Arun/Shephali

**REPORTABLE**

# IN THE HIGH COURT OF JUDICATURE AT BOMBAY
## ORDINARY ORIGINAL CIVIL JURISDICTION
## IN ITS COMMERCIAL APPELLATE DIVISION
## INTERIM APPLICATION (L) NO. 19253 OF 2022
## IN
## COMMERCIAL APPEAL (L) NO. 19252 OF 2022
## IN
## INTERIM APPLICATION (L) NO. 17730 OF 2022
## IN
## COMMERCIAL SUIT (L) NO. 29569 OF 2021
## WITH
## COMMERCIAL APPEAL (L) NO. 19252 OF 2022
## IN
## INTERIM APPLICATION (L) NO. 17730 OF 2022
## IN
## COMMERCIAL SUIT (L) NO. 29569 OF 2021



**World Crest Advisors LLP,**
Registered Office at: 18th Floor, A wing, Marathon Futurex, NM Joshi Marg, Lower Parel, Mumbai 400 013
Email ID: worldcrestllp@gmail.com

**... Applicant**

**IN THE MATTER BETWEEN**

**WORLD CREST ADVISORS LLP,**
Registered Office at: 18th Floor, A wing, Marathon Futurex, NM Joshi Marg, Lower Parel, Mumbai 400 013
Email ID: worldcrestllp@gmail.com

**...APPELLANT**
**ORIG. APPLICANT/ PLAINTIFF**

**~ VERSUS ~**

1. **CATALYST TRUSTEESHIP LIMITED,**
Registered Office at: GDA House, Plot No. 85, Bhusari Colony (Right), Paud Road, Kothrud, Pune 411 038, and a branch office at Windsor, 6th Floor, Office No. 604, CST Road, Kalina, Santacruz (East), Mumbai 400 098
Email ID: dt@ctltrustee.com

2. **YES BANK LIMITED,**
Registered office at: Yes Bank House, Off Western Express Highway, Santacruz East, Mumbai 400 055
Email ID: shareholders@yesbank.in

3. **DISH TV INDIA LIMITED,**
Registered Office at: A Wing, Marathon Futurex, NM Joshi Marg, Lower Parel, Mumbai 400 013
Email ID: investor@dishd2h.com

4. **EVENNESS BUSINESS EXCELLENCE SERVICES PRIVATE LIMITED,**
Previously Essel Business Excellence Services Ltd, Registered office at: Essel Business Excellence Services Ltd 513, 5th Floor, Kohinoor City Mall,

Vidhyavihar Kirol Road, Kurla West, Mumbai 400 070
Email ID: businessprocess23@gmail.com

5. **Essel Corporate Resources Private Limited,**
Office at: Continental Building, 135, Dr Annie Besant Road, Worli, Mumbai 400 018
Email ID: esselcorporateresources@gmail.com

6. **Last Mile Online Limited,**
Registered Office at: 513, 5th Floor, Kohinoor City Mall, Vidhyavihar Kirol Road, Kurla West, Mumbai 400 070
Email ID: esselinfragroup19@gmail.com

7. **Living Entertainment Enterprises Private Limited,**
Registered Office at: 513, 5th Floor, Kohinoor City Mall, Vidhyavihar Kirol Road, Kurla West, Mumbai 400 070
Email ID: livingentertainment343@gmail.com

8. **Mumbai WTR Private Limited,**
Registered Office at: 513, 5th Floor, Kohinoor City Mall, Vidhyavihar Kirol Road, Kurla West, Mumbai 400 070
Email ID: mumbaiwtr2011@gmail.com

9. **Pan India Network Infravest Limited,**
Registered Office at: Continental Building, 135, Dr Annie Besant Road, Worli, Mumbai 400 018
Email ID: panindianetwork2020@gmail.com

**...Respondents**
**Orig Defendants**

## Appearances

| | |
|---|---|
| **FOR THE APPLICANT/ APPELLANT ("WORLD CREST")** | **Mr Navroz Seervai, Senior Advocate**, *with Gulnar Mistry, Shreni Shetty, Krusha Maheshwari, & Swati Chandan, i/b ANB Legal* |
| **FOR RESPONDENT NO.1 ("CATALYST")** | **Mr JP Sen, Senior Advocate**, *with Gathi Prakash, Nidhi Asher, Arushi Pddar & Priyanka Desai, i/b Cyril Amarchand Mangalda* |
| **FOR RESPONDENT NO.2 ("YBL")** | **Mr Darius Khambata, Senior Advocate, with Mr Venkatesh Dhond, Senior Advocate**, *and Shyam Kapadia, Indranil Deshmukh, Gathi Prakash, Nidhi Asher, Arushi Pddar & Priyanka Desai, i/b Cyril Amarchand Mangaldas* |
| **FOR RESPONDENT NO.3 ("DISH TV")** | **Mr Aspi Chinoy, Senior Advocate, with Zal Andhyarujina, Senior Advocate**, *and Rugved More, Maithili Parekh, Tanya Mehta & Vaibhavi Bhalerao* |
| **FOR RESPONDENTS NOS. 4 TO 9** | **Mr Sayeed Mulani.** |

