefits, and liabilities attached to the securities held by 'the depository'.* He has submitted that this has been recognized in the Judgment dated 23rd June, 2022 of the Division Bench of this Court, dismissing Commercial Appeal (L) No. 19252 of 2022 which challenged the order dated 17th June, 2022 passed in Interim Application (L) No. 17730 of 2022 filed in the present Suit. He has submitted that whilst the Judgment dated 23rd June, 2022 examining the decision of *PTC*

India (supra) in the facts of the present case is not binding on this Court, the reasoning contained therein at Paras 69, 70, 71, 74, 75, 76, 77, 78, 79, 82, 86 is instructive and is adopted by Yes Bank/ JCF as their submissions.

162. Mr. Khambata has submitted that *PTC India (supra)* has unequivocally held that, “*It is absolutely necessary that the Pawnee must be accorded status of ‘beneficial owner’ to enable him to exercise his right to sell the pledged dematerialized securities*”, [Paragraph 80 of *PTC India (supra)*]. He has also relied upon Paragraph 7, 11, 84, 85 of the said decision. He has submitted that the a Pledgee is not deemed to be a beneficial owner by some legal fiction, but is in fact the beneficial owner with all rights, benefits and full status of beneficial ownership.

163. Mr. Khambata has submitted that the Depositories Act does not contemplate different kinds/classifications of beneficial owners i.e. a party may either be a beneficial owner or it may not. There is no concept of a ‘lessor’ or ‘Pledgee’ beneficial owner who has a right to sell but no other right (as contented by the Plaintiff and Dish TV). The Supreme Court in *PTC India (supra)* expressly notes

and recognizes the contractual right of the petitioner-beneficial owner therein to transfer shares into its name or in the name of its nominees and to exercise voting rights over the pledged shares.

164. Mr. Khambata has submitted that a company is duty bound in law to recognize only a beneficial owner / member whose name appears on the register of members as having all rights and benefits, including voting rights in relation to shares. He has relied upon Section 106(1) & (2) of the Companies Act as well as *Swadeshi Polytex (supra)* at Paragraphs 29 and 36 in this context.

165. Mr. Khambata has submitted that the definitions of 'beneficial owner' and 'member' under Section 2(1)(a) of the Depositories Act and Section 2(55) of the Companies Act is caveated by the words "*unless the context otherwise requires*". These definitions must be read down in the context of the said common law principle to mean a 'Pledgee-beneficial owner' who cannot have the full rights of a 'member'. He has submitted that Dish T.V. has not demonstrated that the context of the definition of "member" in Section 2(55)(iii) of the Companies Act, 2013 or of "beneficial owner" in Section 2(1)(a) of the Depositories Act does not require

adopting a meaning other than as the definitions and provisions of these Acts expressly provide. He has submitted that the words which are not defined in the Companies Act shall have the meanings assigned to them in the Depositories Act (**Sections 2(95) the Companies Act**). Thus, a 'beneficial owner' is not defined under the Companies Act and therefore its meaning under Section 2(1)(a) of the Depositories Act will have to be read into the Companies Act. Thus, a 'beneficial owner' under the Depositories Act will also be 'beneficial owner' for the purposes of the Companies Act and the 'beneficial owner' will then be a member under Section 2(55)(iii) of the Companies Act. Neither of these Acts envisage a curtailment/colouring of the definition of 'beneficial owner' under Section 2(1)(a) of the Depositories Act by restricting the rights of a Pledgee who has been conferred the status of beneficial owner.

166. Mr. Khambata has submitted that voting rights have been expressly conferred on the Pledgee, both under the Pledge Deeds and under the POAs. He has referred to the relevant clauses in the Pledged Deed, wherein voting rights have been conferred upon the Pledgee. He has submitted that it is settled law that the Pledgee is entitled to exercise the Pledgor's voting rights over the pledged

shares as an agent of the Pledgor under a proxy or power of attorney given to it by the Pledgor. He has referred to Section 105 of the Companies Act which confers a right on a member of a company to appoint a proxy to vote on behalf of such member at meetings of the company and Rule 19 of the Companies (Management and Administration) Rules, 2014 which provides that the appointment of proxy shall be in Form No. MGT.11. He has submitted that the decision of this Court in *Gharda Chemicals Limited Vs. Jer Rutton Kavasmaneck*²⁷ in Paragraph 30 and 32 has held that if a power of attorney contains all the requisite particulars, such as the name of the company, the name of the person executing the instrument, the name of the person empowered to vote as a proxy, etc. then such an instrument can be treated as a proxy. It has been further held by the Andhra Pradesh High Court in *Bambino Finance Pvt. Ltd. (supra)* at Paragraphs 66 to 68, 79 to 83 that a Power of Attorney authorizing the Pledgee to vote is binding and enforceable as against the Pledgor where the power of attorney was a part of the Pledge Deed.

167. Mr. Khambata has submitted that the transfer of the Suit Shares i.e. the Security Assets under the Pledge Deeds as defined at

²⁷ 2005 SCC OnLine Bom 842

Clause 1.1 thereof, first in the name of Catalyst, then to Yes Bank and finally to JCF is permitted under the terms of the Pledge Deeds, POAs, and under law. He has submitted that upon enforcement of security, the Plaintiff has authorised the Pledgee to transfer or cause any of the Security Assets to be transferred to and registered in the name of any of its successors, assigns or transferees. He has relied upon Clause 4.1(b) of the Pledge Deeds in this context. He has submitted that upon default, the Pledgee is entitled to enforce the security interest and take possession of or dispose of all or any part of the Suit Shares in any manner permitted by law upon such terms as the Pledgee determines and to cause all or any part of the Suit Shares to be transferred into its name or its nominees as has been provided for in Clause 7.1 (a) and (c) of the Pledge Deeds. Further, the Plaintiff has undertaken not to stop or attempt to stop any transfer of Suit Shares in the name of the Pledgee or its nominee as this is provided for in Clause 10.3(b) of the Pledge Deeds. The Pledgee has been appointed as the Plaintiff's attorney *inter alia* to do all acts in relation to any of the Security Assets. The Pledgee has been empowered to delegate the powers conferred on it by the Pledge Deed (including the Power of Attorney) to any Person. This is provided for in Clause 12 of the Pledge Deeds. Further, the Powers of

Attorney dated 1st May, 2019 and 6th May, 2019 allow the Pledgee to delegate the powers conferred on the Pledgee under the POAs to any other Person as provided for in Clause 18 of the Pledge Deeds.

168. Mr. Khambata has submitted that the transfers of Suit shares are also permitted under law. Regulation 58(8) of the 1996, Depositories Regulations (identical to Regulation 79(8) of the 2018, Depositories Regulations which replace the 1996 Regulations) provides for invocation of the pledge and registration by the depository of the Pledgee as the beneficial owner of the securities. Further, in the decision of the Supreme Court in *PTC India (supra)*, it has been held that the transfer of shares by a Pledgee to its own name is not considered a sale.

169. Mr. Khambata has submitted that the “special interest” of a Pawnee includes the right to assign his special property or interest in the pledged goods as held by the Supreme Court in *PTC India (supra)* at Paragraph 34 and in *The Bank of Bihar (supra)* at Paragraph 5. He has submitted that *PTC India (supra)* recognizes that the law permits transfer of pledged shares to a nominee of the Pledgee and in this context he has relied upon Paragraphs 99-101 of

the said decision.

170. Mr. Khambata has submitted that the transfer of Suit shares from Yes Bank to JCF has taken place pursuant to the Assignment Agreements dated 16th December, 2022 *vide* which Yes Bank's stressed asset portfolio aggregating up to INR 48,000 crores (approx.) was assigned to JCF together with the underlying security created therefor under the provisions of the SARFAESI Act, 2002. He has submitted that the assignment includes assignment of the Loans provided by Yes Bank to *inter alia* the Borrowers - Defendant Nos. 4 to 9. As a result, the Suit Shares of Dish TV previously held by Yes Bank as beneficial owner (in its own name and/or through security trustees) are now held by JCF (by itself, through Yes Bank (in its capacity as the agent of its security trustee and through its security trustee)).

171. Mr. Khambata has submitted that Section 5 of the SARFAESI Act provides for acquisition of a 'financial asset' by an asset reconstruction company and prescribes the rights of the ARC on such acquisition. He has referred to the definition of the 'financial asset' in Section 2(l) which includes a pledge of movable property. He has

also referred to Section 5(1), Section 5(2) and Section 5(3) of the SARFAESI Act which *inter alia* provides for acquisition of financial assets by an Assets Reconstruction Company (ARC) by way of an Agreement with the bank for transfer of financial assets. In that event the buyer of these assets viz. ARC would be treated as the lender for all purposes. He has submitted that there can be no doubt that the ARC is the new Pledgee of these shares and its right to deal with these pledged shares is absolute. Therefore, the ARC is required to be recognised as Pledgee by all third parties, including statutory authorities. He has relied upon the decision of Delhi High Court in *UV Asset Reconstruction Company Ltd. Vs. Union of India & Ors.* (supra) at Paragraph 9 in this context.

172. Mr. Khambata has submitted that the contention of the Counsel for the Plaintiff that the Pledgee cannot claim that it is a member under the Companies Act and can hold the Suit Shares forever without selling them, is misconceived. It is well settled that the Pledgee cannot be compelled by the pawner to sell the pledged goods. Power to sell is conferred on the Pawnee for "*his benefit*" and it is his "*sole discretion*" to exercise the power of sale or not. Even where the value of the goods deteriorates due to time, no relief can

be granted to the Pawnor against the Pawnee as the Pawnor is legally bound to clear the debt and obtain possession of the pawned goods. In this context he has relied upon *PTC India (supra)* at Paragraph 39, 42 and 62.

173. Mr. Khambata has submitted that though Yes Bank was desirous of selling the Suit Shares, there were circumstances which prevented it from doing so. He has referred to the order passed by the Saket District Court restraining Catalyst and Yes Bank from selling and/or transferring 44,53,48,990 shares of Dish TV (including the suit shares). The order operated for over 9 months (from October 2020 to August 2021) when the Saket Court proceedings were withdrawn by the Borrowers. Thereafter, notices were issued by the UP Police under Section 102 Code of Criminal Procedure, 1973 by which Yes Bank constrained from acting on the Suit Shares from 5th November, 2021 to 30th November, 2021. He has submitted that the Suit shares will have to be sold to a strategic buyer considering that it amounts to approximately 25.63% of Dish TV's share capital. Further, in view thereof various litigations are pending which have been initiated by or at the behest of the Essel Group, no buyer is willing to purchase the Suit Shares. He has submitted that though on the one

hand the Plaintiff claims that Yes Bank and JCF are wrongly holding on to the Suit Shares and are exercising ownership rights over them with no intention to sell, on the other hand the Plaintiff by the Interim Application is seeking *inter alia* to restrain Yes Bank and JCF from “..creating third party rights, in any manner in respect of the suit shares”. This averment was prior to the amendment introducing the alleged case of fraud.

174. Mr. Khambata has thereafter dealt with the allegations of the Plaintiff with regard to fraud in relation to the Pledge Deeds. He has submitted that Section 17 and 19 of the Contract Act *inter alia* provide that when consent to an agreement is caused by fraud/coercion, the agreement is a contract voidable at the option of the party whose consent was so caused. He has submitted that Section 23 of the Contract Act deals with contracts that are rendered void due to unlawful consideration or object and provides that if the object or consideration of an agreement is unlawful (for *inter alia* being fraudulent), the agreement is void. Section 24 further adds that if any part of a single consideration for one or more objects, or any part of several considerations for a single object, is unlawful, the agreement is void.

175. Mr. Khambata has submitted that the Plaintiff's case of fraud is based on the Complaint dated 24th September, 2021 filed by Yes Bank with the Economic Offences Wing, Mumbai (EOW). The Plaintiff has claimed that the complaint was "recently discovered" by the Plaintiff and it confirms and reiterates the contents of the criminal Complaint dated 22nd June 2020 filed by Mr. Subhash Chandra. The Plaintiff has placed reliance on ***Lazarus Estates Ltd. (supra)*** to submit that fraud unravels all and "*vitiates judgments, contracts and all transactions*" and that nothing that has been obtained by fraud can be permitted to stand. Mr. Khambata has submitted that the Plaintiff's reliance on ***Lazarus*** is entirely misplaced as in the case ***Lazarus***, a landlord had obtained a decree from a County Court on the basis of a false and fraudulent declaration pertaining to repairs in a rent increase form. An appeal against the decree was allowed and the tenant was permitted to raise the defence of fraud. He has submitted that the Plaintiff has plucked out a stray sentence from the judgment and taken it out of context to claim that fraud vitiates all. The decision in ***Lazarus (supra)*** contains the line in passing "*see... as to contracts Master Vs. Miller*²⁸ ...".

28 (1791) 4 T.R. 320

176. Mr. Khambata has submitted that in ***Master Vs. Miller***, the Court only dealt with material alterations of the deed/ contract without the “*privity of the oblige*” and holds that such alterations render the instrument void. He has submitted that no case of contractual fraud of the nature alleged by the Plaintiff was alleged or dealt with in ***Lazarus*** or in ***Master Vs. Miller*** and these cases therefore do not apply to the facts of the recent case. He has submitted that ***Master Vs. Miller*** has been explained by the Supreme Court in ***M.S. Anirudhan Vs. Thomco’s Bank Ltd.***²⁹. The Supreme Court has held that “*An alteration made in a deed, after its execution, in some particular which is not material does not in any way affect the validity of the deed;.... It appears that an alteration is not material ... which carries out the intention of the parties already apparent on the face of the deed*”. He has submitted that as per Sections 17 and 19 of the Contract Act, fraud renders a contract voidable (not void) and the ratio in ***Lazarus***, if accepted as argued by the Plaintiff, would render Sections 17 and 19 of the Contract Act otiose.

177. Mr. Khambata has submitted that a contract is rendered void *ab initio* when there is fraud as to the character of the contract

29 1963 Supp (1) SCR 63

i.e. there is no consent between parties as a result of (a) a material alteration to the original contract; or (b) signing of the contract by a person believing it to be an entirely different document. This doctrine applies only to a particular set of facts and circumstances. It cannot be stretched to apply to cases of fraud and/or misrepresentation as to contents of the document, such as in the present matter.

178. Mr. Khambata has submitted that in the present case all the parties to the Pledge Deeds including the Plaintiff were fully aware of the character and nature of the documents that were being executed i.e. the documents were deeds of pledge whereby the Plaintiff was pledging certain shares held by it in favour of Catalyst for the benefit of Yes Bank as security for the loans advanced by Yes Bank.

179. Mr. Khambata has submitted that it is a settled position under English Law and Indian Law that a transaction is void in the case of a fraudulent misrepresentation as to the character of the document and in the case of a fraudulent misrepresentation as to the contents of the document, the transaction is merely voidable and continues to be valid until it is avoided. He has relied upon the

authorities which have considered this position which are as under :

- (i) The House of Lords in *Saunders (executrix of the estate of Rose Maud Gallie, deceased) Vs. Anglia Building Society*³⁰
- (ii) *Ningawwa Vs. Byrappa Shiddappa Hireknrabar & Ors.*³¹
("Ningawwa")
- (iii) *Mohan Vishnu Satardekar Vs. LIC*³²
- (iv) *Ramesh Mali v M/s Samrat Associates & Ors.*³³
- (v) *Dularia Devi v. Janardan Singh & Ors.*³⁴

180. Mr. Khambata has submitted that in order to establish that the pledge is void, the Plaintiff would have to meet the narrow test of fraud as to character which it does not meet. It is not the Plaintiff's case that the Plaintiff was tricked into signing something that turned out to be a different document altogether. In the present case, the Plaintiff has explicitly acknowledged in the Plaint at Paragraph 2, 5, 8, 8D, 11, 24C, 24H, 24I that the underlying transaction was a loan and the transaction impugned in the Suit was a pledge, thus demonstrating that the Plaintiff had full knowledge of

30 [1970] 3 WLR 1078

31 (1968) 2 SCR 797

32 2023 SCC OnLine Bom 423

33 Jt dt 18.07.2022 passed by this Court in IA (L) No. 2566 of 2022 in S(L) 29721/2021

34 1990 (Supp.) SCC 216

what it was signing. The Plaintiff's case on fraud is that the Borrowers were "induced" to avail Loans and they believed that the money would be used for one purpose but the money was subsequently used for another purpose. The Plaintiff's case is predicated on the Loan transaction, that is to say that if the loan falls so must the pledge. He has submitted that a borrower corporation advised by a Board of Directors availing a loan, utilizing the loan amounts and then claiming that someone in their own organisation misused the loan amounts is not a case of fraud on the Borrowers and/or the Plaintiff-Pledgor.