**CORAM : G.S.Patel &**
**Madhav J Jamdar, JJ**

**DATED : 23rd June 2022**

**ORAL JUDGMENT (*Per GS Patel J*):-**

**1.** The original Plaintiff is in appeal against an order of 17th June 2022 of a learned Single Judge of this Court, AK Menon J, declining, in his discretion, to grant ad-interim relief in the Plaintiff's Interim Application (L) No. 17730 of 2022. The impugned order is a speaking order (notwithstanding that the Plaintiff assails it for insufficiency of reasons). Menon J's exercise of discretion in refusing relief is important in view of the decision of the Supreme Court in *Wander Limited And Another v Antox India Private Limited*.[1] In paragraph 14, the Supreme Court said:

> "14. **The appeals before the Division Bench were against the exercise of discretion by the Single Judge. In such appeals, the Appellate Court will not interfere with the exercise of discretion of the court of first instance and substitute its own discretion except where the discretion has been shown to have been exercised arbitrarily, or capriciously or perversely or where the court had ignored the settled principles of law regulating grant or refusal of interlocutory injunctions. An appeal against exercise of discretion is said to be an appeal on principle. Appellate Court will not reassess the material and seek to reach a conclusion different from the one reached by the court below if the one reached by the court was reasonably possible on the material. The appellate court would normally not be justified in interfering with the exercise of discretion under appeal solely on the ground that if it had considered the matter at the trial stage it would have come to a contrary conclusion. If the discretion has been exercised by the Trial Court reasonably and in a judicial manner the fact that the appellate court would have taken a different view may not justify interference with the trial court's**

1 1990 (Supp) SCC 727.

> **exercise of discretion.** After referring to these principles Gajendragadkar, J. in *Printers (Mysore) Private Ltd. v. Pothan Joseph:* (SCR 721) :
>
> > "... These principles are well established, but as has been observed by *Viscount Simon in Charles Osention & Co. v. Johnston* '…the law as to the reversal by a court of appeal of an order made by a judge below in the exercise of his discretion is well established, and any difficulty that arises is due only to the application of well settled principles in an individual case."
>
> The appellate judgment does not seem to defer to this principle."
>
> **2.** (*Emphasis added*)

**3.** *Wander v Antox* was reaffirmed by the Supreme Court in *Mohd Mehtab Khan v Khushnuma Ibrahim Khan*.[2] That was a case where a Division Bench of this Court granted interim relief in an appeal against an order of the learned Single Judge. In paragraph 20, the Supreme Court said:

> **20. In a situation where the learned trial court on a consideration of the respective cases of the parties and the documents laid before it was of the view that the entitlement of the plaintiffs to an order of interim mandatory injunction was in serious doubt, the appellate court could not have interfered with the exercise of discretion by the learned trial Judge unless such exercise was found to be palpably incorrect or untenable. The reasons that weighed with the learned trial Judge, as already noticed, according to us, do not**

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**2** (2013) 9 SCC 221.

> **indicate that the view taken is not a possible view. The appellate court, therefore, should not have substituted its views in the matter merely on the ground that in its opinion the facts of the case call for a different conclusion. Such an exercise is not the correct parameter for exercise of jurisdiction while hearing an appeal against a discretionary order.** While we must not be understood to have said that the appellate court was wrong in its conclusions **what is sought to be emphasised is that as long as the view of the trial court was a possible view the appellate court should not have interfered with the same following the virtually settled principles of law in this regard as laid down by this Court in *Wander Ltd. v. Antox India (P) Ltd.*** [1990 Supp SCC 727]
>
> (*Emphasis added*)

**4.** It is also well settled that when considering an application for interim relief, a Single Judge is not expected and is in fact not permitted to conduct mini-trial. It is the prima facie case that is to be assessed.[3]

**5.** Further, as the Supreme Court said in *Monsanto Technology LLC v Nuziveedu Seeds Ltd*,[4] the appeals court must not 'usurp the jurisdiction of the Single Judge'; it must confine itself to an adjudication of whether the impugned order was or was not justified in the facts and circumstances of the case.

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3 *SM Dyechem Ltd v Cadbury India Ltd*, (2000) 5 SCC 573; *Anand Prasad Agarwalla v Tarkeshwar Prasad & Ors*, (2001) 5 SCC 568; *Zenit Mataplast Pvt Ltd v State of Maharashtra & Ors*, (2009) 10 SCC 388.

4 (2019) 3 SCC 381.

**6.** In a very recent decision of 14th March 2022 in *Shyam Sel & Power Ltd & Anr v Shyam Steel Industries Ltd*,[5] the Supreme Court had before it a challenge to an appellate order from an interim or interlocutory order of a learned single Judge of the Calcutta High Court. *Shyam Sel* reaffirmed the law in *Wander Ltd* and *Monsanto*.[6] In *Shyam Sel*, the Supreme Court inter alia said that to intervene, the appellate court must discuss how the view taken by the trial judge was either perverse or impossible. The appellate court is not duty-bound to pass a suitable interim order pending the trial of the suit. As to Wander v Antox, the Supreme Court said:

> 35. … **This judgment has been guiding the appellate courts in the country for decades while exercising their appellate jurisdiction considering the correctness of the discretion and jurisdiction exercised by the trial courts for grant or refusal of interlocutory injunctions.**
>
> 36. Though the learned Judges of the Division Bench of the High Court have on more than one occasion referred to the judgment of this Court in *Wander Ltd.* (*supra*), **they have not even, for namesake, observed as to how the discretion exercised by the learned Single Judge was exercised arbitrarily, capriciously or perversely.**
>
> (*Emphasis added*)

**7.** We have noted this at the forefront for two reasons. First, we believe the principle enunciated in these two cases constrains to a considerable extent, although perhaps not entirely, the extent of our ability to interfere with an impugned order such as this one. Should

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**5** 2022 SCC OnLine SC 313.