181. Mr. Khambata has submitted that it is settled position of law that an innocent party upon discovering fraud must avoid the transaction and such avoidance relates back to the inception of the transaction. Until such avoidance, the contract remains valid in law. This has been held in decisions of *Ningawwa (supra)*. Thus, a finding of fraud with respect to the Loan transactions, would at the highest render the transaction voidable at the instance of the defrauded parties.

182. Mr. Khambata has submitted that the Plaintiff has put

together an incredible and unbelievable story to further its case and mislead this Court. The Plaintiff in fact had knowledge of the alleged fraud prior to the date of filing of the present Suit i.e. prior to 16th December 2021. He has adverted to the proceedings in the Saket District Court at New Delhi which refers to and annexes the FIR registered pursuant to Subhash Chandra Complaint and ongoing criminal investigation into the Subhash Chandra Complaint. It is the Plaintiff's own case that the EOW Complaint confirms and reiterates the contents of the Subhash Chandra Complaint. However, the Suit filed by Defendant No.5, Essel Co-operative Resources Pvt. Ltd. in Saket District Court at New Delhi only seek to invalidate the invocation of the pledge and not the pledge itself. Identical suits were filed by other Borrowers but all the Suits were ultimately withdrawn by the Borrowers with liberty to file fresh Suits. However, no such fresh suits have been filed.

183. Mr. Khambata has submitted that the Oppression & Mismanagement Petition, being Company Petition No. 411 of 2021 filed by Yes Bank before the NCLT, Mumbai demonstrates that the Subhash Chandra Complaint and the alleged fraud was within the knowledge of the Plaintiff as early as on 20th November 2021. The

Plaintiff is Respondent No. 15 in the Oppression & Mismanagement Petition and has admittedly been served a copy of the Oppression & Mismanagement Petition. The Oppression & Mismanagement Petition contains a detailed recounting of the Subhash Chandra Complaint and the FIR registered in the matter and annexes both the Subhash Chandra Complaint and the FIR dated 12th September, 2020. The Oppression & Mismanagement Petition also makes a reference to the EOW Complaint and the proceedings filed by the Borrowers before the Saket District Court.

184. Mr. Khambata has submitted that despite having prior knowledge of the alleged fraud, the Plaintiff did not and has not till date addressed a letter or any communication seeking to avoid the pledge transactions and/or the Pledge Deeds on account of being voidable on grounds of fraud. He has submitted that even the Plaint, both as originally filed and as amended till date, contains no averment to the effect that the Plaintiff has avoided the transactions and/or the Pledge Deeds.

185. Mr. Khambata has thereafter referred to various Paragraphs of the Plaint filed in the present Suit in support of his

submission that despite having knowledge of the alleged fraud, the Plaintiff instead of avoiding the Pledge Deeds has in fact elected to affirm them. The Plaintiff proceeds on the basis that the Pledge Deeds and the underlying/related transactions are valid.

186. Mr. Khambata has thereafter referred to the amended Plaintiff and has submitted that the pleadings on fraud have been inserted belatedly into the Plaintiff and now the Plaintiff as amended seeks inter alia a declaration to the effect that the Pledge Deeds are void. However, Paragraphs 7, 11, 12, 18, 21-24 and Prayer Clauses 36(b) and 36(c) of the Plaintiff (which evince affirmation of the Pledge Deeds by the Plaintiff) continue to appear in the amended Plaintiff. The reliefs sought by the Plaintiff pursuant to the said amendment are in addition to those sought prior to the amendment. He has submitted that the Plaintiff is attempting to ride two horses simultaneously by propounding the pledges as also praying for them to be declared void; and is thereby attempting to take advantage of the very pledges that it claims are void. Mr. Khambata has thereafter referred to the authorities which establish that once a party has elected to affirm a contract, whether expressly, or by implication, it cannot later seek to avoid it, which are as follows:-

- (i) *Clough Vs. London and North Western Railway Company*³⁵
- (ii) *Kunja Lal Bhuiya Vs. Haralal Bhuiya* ³⁶
- (iii) *Mumbai International Airport Pvt. Ltd. Vs. Golden Chariot Airport & Anr.*³⁷

187. Mr. Khambata has thereafter dealt with the Plaintiff's case on fraud under Section 23 of the Contract Act. He has submitted that the contention of the Plaintiff that the consideration for the pledge of the Suit Shares (under the Pledge Deeds) being the advancement of Loans by Yes Bank, is tainted by fraud and renders the pledge of the Suit Shares void under Section 23 read with Section 24 of the Contract Act is misconceived. He has submitted that Section 23 of the Contract Act deals with contracts that would be rendered void due to unlawful consideration and/or object. In the present case, nothing about the granting of the Loans which are the "stated consideration" under the Pledge Deeds is illegal / unlawful since the Loans were advanced by Yes Bank and accepted by the Borrowers. He has submitted that the Plaintiff is alleging illegality in use of the Loan amounts, which does not render the Loans themselves illegal

³⁵ (1871) LRs 7 Ex26

³⁶ AIR 1943 Cal 162

³⁷ (2010) 10 SCC 422

and/or unlawful. He has submitted that even if the allegations contained in Subhash Chandra compliant to the effect that the Borrowers were induced to take the Loans are accepted *arguendo* (whilst being denied), fraud/illegality as contemplated under Section 23 is not made out.

188. Mr. Khambata has referred to the decision of the Supreme Court in *Gurmukh Singh v. Amar Singh*³⁸ wherein Supreme Court explained that a contract for the commission of a fraud (upon a third party or for a purpose prohibited in law) would be fraudulent in its object or consideration. He has submitted that it is not the Plaintiff's case that the Pledge Deeds were entered into as a fraud upon someone. The consideration for the Pledge Deeds viz. the Loans advanced to the Borrowers (the Essel Group) were misutilised by the Borrowers will not render the object or consideration of the Pledge Deeds fraudulent. At the highest, that would be a case of fraud upon the Plaintiff to secure the Plaintiff's consent i.e. under Sections 17 and 19 of the Contract Act.

189. Mr. Khambata has accordingly submitted that in the

³⁸ (1991) 3 SCC 791

event the Plaintiff's case of fraud is accepted, it would at the highest render the Pledge Deeds and the Loan agreements voidable under Sections 17 and 19 and would not render them void ab initio under Section 23 of the Contract Act. The Loan transactions until they are avoided by the Borrowers would be valid. Similarly, the Pledge Deeds until avoided by the Plaintiff would be valid. Once the Plaintiff has elected to affirm the Pledge Deeds it is not open to the Plaintiff to resile from such election. It is in fact the Borrowers' case that the Loan transactions can be declared void only after investigation under the FIR and adjudication of proceedings filed on the basis of Subhash Chandra Complaint. Thus, there is no challenge to the loan transaction, let alone an adjudication by any Court of law on the issue of the alleged illegality and/or alleged fraud in respect of the Loan transactions.

190. Mr. Khambata has submitted that the Plaintiff's case is that entire loan transaction was designed to disguise evergreening of Videocon loans by Yes Bank and make it appear like a bona fide acquisition of Videocon by the Essel Group. According to the Plaintiff, the entire scheme was "orchestrated" by Yes Bank for evergreening of Yes Bank's loans to the Videocon Group. This would at the highest be

a non compliance with the RBI guidelines with regard to evergreening of the loans. He has submitted that it is trite that non-compliance with RBI guidelines may attract penal action from the RBI, however, such non-compliance does not render the transactions void. Therefore, evergreening which is prohibited/impermissible under extant law would not make the loan transactions themselves unlawful. He has in this context relied upon decision of the Supreme Court in *BOI Finance Vs. Custodian & Ors.*³⁹ He has also relied upon the decision of the Supreme Court in *IL&FS Financial Services Ltd. Vs. SKIL Infrastructure Ltd. & Ors.*⁴⁰ where the Supreme Court held that non-observance of prudent lending norms, including in relation to evergreening, would not render the loan transactions void.