**6** Paragraphs 11, 29, 31, 34, 35, 36.

we find that the impugned order is a plausible view, one that is not arbitrary, capricious or, in the legal understanding of the term, 'perverse', then in appeal we should not — indeed cannot — interfere. In those circumstances, we cannot substitute an alternative view or order for that of the learned Single Judge. The second aspect affects the Plaintiff in appeal before us, represented by Mr Seervai. Before the learned Single Judge, he would undoubtedly have had to show that all three well-established ingredients or components for ad-interim relief were met: a strong prima facie case, that the balance of convenience favours the Plaintiff, and demonstrating irretrievable prejudice if relief was denied. Once that discretion was exercised at the ad-interim stage by the learned single Judge, in appeal, the burden on Mr Seervai is much heavier following the *Wander v Antox* principle. For Mr Seervai must now show that, despite that long-understanding principle of law, we *must* exercise our discretion and *must* grant the ad-interim relief refused by the learned Single Judge. This requires Mr Seervai to now make out an *overwhelming* prima facie case. It is not enough for him to merely demonstrate that a view and conclusion different from that of the learned Single Judge is possible, but to show that the relief he seeks is the *only* possible view, that the impugned order is not even remotely plausible, and therefore the learned single Judge fell into error. As we shall presently see, and for the reasons that follow, despite a day-long hearing, we are not persuaded at the end of all this that the Plaintiff has succeeded in discharging this obligation.

**8.** The discussion before us has centred on one branch of law, viz., the law relating to pledges and Sections 176 and 177 of the

Contract Act 1872. It has principally centred around a reading of a recent decision of the Supreme Court in *PTC India Financial Services Ltd v Venkateswarlu Kari & Anr.*[7] Both sides have relied extensively on *PTC India*. Rival submissions have been made on this judgment and what, according to each side, it holds in regard to the law relating to pledges under Sections 176 and 177 of the Contract Act; specifically in regard to shares of companies held in demat or dematerialised form and Regulation 58 of the Securities and Exchange Board of India (Depositories and Participants) Regulations 1996. The opening words of *PTC India* tell us that the primary legal issue was whether the Depositories Act 1996 read with Regulation 58 had the legal effect of overwriting the provisions relating to contracts of pledge under the Indian Contract Act 1872 (and the common law as applicable in India).

**9.** To facilitate a clearer understanding of what it is that we have been asked to decide, we will first endeavour to set out the question that arises. First, a description of the parties before us. They are arrayed in appeal in same sequence and order as they are in the suit itself. The Plaintiff, the Appellant before us is World Crest Advisors, a Limited Liability Partnership (**"World Crest"; "WCA"**). It holds equity in Defendant No. 3, Dish TV India Limited (**"Dish TV"**), a media company. The 1st Defendant/1st Respondent is Catalyst Trusteeship Limited (**"Catalyst"**). In this case, Catalyst is a security trustee and a pledgee of World Crest's shares in Dish TV. Respondent/Defendants No. 2 is YES Bank Limited (**"YBL"**), a banking company. Respondents/Defendants

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**7** 2022 SCC OnLine SC 608.

Nos. 4 to 9 are borrowers from YBL. Defendants Nos. 4 to 9 and two other companies, Pan India Infraprojects Pvt Ltd and RPW Projects Pvt Ltd took financial facilities from YBL. Defendants Nos. 4 to 9 and these two companies were and continue to be indebted to YBL. The indebtedness of these parties to YBL between November 2015 and April 2018 was in the amount of approximately Rs. 5270 crores.

**10.** YBL advanced a loan to Defendants Nos.4 to 9 (and the two other entities; "**the Borrowers**"). party **D**. The repayment of this loan was secured by a pledge of shares held by World Crest in Dish TV. These shares are all in what is called demat form. There are no physical shares. The shares are lodged with one of the depositories, viz., National Securities Depositories Ltd ("**NSDL**") or the Central Securities Depositories Ltd ("**CSDL**"). The pledge in question is created in favour of a security trustee, Catalyst. YBL is not a party to the pledge document, although it fits the definition of a 'lender' in the pledge document. The document or contract of pledge specifically permitted Catalyst as the pledgee to transfer the pledged shares to itself. This it could do only if there is an event of default as defined in the pledge deed. There was an event of default. Catalyst transferred the pledged Dish TV shares to itself. It got its name noted as the 'beneficial owner' as required by law (and Regulation 58(8)) with the depository in question, NSDL, where the shares are held in demat form. Catalyst then further transferred the shares to YBL or constituted YBL as its nominee; at any rate, it was YBL that exercised rights arising from those shares. One of the central questions that arises is whether, once Catalyst makes this first transfer so that the shares stand in its name such that the relevant