191. Mr. Khambata has submitted that the Plaintiff's case of alleged fraud and that Yes Bank advanced huge Loans worth INR 5,270 Crores to the Borrowers - Essel Group so that a sum of INR 1,500 Crores (approx.) could be utilised by the Videocon Group to repay its outstanding dues to Yes Bank is an incredible argument. He has submitted that this does not make any commercial sense as no

³⁹ (1997) 10 SCC 488

⁴⁰ 2020 SCC OnLine Bom 4862

bank would advance upwards of INR 5,000 Crores to evergreen outstanding dues worth INR 1,400 Crores. This theory offers no explanation for the remaining INR 4000 Crores (approx.) amount which was clearly used by the Borrowers for extraneous purposes.

192. Mr. Khambata has submitted that Sections 64 and 65 of the Contract Act provide for restitution in case of voidable/void contracts. Section 64 provides that the party rescinding a voidable contract shall restore the benefit it received thereunder to the person from whom it was received. Section 65 provides that when an agreement is discovered to be void, or when a contract becomes void, the person receiving advantage under such agreement is bound to restore it or compensate the person from whom he received such advantage. He has submitted that assuming whilst denying that the Plaintiff is entitled to avoid the Pledge Deeds and/or that the Pledge Deeds are declared void, and assuming that Yes Bank/JCF is therefore bound to return the Suit Shares, the benefit received by the Plaintiff / Borrowers (Defendants Nos. 4-9) under the Loan transactions and Pledge Deeds (being the Loan amounts) must also be returned to Yes Bank/JCF. A party rescinding a voidable contract is bound to restore benefit obtained thereunder under Sections 64 and

65 of the Contract Act. He has relied upon the decision of the Delhi Counsel in *Murlidhar Chatterjee Vs. International Film Co. Ltd.*⁴¹ in this context.

193. Mr. Khambata has submitted that under the Pledge Deeds the Pledgor is the principal-debtor from whom the Pledgee may at its option recover the amounts due under the Loans, without exercising any rights against the Borrowers. He has placed reliance upon decision of the Madras High Court in *Merit Resorts Pvt. Ltd. Vs. Canara Bank*⁴² where it has been held that without restoration of the benefit received viz. the loan amounts, the Borrowers cannot seek to rescind a mortgage created for securing the loan - which case has also not been dealt with by the Plaintiff.

194. Mr. Khambata has submitted that there is no merit in the contention of the Plaintiff that the first part of Section 65 of the Contract Act (where a contract is *void ab initio*) would apply, whereunder there is a duty to restore the benefit received under a void agreement only to an innocent third party. The Plaintiff has

41 *AIR 1943 PC 34*

42 *2009 SCC OnLine Mad 1813*

further contended that it is Yes Bank and perhaps the Borrowers who received advantage/benefit under the Pledge Deeds, whereas the Plaintiff received “no benefit”; and therefore it is Yes Bank who is bound to restore the Suit Shares to the Plaintiff who is purportedly an innocent third party. He has submitted that this is contrary to (a) clauses of the Pledge Deeds which expressly state that the consideration for the Pledgor under the Pledge Deeds is advancement of the Loans to the Borrowers who have in fact received and utilized the Loan amounts. The Plaintiff has not clarified why it pledged the Suit Shares in the first place if no consideration/benefit was received by it under the Pledge Deeds. Thus, the Plaintiff cannot claim to be an innocent third party. The Plaintiff had knowledge of the alleged fraud even prior to the filing of the present Suit. Further, there is interconnection between the Essel Group and the Jawahar Lal Goel Group.

195. Mr. Khambata has submitted that the Plaintiff cannot conflate two separate types of fraud and substitute one for the other. It is settled law that the fraud must prove as pleaded in its Pleint that a charge of fraud must be substantially proved as laid and when one kind of fraud is charged another kind of fraud cannot be substituted

in its place. He has relied upon decision of the Proviso Counsel in *Abdool Hoosein Zenail Abadin Vs. Charles Agnew Turner*⁴³ and the Supreme Court in *Bijendra Nath Srivastava Vs. Mayank Srivastava*⁴⁴ in this context.

196. Mr. Khambata has submitted that the Plaintiff has not produced any evidence in support of its case of fraud. The Plaintiff has only relied upon the complaints filed before investigation authorities, affidavits filed by investigating authorities and/or letters issued by such authorities to establish its case on fraud. The Affidavit dated 10th January, 2022 filed by the State of Uttar Pradesh in SLP (Cri) No.9192 of 2021 makes it clear that the same has been filed based on a preliminary investigation and it does not purport to (nor can it) render any conclusive finding with respect to the validity of the documents and transactions being investigated under Subhash Chandra Complaint. He has submitted that the EOW Letter dated 21st April 2022 closing the preliminary enquiry in respect of the EOW Complaint proves that the Subhash Chandra Complaint and the EOW Complaints are the same. He has submitted that the EOW

43 *1887 SCC OnLine PC 10*

44 *(1994) 6 SCC 117*

Letter merely closes the preliminary enquiry since the self-same transactions i.e. the Loan and Pledge transactions are already being investigated by the UP Police under the Subhash Chandra complaint.

197. Mr. Khambata has submitted that it is settled law that even a final report of the investigating officer under Section 173(2) of the Code of Criminal Procedure, 1973 is his mere opinion on the materials collected by him and the truth of the offence can only be decided by the Court. In this context he has relied upon the decision of the Supreme Court in *Rajesh Yadav & Anr. Vs. State of UP*⁴⁵ at Paragraph 25.

198. Mr. Khambata has accordingly submitted that there is no merit in the Interim Application and accordingly it deserves to be rejected.

199. Having considered the submissions, the issue which arises for determination is whether the Deed of Pledge can include terms governing the pledge over and above those contained in Sections 172 to 179 of the Contract Act. It is the case of the Plaintiff

⁴⁵ (2022) SCC OnLine SC 150

that the rights of the Pledgee are limited to those prescribed in Section 176 of the Contract Act. In the present case the Pledgee has exercised voting rights in respect of the Suit shares.

200. Section 176 of the Contract Act reads as under :-

“176. If the Pawnor makes default in payment of the debt, or performance, at the stipulated time of the promise, in respect of which the goods were pledged, the Pawnee may bring a suit against the Pawnor upon the debt or promise, and retain the goods pledge as a collateral security; or he may sell the thing pledged, on giving the Pawnor reasonable notice of the sale...”

201. In *Madholal Sindhu (Supra)*, the Division Bench of this Court had considered the question as to whether the terms of Section 176 of the Contract Act are mandatory and override the provisions of any contract to the contrary. This Court has in that context held as under:-

“Therefore, the question is whether the terms of Section 176 of the Indian Contract Act are mandatory and override the provisions of any

contract to the contrary. The scheme of the Indian Contract Act is that it is competent to parties to incorporate into any contract any incident which is not contrary to or inconsistent with any provision contained in the Act. But they can only override a specific provision contained in the Act provided the particular Section dealing with that provision contains a saving clause in respect of special contracts to the contrary. If one looks at the various sections of the Indian Contract Act, one finds that some of them specifically mention “in the absence of a contract to the contrary.” There is no such saving clause in S. 176, and in my opinion its provisions are mandatory, and it is not open to parties to contract themselves out of those provisions.”

202. The said decision has to be read in light of the facts of that case. There, the pledge documents sought to confer rights on the Pledgee to sell the Pledged shares without giving reasonable notice of sale. This Court held that the conferring of such rights is prohibited by the expressed mandatory provision viz. Section 176 of the Contract Act and thus void.