records show it as a "beneficial owner", does Catalyst acquire the fullness of rights in those shares? Can it act for the purposes of, say, the Companies Act as a 'beneficial owner' and exercise voting rights over those shares? Can it further transfer those shares downstream, or constitute a nominee? Is this forbidden by the law of pledges as declared by *PTC India*? Can World Crest and Catalyst agree that Catalyst would have such rights, or is such a contract forbidden by law? On becoming noted and recorded as the beneficial owner, does Catalyst get the right to further transfer them to YBL, including the right to YBL to vote at a meeting of Dish TV? Or does Catalyst merely hold those shares in its name until (i) World Crest / the Borrowers either redeem the pledge (obviously by tendering the value of the debt), or (ii) until the shares are "sold" to a third party purchaser by T after the necessary notice; or (iii) during a suit Catalyst may choose to bring for recovery of the debt?

**11.** The case advanced by Mr Seervai for World Crest, and Mr Chinoy for Dish TV, is that both under the general law regarding pledges in Sections 176 and 177 of the Contract Act, and following the decision of the Supreme Court in *PTC India*, Catalyst can transfer these shares to its name but only for the limited purpose of holding them safely until they are redeemed, sold (after notice to World Crest) or for the purposes of Catalyst's recovery suit. Under no circumstances does Catalyst as a pledgee acquire general property in the shares sufficient to allow it to either (i) further transfer the shares or make a nomination in favour of anyone in regard to those shares; or (ii) exercise any rights emanating from those shares, such as voting at a general meeting of Dish TV.

**12.** They go further: they say that any such full-blooded transfer of all rights of 'general property' by Catalyst to itself (and certainly to YBL) is a sale-to-self, forbidden by the Contract Act. They also say that it is not permissible for World Crest itself as the pledgor-shareholder and Catalyst as the pledgee to enter into a contract giving Catalyst, in its capacity as a pledgee, such full proprietary, ownership, dispositive and general property rights in the pledged shares.

**13.** Mr Khambata for YBL would have it that this formulation is incorrect and has never been the position in law. Once Catalyst, as the pledgee, is shown as the beneficial owner of the shares, it exercises all rights as a shareholder of Dish TV. Indeed, once this change happens, *only* Catalyst can exercise those rights. There is no concept of a 'beneficial owner with restricted rights' for the purposes of the Companies Act, 2013 or any other law relating to shares and shareholdings. It the other way around: none *except* the beneficial owner can exercise those rights. Once World Crest ceases to be recorded as the beneficial owner, it cannot continue to exercise its rights as a beneficial owner. There is nothing in the Contract Act or in *PTC India* to suggest that there is such a restriction on the rights of the beneficial owner. He also submits that there is no prohibition in either the Contract Act or *PTC India* that prevents the parties from entering into a contract (or restricting the rights of the World Crest and Catalyst to enter into a contract) that permits a transfer by Catalyst of the shares — but without affecting a sale-to-self. He accepts that a pledgee cannot sell the pledged security to itself. Regulation 58 does not, in his submission, change this position one whit.

**14.** We now turn to the facts of this long and tortuous litigation history. On 5th July 2018 and 6th May 2019, World Crest and Catalyst entered into two Deeds of Pledge. By these, Catalyst pledged a total of 44,00,54,852 shares that it held in Dish TV as security for the repayment by Defendants Nos. 2 to 9 (and the two other companies) to YBL. We will examine the terms of the Pledge Deeds below. There is no doubt that Catalyst was appointed as YBL's security trustee under several Security Trustee Agreements. It is also not capable of dispute that World Crest and Defendants Nos. 3 to 9 are part of one group.[8]

**15.** On 24th July 2019, saying that there were events of default, Catalyst on behalf of YBL invoke the pledges and claimed that it had become entitled to enforce the security. Catalyst demanded payment of the dues outstanding as on 21st July 2019. That notice was specifically said to be one under Section 176 of the Indian Contract Act.[9] World Crest replied that very date, 24th July 2019,[10] confirming the balance as due and the security created. It asked for prior notice to the pledgor and the borrower and said that a sale of the pledged shares could be adjusted only against the outstanding dues in respect of which the necessary notices had been issued. A copy of this was marked to YBL. There is no denial at this stage of the Pledged Agreements, the indebtedness or a reputation of the claim for enforcement.

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**8** The Essel Group. This is stated at several places in the record.

**9** Pages 320–348. (All references are to the appeal paper book unless otherwise indicated). There were five separate letters under the Pledge Agreements in respect of the various amounts due from the different entities.