203. The Plaintiff has placed reliance upon *Madhaolal Sindhu*

(Supra) in support of its contention that the Pledgee has only a two fold right under Section 176 of the Contract Act : (i) to bring a Suit against the pawner upon the debt or promise, and retain the goods pledged as a collateral security and (ii) sell the thing pledged on giving the pawner reasonable notice of the sale. It is the Plaintiff's contention that the conferring of voting rights upon the Pledgee by the contract i.e. the Pledge Deeds would constitute contracting out of Section 176 which is prohibited. In my prima facie view, this contention is misplaced. This Court in *Madhaolal Sindhu (Supra)* was not concerned with the issue which arises herein namely whether the conferring of voting rights upon the Pledgee constitutes contracting out of Section 176. It is a settled position that the Contract Act, including law of pledge is not exhaustive. This has been held by Privy Council in *Irrawaddy Flotilla (Supra)*. Further, in *PTC India(Supra)*, the Supreme Court has expressly noted and recognized the contractual rights of the Pledgee to transfer shares into its name or in the name of its nominees and to exercise voting rights over the pledge shares. Further, the provisions of the Contract Act governing pledges viz. Section 172 to 179 do not prohibit parties from contractually agreeing upon additional terms and conditions, so long as they are not in derogation of the mandatory provisions of the

Contract Act. Prima facie, there is no bar to the Pledgee upon invocation of the pledge exercising voting rights in respect of the pledge goods viz. shares.

204. In the present case, the mandatory provision of Section 176 of the Contract Act which provides for giving a reasonable notice prior to sale has infact been complied with. The Pledge Deeds mandate reasonable notice to be given before the sale i.e. Clause 7.3 and 8 of the Pledge Deed. The Pledgee has in compliance with the clauses of the Pledge Deeds which are in terms of the mandatory provision of Section 176 of the Contract Act issued notice of sale to the Plaintiff and the Plaintiff's right to redeem the Suit shares from JCF remains intact.

205. Thus in my prima facie view, the Pledge Deeds in the present case which confer voting rights on the Pledgee beyond what is specified and expressly provided for under Section 176 of the Contract Act cannot be voided as it is permissible for the parties to incorporate into the Pledge Deeds any incident which is not contrary to or inconsistent with the said provisions governing Pledges in the Contract Act.

206. There have been submissions made by the Plaintiff and / or Dish TV on the distinction between Pledge and mortgage of movables and contending that the right of enjoyment of pledged goods such as right to vote is inconsistent with the pledge but consistent with a mortgage of movables. In my view decision of the Andhra Pradesh High Court in *Shatzadi Begum (Supra)* relied upon by the Plaintiffs in this context is inapplicable to the present case as the Court in that case had not considered the law of bailment of goods. In my prima face view a pledge is a form of bailment and this is apparent from Section 172 of the Contract Act. The Supreme Court in *PTC India (Supra)* holds that pledges are nothing but a “subset of bailment” and Section 148 to 171 and 180 and 181 of the Contract Act will apply to a pledge. Further, the use of pledged goods by Pledgee post invocation of pledge but prior to sale is not barred either under Section 176 or any other provision of the Contract Act.

207. In the present case the use of the pledged goods will include exercise of voting rights since the pledged goods are shares. Thus, in my prima facie view the Pledge Deeds by including in its terms the exercise of voting rights of the Pledgee will neither be contrary to law nor lead to conversion nor would amount to

mortgage of movables.

208. There is much merit in the submissions of Yes Bank / JCF that *Shatzadi Begum (Supra)* was a case wherein, a Vanilla – Pledge was compared to a Vanilla – mortgage to hold that the case was mortgage of movables and not of pledge since it involved more than a mere delivery of the shares.

209. There have been submissions on behalf of the Plaintiff and Dish TV that a pledge by operation of law creates a species of “special property” or “Special Interest” in the pledged goods in favour of the Pledgee; whereas the general property in the pledged goods (which includes rights of enjoyment of the pledged goods) continues to vest in the Pledgor by virtue of its ownership of the pledged goods. Various decisions have been relied upon on behalf of the Plaintiff to contend that the Pledgee only has a “Special Right” or “Special Interest” in the pledged goods and cannot include the exercise of a right to vote in so far as the pledge shares are concerned. Apart from *Shatzadi Begum (Supra)*, the Plaintiff as well as Dist TV has relied on *Bank of Bihar (supra)*, *The Odessa (Supra)*, *Maharashtra State Cooperative Bank Ltd. (supra)* and *Md. Sultan & Ors. (supra)* in

support of these contentions. Having perused these decisions, I do not find any of these decisions holding that voting rights cannot be exercised by a Pledgee under Contract of Pledge. These cases do not consider as in the present case a contract conferring additional rights on the Pledgee i.e. to vote or otherwise, beyond Section 172 to 179 of the Contract Act. In not one of these cases was there a finding that the additional rights conferred on the Pledgee were contrary to the Contract Act. “Special Property” or “Special Interest” are concepts under common law and there is no statutory bar under the Contract Act from conferring any additional rights on a Pledgee by a contract, save and except any term that violates the mandatory provisions of the Contract Act.

210. The authorities relied upon by the Yes Bank / JCF which include the judgments of this Court in *IL and FS Limited (supra)*, *Sarvopari Investments Pvt. Ltd. (supra)* and *Bambino Finance Pvt. Ltd. (supra)* have all considered contracts conferring special rights on the Pledgee, including the right to vote and in none of these cases was there a finding to the effect that additional rights conferring on the Pledgee were contrary to the Contract Act. Further, in *PTC India (Supra)*, the Supreme Court has noted the concept of “Special

Property” in a Pledgee and despite which has held that the contract of pledge can contain any terms governing the pledge. This has been held in paragraph 28 of the said decision. In the case before the Supreme Court the additional terms included voting rights.

211. The decision of the Supreme Court in *Lallan Prasad (Supra)* has been relied upon by the Plaintiff and Dish TV to contend that a pledge is an intermediate between a simple lien and a mortgage. This decision is required to be read in light of the facts of that case. The issue for determination was whether the Pledgee can sue to recover the underlying debt and also keep the pledged property. The Supreme Court in that context referred to the Pledgee’s “Special Property” and the Pledgor’s general property rights in the pledged goods and held that satisfaction of a debt extinguishes a pledge / pawn and that upon such satisfaction the Pledgee is bound to redeliver the pledged property. In *Lallan Prasad (Supra)* a reference has been made to the decision of the Court in England viz. *Halliday V. Holgate, (Supra)* which elucidates what special property would mean for a bailee with respect to bailed goods i.e. a Pledgee has the whole present interest in the pledged property until the debt is paid off.

212. Having considered these decisions, I am of the prima facie view that the express terms of the Deed of Pledge will prevail and where there are no express terms, the Pledgee may hold or assign the pledged goods, until the debt is discharged. This has also been held in the English case of *Donald Vs. Suckling (supra)*. The Pledgee has a right to protect the pledged goods and its interest therein during the subsistence of the pledge.

213. I have been taken through the provisions of the Companies Act, Depositories Act and the 1996 Depositories Regulations (replaced by the 2018 Regulations) from which it is clear that only a shareholder listed as a member in the Register of Members of a Company is entitled to exercise voting rights over the shares. This has also held by the Supreme Court in *LIC Vs. Escorte Ltd. (Supra)*. In *Vodafone International Holding BV (supra)*, the Supreme Court recognized the doctrine against decoupling of shares i.e. right to vote cannot be decoupled from the shares but nevertheless held voting agreements to be valid and enforceable. Such agreements do not conflict with the doctrine that voting rights cannot be decoupled from the shares.

214. In the present case, the Plaintiff has under the Deeds of Pledge authorized the Pledgee to exercise voting rights in respect of the Suit shares and this is borne out from Clauses 2.1(b), 5(b), 7.1(g), 10.3(d), 12(i) and (iii) of the Pledge Deeds. Further, independent POAs have been executed under which the Plaintiff has appointed the Pledgee as its proxy in law, including for the purposes of voting at the Dish TV's shareholder meetings. It is well settled that a proxy / Power of Attorney or a contractual obligation to vote in a particular manner is not to be misconstrued as decoupling the right to vote from the share. The decision relied upon by the Plaintiff viz. *Swadeshi Polytex (Supra)* in support of its contention that the Pledgor Company in that case was permitted to exercise the voting rights with respect to the pledged shares is inapplicable to the facts of the present case. In that case unlike the present cases, the Pledgee had neither invoked the pledged shares nor was the Pledgee registered as a member of the company in its Register of Members. In my view, the said decision confirms that only the holder of the shares whose name is entered in the Register of the Company has a right to vote at the meetings of the Company.