**10** Pages 349–352.

**16.** In the meantime, YBL had problems of its own. It was reconstructed through a central government mandated scheme, largely on account of its significant exposure to Non Performing Assets (**"NPA"**). A major component of YBL's Non Performing Assets was the indebtedness of the Essel Group, then in the amount of Rs. 7698 crores of which Rs. 6789 crores were apparently classified as NPAs. The Defendants Nos. 4 to 9, World Crest and the two other debtor companies are said to be under the control of the Essel Group. Since there were continuing defaults by YBL's borrowers and there continued to be non-repayment of over due amounts, Catalyst transferred the pledged shares of Dish TV to its own name. It informed Dish TV and World Crest of this.[11] Then on 2nd June 2020, YBL informed the RBI of this share transfer.[12]

**17.** There then followed certain proceedings before the Saket District Court in Delhi at the instance of Defendants Nos. 4 to 9. These Defendants assailed show-cause notices issued by YBL to declare some of the borrowers as wilful defaulters under the relevant RBI Master Circular. The borrowers also sought a declaration that the invocation of the pledge was bad in law. This was the first attempt by the borrowers to stall the pledge. Ultimately, these proceedings were withdrawn after the long gap of nine months on 3rd August 2021, during which a restraint operated against YBL.

**18.** We pass over certain intermediate events. In April 2021, there appears to have been some settlement proposal, but that need not

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**11** Pages 353–354.

**12** Page 260 of the Interim Application in Appeal.

detain us today. On 7th August 2021, Catalyst transferred 24.19% of the shares in Dish TV i.e. the pledged shares, to YBL. On 12th August 2021, Dish TV issued notice of its Annual General Meeting to be held on 27th September 2021. YBL, claiming entitlement as a transferee or nominee of the pledged Dish TV shares from Catalyst, issued notices on 4th September 2021 under Sections 160 and 169 of the Companies Act 2013 demanding the appointment of certain directors to Dish TV's board. A few weeks later, on 21st September 2021, YBL issued notice under Section 100 of the Companies Act requisitioning an Extraordinary General Meeting of Dish TV. YBL emailed Dish TV on 27th September 2021 voting on various agenda items including in respect of the pledged shares.

**19.** It seems that Dish TV did not call the requisitioned Extraordinary General Meeting and this dispute lead to YBL approaching the NCLT on 22nd October 2021 under Section 98 of the Companies Act. YBL sought an order from NCLT compelling the convening of an Extraordinary General Meeting of Dish TV.

**20.** There followed certain criminal proceedings filed by persons on behalf of Essel Group against YBL. It is sufficient to note that there followed a restraint against YBL from exercising rights in respect of the pledged shares until completion of investigations. In the meantime, following notices under section 102 of the Code of Criminal Procedure, 1973, Dish TV informed the two stock exchanges (the Bombay Stock Exchange and National Stock Exchange) that its Annual General Meeting (initially scheduled for 21st September 2021, and then postponed) would now be held on

30th November 2021. YBL challenged the Section 102 CrPC notices in the Allahabad High Court and then filed a Special Leave Petition against a dismissal of that Writ Petition. Dish TV's Annual General Meeting was further postponed. The Supreme Court stayed the operations of Section 102 CrPC notices as also further proceedings in regard to the criminal complaint.

**21.** Dish TV then filed a company application saying that the Section 98 proceedings filed by YBL before the National Company Law Tribunal (**"NCLT"**) were not maintainable. Dish TV then issued a fresh notice of its 33rd Annual General Meeting, now scheduling it for 30th December 2021.

**22.** On 8th December 2021 World Crest wrote to Dish TV.[13] This may have some consequence to the discussion that follows. World Crest agreed that the 44,00,54,852 pledged shares of Dish TV

> "are presently held by YBL in its custody as security package for certain loans granted to Essel Corporate Resources Private Limited until the said shares are sold or appropriated by YBL."

However, World Crest said that although the physical custody of the shares was with YBL, World Crest was entitled to voting rights in respect of these shares since they continued to be part of the security package. World Crest asked Dish TV to

> "facilitate the exercising of voting to World Crest in respect of the said shares in the upcoming Annual General Meeting scheduled to be held on 30th December 2021".

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**13** Page 366.

**23.** As we shall immediately see, this is really the heart of the dispute, for World Crest claims that notwithstanding the invocation of the pledge; notwithstanding the transfer by Catalyst of the pledged shares to its own name; and even assuming that this was permissible, notwithstanding the second transfer by Catalyst to YBL, only World Crest could exercise general property dominion over and in respect of those shares. This includes all rights associated with that shareholding; in particular, the voting rights in relation to the pledged shares.

**24.** The reply to this from Dish TV is important for two reasons. The first reason is what Dish TV said in immediate answer. The second is the complete U-turn that Dish TV now takes before us today. Dish TV's reply to World Crest is of 12th December 2021.[14] It said, inter alia—

> "In this connection, we would like to inform you that Dish TV India Limited ("the Company") is following the due process in respect of the proposed Annual General Meeting scheduled to be held on December 30, 2021. As per the defined process, each of the shareholder will be entitled to vote on such shares which are held in its respective custody/demat account."

Again this is important because this outlines precisely the nature of Mr Khambata's submission for YBL and Mr Sen's for Catalyst. Namely, that once Catalyst or YBL were shown as "beneficial owners" they would be entitled to enjoy the fullness of all rights available to a beneficial owner, without restriction or restraint, including voting rights. They would continue to do so until

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**14** Page 381.