215. In the present case, it would be necessary to consider the

position post enactment of the Depositories Act, 1996 and the 1996 Depositories Regulations. In my view, both are required to be read harmoniously with the provisions relating to contract of pledge under the Contract Act. In the present case, the Pledgee was registered as “beneficiary owner” of the dematerialized Suit shares in the record of the depository. Regulation 58 (8) of the 1996 Depositories Regulations, which is para materia with Regulation 79(8) of 2018 Depositories Regulations is applicable and provides as under :

“Subject to the provisions of the pledge documents, the Pledgee may invoke the pledge and on such invocation, the depository shall register the Pledgee as beneficial owner of such securities and amend its records accordingly”.

216. Thus, under the Depositories Regulations upon invocation of the pledge, the depository is mandatorily to register the Pledgee as a beneficial owner and that no person, including the Pledgee can transfer the pawn held in dematerialized form without being registered as a beneficial owner. This has been held in the case of *PTC India (Supra)*. This mandatory stipulation has been held in the *PTC India (Supra)* not to curtail or restrict, but on the other hand

respects party autonomy and freedom to decide the terms of the pledge.

217. Having perused the Depositories Act and the relevant provisions viz. Section 10 which pertains to rights of depositories and beneficial owner and Section 12 which pertains to pledge of Hypothecation of Securities held in a depository, it is clear that there are only two categories of owners, “registered owner” who is necessarily to be a depository and “a beneficial owner” in whom all the rights vests.

218. In *PTC India (Supra)*, the Supreme Court in Paragraph 69 held as under:-

“The Depositories Act establishes the depository ecosystem and introduced concepts of registered listed owner and “beneficial owner”.... “The depository as the registered owner, does not have any voting right or any other right in respect of the securities held by it. The beneficial owner shall be solely entitled to all rights, benefits, and liabilities attached to the securities held by the depository.”

Further, the Supreme Court in *PTC India (Supra)* at Paragraph 80 has held as under:-

“It is absolutely necessary that the Pawnee must be accorded status of beneficial owner to enable him to exercise his right to sell the pledged dematerialized securities”.

Further, the beneficial owner “shall be solely entitled to all rights, benefits....” in respect of the shares (Section 10(3) read with PTC India (paragraph 69). Thus, a Pledgee is not deemed to be a beneficial owner by some legal fiction but is in fact the beneficial owner with all rights, benefits and full status of beneficial ownership.”

219. Thus, it is necessary for the Pawnee / Pledgee to be accorded the status of beneficial owner for the Pledgee to exercise his right to sell the pledged dematerialized securities. In my prima facie view, this does not limit the status and right of the beneficial owner and / or in any manner dilute or restrict such status.

220. Having perused the relevant provisions of the Depositories Act, it is clear that the Depositories Act does not contemplate different kinds of beneficiary owners. There is no

limitation on the Pledgee's rights as beneficial owner and / or limitation as to the Pledgee having right to sell but having no other right. Thus, the contention on behalf of the Plaintiff and / or Dish TV to the effect that the only rights which the Pledgee has upon being transposed as beneficial owner, under the Depositories Act and the Depository Regulations is only for effecting the sale and does not contemplate the exercise of voting rights by the Pledgee upon invocation of the pledge does not merit acceptance.

221. A Company is duty bound in law to recognize only a beneficial owner / member whose name appears on the register of members as having all rights and benefits including voting rights in relation to the shares. I do not find any merit in the submission on behalf of Dish TV that the definition of "beneficial owner" and "member" under Section 2(1)(a) of the Depositories Act and Section 2(55) of the Companies Act having been caveated by the words "unless the context otherwise requires", must be read down in the context of the said common law principle to mean a 'Pledgee beneficial owner' who cannot have the full rights of a "member". In the present case there is no context that permits such interpretation to be placed on the said definitions under the

Companies Act and / or Depositories Act. Further, Dish TV has not been able to demonstrate that the definition of “member” and / or “beneficial owner” under the Companies Act and Depository Act requires adopting a meaning other than as the definitions and provisions of these Acts expressly provide.

222. It has been provided in Section 2(95) of the Companies Act that where the words are not defined under that Act, they shall have the meaning assigned to them under the Depositories Act. Since a “beneficial owner” is not defined under the Companies Act its meaning under Section 2(1) (a) of the Depository Act necessarily will have to be read into the Companies Act. Accordingly, “beneficial owner” under the Depository Act will also be a “beneficial owner” for the purpose of the Companies Act and the “beneficial owner” will be a member under Section 2(55) (iii) of the Companies Act. The Depositories Act has a counterpart provision to Section 2(95) of the Companies Act, viz. Section 2(2) of the Depositories Act, which provides that where the words not defined in the Companies Act, they shall have the meanings assigned to them in the Depositories Act. Further, neither of these Acts envisage a curtailment / colouring of the definition of “beneficial owner” under Section 2(1) (a) of the

Depositories Act by restricting the rights of a Pledgee who has been conferred the status of beneficial owner.

223. Now coming to the contention of the Plaintiff and / or Dish TV that the transfer of the Suit shares first in the name of Catalyst then to Yes Bank and finally to JCF is in violation of law. I do not find any merit in this contention. In my prima facie view, these transfers are permitted by the Pledge Deeds under which the Plaintiff has authorised the Pledgee to transfer or cause any of the Suit shares defined as security assets therein to be transferred to and registered in the name of any of its successors, assigns or transferees as provided in Clause 4.1(b) of the Deeds of Pledge. It has been further provided under Clause 7.1(a) and (c) of the Deeds of Pledge that the Pledgee is entitled to enforce the security interest and take possession and dispose of all or any part of the suit shares in any manner permitted by law upon such terms as the Pledgee determines and to cause all or any part of the Suit Shares to be transferred into its name or its nominees. The Plaintiff has under Clause 10.3 (b) of the Deeds of Pledge undertaken not to stop or attempt to stop any transfer of Suit shares in the name of the Pledgee or its nominee. Further, the Powers of Attorney dated 1st May, 2019 and 6th May,

2019 allow the Pledgee to delegate the powers conferred on the Pledgee under the Power of Attorney to any other person as can be seen from the Clause 18 of the Powers of Attorney. The transfer of shares by the Pledgee to its own name are permitted under law. These transfers are not considered to be a sale as can be seen from the decision of *PTC India (Supra)* at paragraph 95 and 105. This has also been recognized in *Bank of Bihar (Supra)*.

224. There have been various submissions made with regard to the transfer of Suit shares from Yes Bank to JCF. This transfer took place pursuant to the Assignment Agreement dated 16th December, 2022 under which Yes Bank's stressed asset portfolio aggregating upto INR 48,000 Crores approximately was assigned to JCF together with the underlying security created thereunder. The assignment included assignment of the loans provided by Yes Bank to inter alia the Borrowers viz. Defendant Nos.4 to 9. Accordingly, the Suit shares of Dish TV previously held by Yes Bank as beneficial owner (in its own name and / or through security trustees) are now held by JCF.

225. Section 5 of the SARFAESI Act expressly provides for acquisition of a 'financial asset' by an Asset Reconstruction Company

(ARC) and prescribes the rights of the ARC on such acquisition. Further, the definition of 'financial Asset' under Section 2(l) of the SARFAESI Act includes a pledge of movable property. I have perused Section 5 and in particular Section 5(1) 5(2) and 5(3) of the SARFAESI Act. Section 5(1) provides for an ARC to acquire financial assets of a bank by way of an agreement with the bank for the transfer of the financial assets. Under Section 5(2), the ARC on such acquisition shall be deemed to be the lender and all rights of such bank in relation to financial assets vest in the ARC. Under Section 5(3) all contracts which relate to the financial assets to which the bank is a party, ARC shall after such acquisition be enforceable as if in place of the bank, the ARC has been a party thereto.

226. Upon a reading of the relevant provisions of SARFAESI Act, it is clear that the transfer of the Suit shares from Yes Bank to JCF is permitted and JCF as ARC is deemed to be a party to the Pledge Deeds as the Pledgee. The Pledge Deeds under Section 5(3) of the SARFAESI Act read with the definition of 'financial asset' are enforceable against JCF. It has been held in the decision of the Delhi High Court in *U.V. Asset Reconstruction Company Ltd. Vs. Union of*

*India*⁴⁶, that the ARC upon acquisition of the financial assets and / or NPA account along with all assets including pledge shares, is to be recognized as Pledgee of all third parties including statutory authorities.

227. The contention of the Plaintiff, namely Section 5(3) of the SARFAESI Act is caveated by the words “unless otherwise expressly provided by this Act” and since Section 31(b) of the SARFAESI Act excludes the application of the Act to a contract for pledge, Section 5(3) of the SARFAESI Act is not applicable to Pledge Deeds cannot be accepted. If this interpretation of the Plaintiff is to be accepted, in my prima facie view this would render Section 5(1) and 5(2) read with definition of financial asset in Section 2(1) otiose in respect of Pledges. Thus, this interpretation of the Plaintiff cannot be considered to be a possible interpretation.

228. The other provision namely Section 5(2A) which the Plaintiff has relied upon to contend that this is only provision which JCF could, if at all have placed reliance upon, is inapplicable in the present case as the Borrowers have not purchased the Suit shares

46 2022 SCC OnLine Del 4289

from the loan funds as contemplated thereunder. However, it is not necessary to consider that provision having held that the transfer to JCF is permissible under the aforementioned provisions viz. Section 5 read with Section 2(l) of the SARFAESI Act.

229. Thus, in my prima facie view, the Suit shares stand transferred to JCF and that this is pursuant to the Assignment Agreement which provides for the assignee to acquire loans and underlying security interest and Pledges in respect of the loan as can be seen from the recital 'C' thereof read with Clause 2.1.2 thereof which provides for the assignment by the assignor of the right, title and interest in the financing documents in respect of the loans and the exercise of rights by the assignee in relation to the Security Interests and Pledges. Further, it is clarified in Clause 2.3.1 of the Assignment Agreement that nothing other than a 'Financial Asset' as defined in the SARFAESI Act is acquired by the assignee. I further do not find any merit in the contention of the Plaintiff that JCF is trying to manage the affairs of Dish TV under Section 9 and 10 of the SARFAESI Act. It has been clarified by JCF that it is not enforcing its rights under the SARFAESI Act.

230. The contention of the Plaintiff that the Pledgee cannot claim that it is a member under the Companies Act and hold Suit shares forever without selling them is misconceived. It has been held in *PTC India (Supra)* that the Pledgee cannot be compelled by the Pledgor to sale the pledged goods. The power to sell is conferred on the Pledgee for his benefit and it is his “sole discretion” to exercise the power of sale or not. Even where the value of the goods deteriorates due to time, no relief can be granted to the Pledgor against the Pledgee as the Pledgor is legally bound to clear the debt and obtain possession of the Pledged goods. Reference can be made to paragraph 39, 42 and 62 of *PTC India (Supra)* in this context.

231. I have considered the facts which have been adverted to wherein it is apparent that though Yes Bank was desirous of selling the shares, there were circumstances which prevented it from doing so including orders passed in the proceedings before the Saket District Court as well as Notice issued by Uttar Pradesh Police under Section 102 of Code of Criminal Procedure, 1973 constraining Yes Bank from selling the Suit shares. Further, the Plaintiff by the present Interim Application has sought a restraint on Yes Bank / JCF from creating third party rights in any manner in respect of the Suit

shares.

232. Having held that the transfer to JCF is lawful and the Pledgee can contractually exercise voting rights, the allegations of fraud are now dealt with. The Plaintiff has in the amended Plaint alleged that the Deeds of Pledge are vitiated by fraud. It is the contention of the Plaintiff that the alleged fraud was recently discovered by the Plaintiff i.e. from the complaint dated 24th September, 2021 filed by Yes Bank with the Economic Offences Wing, Mumbai (“EOW”). The Plaintiff has maintained that the EOW complaint confirms and reiterates the contents of the criminal complaint dated 22nd June, 2020 filed by Mr. Subhash Chandra. The Plaintiff contends that as per the EOW Complaint, Yes Bank has admitted that the loan transaction was not for the purpose stated in the loan document but was to be utilized for paying the outstanding debt owed to Yes Bank by the Videocon group. Further, upon reading of both the complaints, the Plaintiff claims that the ostensible purpose of the loans advanced by Yes Bank was only a front for the real purpose viz. reducing Yes Bank’s exposure in the Videocon account and to circumvent applicable regulations of the Reserve Bank of India.

233. I have perused the material on record including the aforementioned two complaints. In my prima facie view, the Plaintiff had prior knowledge of the alleged fraud i.e. prior to the filing of the present Suit but despite which the Plaintiff did not avoid the Pledge Deeds. The alleged fraud does not in my prima facie view render the loan transaction void but at the highest would render the transaction voidable at the instance of the defrauded party. The Suit dated 14th October, 2020 filed by the Defendant No.5, Essel Corporate Resources Pvt. Ltd. before the Saket District Court at New Delhi, being one of the suits filed by the Borrowers challenging Yes Bank's invocation of the pledged shares, demonstrates that the Borrowers were aware of the allegations of fraud as early as in October 2020. The Suit has referred to the FIR registered pursuant to Subhash Chandra's complaint and ongoing criminal investigation into Subhash Chandra's complaint. The Suit only seeks to invalidate the invocation of the pledge and not the pledge itself. There were identical Suit filed by the Borrowers. Ultimately all the Suits were withdrawn by the Borrowers with liberty to file fresh Suits. However, no such fresh suits have ever been filed. Further, the Oppression and Mismanagement Petition being Company Petition No.411 of 2021 dated 21st November, 2021 filed by Yes Bank before the NCLT, Mumbai

demonstrates that the Subhash Chandra Complaint and the alleged fraud was within the knowledge of the Plaintiff on 20th November, 2021. There is a reference made to the Subhash Chandra Complaint and FIR registered, both of which have been annexed to the Petition. Further, the Oppression and Mismanagement Petition makes a reference to the EOW Complaint and the proceedings filed by the Borrowers before the Saket District Court.

234. The Plaintiff has not addressed any communication seeking to avoid the pledge transaction and / or pledge deeds and has in fact elected to affirm them. The Plaintiff's election can be seen from the Plaint (unamended) where the Plaintiff proceeds on the basis that the pledge deeds and underlying / related transactions are valid. A reference has been made on behalf of the Yes Bank / JCF to the paragraphs of the Plaint wherein the Plaintiff has proceeded to propound the pledges by acknowledging that there exist valid Pledge Deeds in respect of which the Plaintiff possesses rights under Section 176 of the Contract Act. These paragraphs remain in the Plaint (as amended).

235. In my prima facie view, the Plaintiff's allegation of fraud

vitiating the pledge deeds and rendering them illegal and unlawful is misconceived. This is upon considering the fraud alleged viz. loan advances by Yes Bank being unlawfully used for collateral purposes i.e. greening of loans by Yes Bank. At the highest the fraud alleged would be one which falls under Section 17 and 19 of the Contract Act. Thus, the alleged fraud being voidable, it was necessary for the Plaintiff to have avoided the pledge deeds in the event the Plaintiff's case of fraud is accepted. It is well settled that in the event a defrauded party has elected to affirm the Pledge Deeds, it is not open to the Plaintiff to resile from such election. The decisions relied upon on behalf of the Yes Bank viz. *Clough v. London and North Western Railway Company (supra)*, *Kunja Lal Bhuiya v. Haralal Bhuiya (supra)* and *Mumbai International Airport Pvt. Ltd. v. Golden Chariot (supra)* are apposite.