(i) World Crest redeemed the pledge; or (ii) the shares were sold after proper reasonable notice; or (iii) pending any recovery suit Catalyst or YBL filed. Options (ii) and (iii) are always available to Catalyst. World Crest cannot compel either. It is indeed their submission that there is, *first*, nothing in law (including the *PTC India* judgment) that prevents such an exercise of rights by the recorded beneficial owner; *second*, no prohibition in law against such a contract permitting voting rights (as envisaged by clause 2.1(c)) either under general law or from any reading of *PTC India*; third, that in any case under the pledged agreements, World Crest specifically agreed to precisely such an exercise of voting rights; and *fourth*, that in law no one *except* the beneficial owner can exercise these rights.

**25.** On 16th December 2021, World Crest filed the present suit. It filed an Interim Application (L) No. 29574 of 2021 ("**the main Interim Application**"). As it originally stood before an extensive amendment, the suit challenged the transfer of the pledged shares by Catalyst to YBL.[15] The first is for a declaration that World Crest is the owner of the suit pledged shares and is solely entitled to all rights. The second declaration sought is important and prayer (b) needs to be quoted:

> "(b) this Hon'ble Court be pleased to declare that the exercise of the rights other than for sale by the Defendant No. 1 pursuant to invocation of the pledge as pledgee as violative of the security Trustee Agreement and law and therefore void."

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**15** Prayers, from *p.* 181.

The third prayer is for a declaration that the transfer by Catalyst to YBL is illegal and contrary to the security trustee agreements. The fourth prayer is for a direction to Catalyst and YBL to take steps to ensure that World Crest is formally entered as the beneficial owner. Then a direction is sought to Dish TV to recognize World Crest as a shareholder. Next comes a prayer for a declaration that Dish TV's recognition of YBL as the "registered holder/owner" of the shares is bad in law. Thus, what World Crest contends in these original prayers is that as a pledgee of the Dish TV shares, although Catalyst would transfer the shares to its name, it could do so only for the purposes of safeguarding or securing those shares for implementation of its rights as a pledgee and for no other purpose. As Mr Seervai and Mr Chinoy urge today, even if there is a transfer to Catalyst as a beneficial owner and we will shortly see what this means, that transfer is only to ensure that the shares are safe until they are put to sale by Catalyst to a third party or until Catalyst files a recovery action. Under no circumstances as a pledgee can Catalyst sell the shares to itself. That is forbidden by the law relating to pledges. Important in all of this, according to them, are the rights of World Crest as the pledgor. An overriding right or entitlement of World Crest, as the pledgor, is to seek redemption. If, in the meantime, Catalyst further transfers the shares, or itself or through its transferee or nominee, purports to exercise plenary rights over those shares then the pledgor's rights are compromised. Such a transfer and exercise of rights amounts to nothing but a sale-to-self, forbidden by law.

**26.** One reason why this becomes important is precisely on account of the present Interim Application before the learned Single

Judge. In that Interim Application World Crest sought almost exactly the same reliefs as it did in its main Interim Application but it now claimed that there was a 'change in circumstances'. As far as we can tell, the only change in circumstances is in the jurisprudential landscape in that the *PTC India* judgment came in between. There is nothing else of significance between the main Interim Application and the present Interim Application.

**27.** For completeness of record we note that this Plaint has been amended. According to World Crest, YBL has itself elsewhere claimed in a complaint to the Economic Offences Wing ("**EOW**") that the initial borrowing is vitiated by fraud. Consequential amendments have been sought and permitted to the Plaint. We have not been addressed on the question of fraud and no part of the Application before us has been on that basis. We are therefore not required to examine that aspect of the matter.

**28.** On 22nd–23rd December 2021, BP Colabawalla J heard World Crest's main Interim Application at length. The resultant order said that the Court was not inclined to grant ad-interim relief. Mr Seervai on behalf of World Crest at that time apparently submitted that if the Court observed that the outcome of the Annual General Meeting would be made subject to orders in the Interim Application, World Crest would not challenge the rejection of the ad-interim relief. The Court made a direction more or less in those terms.[16] World Crest agreed that no reasons were necessary.

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**16** The actual order says "would abide by" rather than "subject to the outcome of" the main interim application. There is no real difference.

**29.** In December 2021, there were operation and management proceedings before the NCLT, proceedings before the DRT in Jaipur, a Writ Petition before the Delhi High Court and another Writ Petition before this Court. In the Writ Petition No. 25881 of 2021 before this Court, a restraint was again sought (at the instance of an entity of the Essel Group) against YBL from exercising voting rights in respect of the pledged shares. On 30th December 2021, Dish TV held its 33rd Annual General Meeting. Dish TV did not disclose or implement the result of that meeting. Instead, it filed an Interim Application No. 121 of 2022 (the Dish TV's Interim Application) inter alia seeking that it be permitted not to disclose the outcome of the Annual General Meeting on the ground that this might 'adversely affect' the hearing of World Crest's main Interim Application. YBL replied to this Interim Application. It is still pending though it may well be infructuous by now.