236. The reliance placed by the Plaintiff on *Lazarus Estates Ltd. (supra)* is misconceived. In that case although it has been held that fraud unravels all and vitiates judgments, contracts and all transactions, this has been held in the facts of that case. There a landlord had obtained a decree from a County Court on the basis of a false and fraudulent declaration pertaining to repairs in a rent

increase form. An appeal against the decree was allowed and the tenant was permitted to raise the defence of fraud. It was in these circumstances that, the Court held that fraud vitiates all. This was a case of contractual fraud and in that context *Lazarus Estates Ltd. (Supra)* has relied upon *Master v. Miller (Supra)*. The latter case only dealt with material alterations of the deed / contract without the 'Privity of the oblige' and in that context it was held that such alterations render the instrument void. Hence, these cases do not apply to the present case.

237. In my prima facie view, the parties to the Pledge Deeds including the Plaintiff were fully aware of the character and nature of the documents namely the Deeds of Pledge that were executed. By the Deeds of Pledge, the Plaintiff was pledging certain shares held by it in favour of Catalyst for the benefit of Yes Bank as security for the Loans advanced by Yes Bank. Thus, no case has been made out of there being a fraud as to the character of the contract which would render the document void ab-initio. Fraud as to character of the contract are cases where either there is a material alteration to the original contract or signing of the contract by a person believing it to be an entirely different document. The fraud alleged in the present

case, if accepted, at the highest is a fraud as to the contents of the document / Deeds of Pledge which does not render the document void but voidable. It is a settled position under English Law and Indian Law that a transaction is void in the case of fraudulent misrepresentation as to the character of the document and in the case of fraudulent misrepresentation as to the contents of the document, the transaction is merely voidable and continues to be valid until it is avoided. The decision of the The House of Lords in *Saunders (executrix of the estate of Rose Maud Gallie, deceased)* (*supra*), *Ramesh Mali (supra)* and *Dularia Devi (supra)* relied upon by the Yes Bank is apposite in this context.

238. I find no merit in the contention on behalf of the Plaintiff that the case of fraud falls under Sections 23 and 24 of the Contract Act. The Plaintiff has relied upon these provisions in contending that the consideration for the pledge of the Suit Shares under the Pledge Deeds being the advancement of loans by Yes Bank, the same is tainted by fraud and is unlawful. Section 23 of the Contract Act deals with contracts that would be rendered void due to unlawful consideration and / or object. This provision is not attracted in the present case where there is nothing about the granting of loans (the

stated consideration under the Pledge Deeds) being illegal / unlawful consideration since the loans were advanced by Yes Bank and accepted by the Borrowers. The Plaintiff has alleged illegality in respect of the use of the loans amount, which does not render the loans themselves illegal and / or unlawful. Prima facie, I do not find that a case of fraud as contemplated under Section 23 is made out.

239. The Supreme Court in *Gurmukh Singh (supra)* has explained that a contract for commission of a fraud upon a third party or purpose prohibited in law would be fraudulent in its object or consideration. It is not the Plaintiff's case that the Pledge Deeds were entered into as a fraud upon someone. The fact that the consideration for the Pledge Deeds viz. the loans advanced to the Borrowers (the Essel Group) were mis-utilised by the Essel Group will not render the object or consideration of the Pledge Deeds fraudulent. At the highest, that would be a case of fraud upon the Plaintiff to secure the Plaintiff's consent i.e. under Sections 17 and 19 of the Contract Act. In fact, it is the Borrowers case that loan transaction can be declared void only after investigation under the FIR and adjudication of proceedings filed on the basis of Mr. Subhas Chandra's complaint. There is no challenge to the loan transactions,

in any Court of law on the issue of alleged illegality and / or fraud in respect of the loan transactions.

240. The Plaintiff's case of alleged fraud is that the entire loan transaction was designed to disguise evergreening of Videocon loans by Yes Bank and make it appear like a bonafide acquisition of Videocon by the Essel Group. According to the Plaintiff, the entire scheme was "orchestrated" by Yes Bank for evergreening of Yes Bank's loans to the Videocon Group. It is well settled that Non-compliance with RBI guidelines may attract penal action from the RBI, however, such non-compliance does not render the transactions void. Therefore, evergreening which is prohibited / impermissible under extant law would not make the loan transactions themselves unlawful. The Supreme Court in *BOI Finance (supra)* and *IL&FS Financial Services Ltd. (Supra)*, has held that non-compliance of the RBI Guidelines / directions does not invalidate the contract / loan transactions and they would not be rendered void.

241. The submission on behalf of Yes Bank that it is inconceivable that Yes Bank would have advanced loan of INR 5,270 Crores to the Borrowers, Essel Group so that a sum of INR 1,500

Crores (approx.) could be utilized by the Videocon Group to repay its outstanding dues to Yes Bank is of much merit. Further, there is no explanation provided as to whether the balance INR 4000 Crores was used by the Borrowers for extraneous purposes.

242. In the event the Plaintiff's case of alleged fraud and the Plaintiff being entitled to avoid the Pledge Deeds is accepted, the benefit received by the Plaintiffs / Borrowers under the loan transaction and Pledge Deeds are required to be returned to Yes Bank / JCF under Section 64 and 65 of the Contract Act which provides for restitution under voidable / void contracts. It is provided that a party rescinding a voidable contract, is bound to restore the benefit received thereunder to the person from whom it was received. This will apply to a contract which is discovered to be void or when the contract becomes void. It is insufficient for the Plaintiff to seek return of the Suit shares from Yes Bank / JCF on the ground that it is entitled to avoid the Pledge Deeds and / or the Pledge Deeds are required to be declared void. They must also return the benefit received under the loan transactions and the Pledge Deeds to Yes Bank / JCF. I prima facie do not find any merit in the contention of the Plaintiff that the Plaintiff has received no benefit from the loan

transaction and Pledge Deeds and that it is Yes Bank and proposed Borrowers having received the benefit under the Pledge Deeds are required to restore the Suit shares to the Plaintiff. The Pledge Deeds itself provide that the consideration for the Pledgor under the Pledge Deeds is the advancement of the loan to the Borrowers. The Borrowers having received and utilized the loans, it cannot be said that the Plaintiff has not received any benefit from the loan transaction and Pledge Deed. Further, the Plaintiff has not clarified why the Suit shares were Pledged by them in the first place if no consideration / benefit was received by the Plaintiff under the Pledge Deeds. I do not find merit in the Plaintiff's claim to be an innocent party.

243. I am of the prima facie view that, at this stage the Plaintiff has not produced any evidence in support of its case of fraud. The Plaintiff has only relied upon the complaints filed before the investigating authorities, Affidavits filed by the Investigating Authorities and / or letters issued by such authorities in support of its case on fraud. It can be seen from the Affidavit dated 10th January, 2022 filed by State of Uttar Pradesh in SLP (CrI.) No. 9192 of 2021 that the investigation is indeed preliminary. The said Affidavit does

not purport to render any conclusive finding with respect to the validity of the documents and transactions being investigated under the Subhash Chandra's complaint. Further, the EOW complaint dated 21st April, 2022 is a preliminary inquiry and has been closed in view of the investigation by the UP Police under the Subhash Chandra's complaint.

244. I find much merit in the submission on behalf of the Yes Bank / JCF that an investigation report including a final report cannot be relied upon by the Plaintiff to prima facie establish its case of fraud under Section 173(2) of the Code of Criminal Procedure, 1973. A final report of an investigation officer would be a mere opinion on the material collected by him and truth of the offence can only be decided by the Court. The decision of the Supreme Court in the case of *Rajesh Yadav & Anr. (Supra)* relied upon by Yes Bank / JCF is apposite. Thus I am of the view that the Plaintiff has failed to establish a prima facie case of fraud.

245. In view of the *prima facie* finding, that JCF, presently registered as "beneficial owner", is having all rights, benefits and liabilities attached to the securities held by the "depository" and

including voting rights as well as the *prima facie* finding that no case of fraud having been established by the Plaintiff, the interim relief sought for in the present Interim Application cannot be granted.

246. Accordingly, the Interim Application is disposed of. There shall be no order as to costs.

[R.I. CHAGLA J.]