**30.** On 17th February 2022, World Crest filed an Interim Application (L) No. 4788 of 2022. In this, it again sought a restraint against YBL from transferring, selling, acting upon, using or exercising any rights in respect of the pledged Dish TV's shares. It also sought a restraint against both Catalyst and YBL from exercising any rights in respect of these shares. Then it sought an injunction against YBL from interfering or seeking to participate in the management of Dish TV. Finally, it asked for a disclosure of YBL's complaint to the EOW.

**31.** The order that came to be passed on Interim Application (L) No. 4788 of 2022 is important.[17] It features quite prominently in the impugned order.[18]

> "1. By the Interim Application No. 376 of 2022 the applicants seek a direction to defendant no. 3 to declare results of 33rd Annual General Meeting held on 30th December, 2021. On behalf of defendant no. 3 Mr. Chinoy submits that the results cannot be declared since according to him results once declared, the process cannot be reversed. This is sought to be disputed by Mr. Khambata who submits that the order dated 23rd December, 2021 in clear terms in paragraph 1 states that results of outcome of the Annual General Meeting will abide by the decision in Interim Application (L) No. 29574 of 2021 which is still pending disposal. Pleadings are said to be complete.
>
> 2. Mr. Khambata meanwhile makes a grievance that the Securities Exchange Board of India (SEBI) has also called upon defendant no. 3 to declare the results since it has already been delayed by several days. He relies upon a communication dated 9th February, 2022 addressed by SEBI to defendant no. 3 and Stock Exchanges calling for disclosure of the results which SEBI finds is delayed by some 37 days as of 9th February, 2022.
>
> 3. Mr. Khambata finds that the reason for delay in declaring of the results is said to be pendency of Interim Application (L) no. 29574 of 2021 and defendant no. 3 has claimed that the matter is sub judice. It is clarified that pendency of the above two Interim Applications being IA (Lodging) No. 376 of 2022 and IA No. 121 of 2022 have no bearing on the requirement reiterated by SEBI.

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**17** Pages 968–969, Interim Application compilation.

**18** That order was corrected by speaking to the minutes: page 970, Interim Application.

> 4. At this stage Mr. Seervai submits that while the order dated 23rd December, 2021 records instructions received by him as set out in paragraph 1 of that order, he has now been instructed to state that there has been gross suppression of material facts which have now been discovered and now entitles his client to seek ad-interim relief which has already been refused in order dated 23rd December, 2021. He states he has filed Interim Application (L) No. 4788 of 2022 in the above suit in which he seeks ad-interim relief but that Interim Application is not on board today. **Notwithstanding his concession recorded in the order dated 23rd December, 2021 he submits on further instructions that he now intends to seek a review of the order dated 23rd December, 2021 and in view of that decision he does not desire to press Interim Application (L) No. 4788 of 2022 at this stage.** In my view since Mr. Seervai's clients intend to file a Review Petition this fresh Interim Application cannot survive and accordingly, I pass the following order:
>
> > **(i) Interim Application(L) No. 4788 of 2022 is taken on board and disposed as infructuous without prejudice to the Applicant's right, if any, to seek review of order dated 23rd December, 2021**.
> >
> > (ii) List on 24th February, 2022."
>
> (*Emphasis added*)

**32.** A few days later, on 22nd February 2022, World Crest did in fact file a Review Petition (L) No. 5303 of 2022 in its main Interim Application seeking a review of the 23rd December 2021 order (the one that said that the 30th December 2021 Annual General Meeting would be subject to the outcome or abide by the order in World

Crest's main Interim Application). World Crest mentioned the Review Petition twice seeking an urgent listing. The Court declined, saying there was no urgency.

**33.** World Crest then sought an amendment of the Plaint. This was allowed.

**34.** We are passing over certain parallel proceedings in other applications. In April 2022, World Crest filed yet another Interim Application (L) No. 1315 of 2022 for production of YBL's EOW complaint of with all annexures and particulars.

**35.** For its part, Catalyst has filed Interim Application (L) No. 17490 of 2022 seeking a return of the Plaint. That Interim Application is pending.

**36.** On 7th June 2022, World Crest filed the Interim Application (L) No. 17730 of 2022, on which the impugned order was made. By this it sought a restraint against a Catalyst and YBL from participating in the Extraordinary General Meeting scheduled for 24th June 2022, i.e. tomorrow, or exercising any rights including voting rights at this meeting. It sought an order saying that World Crest should be allowed to exercise the voting rights and it also sought an injunction against Catalyst and YBL from interfering in or seeking to participating the management and affairs of Dish TV. The matter seems to have been argued at some length over three afternoon sessions before the learned Single Judge between 14th and 16th June 2022. By his impugned order of 17th June 2022, the

learned Single Judge found that there was no prima facie case and declined interim relief. This brings the World Crest in Appeal before us today.

**37.** We turn to a quick overview of the impugned order. Paragraphs 1 and 2 set out in a compact manner the relationship of the parties and the reliefs sought. Then Menon J noted that World Crest obtained no orders in its main Interim Application on 23rd December 2021. He then went on to note that World Crest had filed Interim Application (L) No. 4788 of 2022 claiming a change in circumstances and once again seeking a similar restraint against Catalyst and YBL from selling or acting on a holding of the shares. Menon J found that what was being canvassed before him was essentially the same as World Crest's main application which received an order on 23rd December 2021. Once again, World Crest claimed a change in circumstances justifying the fresh Interim Application. He noted the submission by World Crest that notwithstanding the pendency of the Review Petition relating to the 23rd December 2021 order in World Crest's main Interim Application, the Supreme Court decision in *PTC India* authoritatively settled the law regarding pledges and the rights of the pledgor and pledgee (or pawnor and pawnee) under Sections 176 and 177 of the Indian Contract Act 1872. Evidently, it was being urged that the *PTC India* decision was the pivotal change in the circumstances. YBL argued that it was entitled to voting rights, that it was a nominee of the Catalyst, that it had voted in the past and hence the balance of convenience did not favour World Crest. Mr Dhond then appearing for YBL pointed out the amount that was due and said this was yet another attempt to prevent the YBL's

participation at the ensuing meeting. The submission on behalf of the Catalyst then and now before us was that YBL had no right whatsoever to vote. The transfer by Catalyst to YBL was illegal. Catalyst had unlawfully parted with custody of the pledged security. There appears to be some error in the wording of paragraph 7 because the reference there is to Clause 5 of the Pledge Deed. That clause, as we shall see when we examine the provisions of the Pledge Deed, relates to the rights of the pledgor before the event of default and not rights of the pledgee. Then Menon J noted that there was a serious dispute as to whether YBL was a nominee or a transferee. World Crest argued that YBL was never a pledgee. It was not even a party to the Pledge Deed. There was no way in law for YBL to exercise any rights let alone any proprietary rights or rights as a beneficial owner over the pledged suit shares. In paragraphs 10 and 11, Menon J noted the submissions canvassed on behalf of the YBL. Finally, in paragraph 13, Menon J said that Interim Application (L) No. 4788 of 2022 (on which the order dated 17th February 2022 was made) effectively sought the same relief as the fresh Interim Application of June 2022.

**38.** Mr Seervai before us endeavours to make capital of the finding in the impugned order that Interim Application (L) No. 4788 of 2022 was 'withdrawn' when the order of 17th February 2022 says it was disposed as 'infructuous', but that matters little in our view because the learned Single Judge was only assessing the nature of the relief sought in the two Interim Applications and nothing further. To us makes no difference whether this was withdrawn or disposed as infructuous.

**39.** Menon J then noted that a Review Petition was pending. He noted that despite the pendency of the Review Petition in regard to the order made on 23rd December 2021 on World Crest's main Interim Application, World Crest was now once again seeking the same relief that was part of the Interim Application (L) No. 4788 of 2022. For this reason, Menon J held that no case was made out for ad-interim relief.

**40.** An important finding in paragraph 14 is this:

> "contentious issues have been raised as to the legal capacity of the bank since the Applicant has contended that the bank is not a nominee but an alleged transferee. The Applicant has not made out a prima facie case nor is the balance of convenience favouring grant of relief. No irreparable harm is likely to be caused to the Plaintiff/Applicant. There is no occasion to once again consider grant of relief which was part of Interim Application (L) No. 4788 of 2022 which was consciously withdrawn to pursue the Review Petition which is still being pursued."
>
> For that reason ad-interim relief was denied.

**41.** Mr Seervai formulates his submission thus:

**(a)** Whether, after the decision of the Supreme Court in *PTC India*, YBL can exercise voting rights at tomorrow's Annual General Meeting?[19]

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**19** Incidentally, we may note that as to the mechanics of voting, this is apparently in two parts. E-voting commenced on Monday, 20th June 2022. As soon as those electronic doors opened, YBL entered, and, at about 9.30 am on that date, cast its vote or votes. Under the regulatory mechanism for e-voting, those electronic votes will not be counted until the conclusion of the Annual

**(b)** Do certain clauses of the pledge deed, namely Clauses 2.1, 5, 7.1(c) and 7.1(g) permit YBL even as a pledgee or a nominee to exercise voting rights? We understand this second submission to be placed in a form *arguendo*, that is to say, that even assuming that a transfer to YBL by Catalyst was possible, YBL could not exercise voting rights.

**42.** We put a question to Mr Seervai at the forefront after he formulated these two submissions. We asked whether in Appeal before us World Crest challenged Catalyst's transfer of the pledged shares to itself? Mr Seervai's response was to say that the transfer to Catalyst was not per se challenged by World Crest but, in his submission, that transfer allowed Catalyst only to hold the shares until they were sold to a third party or until Catalyst filed a recovery suit. He clarified this to mean that under no circumstances on account of the transfer could Catalyst become the true or full "owner" of the shares such that it exercise dominion over them. It could not exercise plenary rights such as voting or further transferring those shares. He maintained in clarification that World Crest disputed, as a necessary corollary of this formulation, Catalyst's right, power or authority to transfer the shares to YBL or, in any shape, fashion or form, to confer any downstream rights in respect of and over the pledged shares of YBL. It made no difference whether YBL was said to be a nominee or a transferee.

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General Meeting tomorrow 24th June 2022. This is to allow others to vote in physical form.

Catalyst simply could not bring YBL into play to give it any rights in respect of these shares.

**43.** This takes us to the Pledge Deed. There are two pledge deeds (because there are different borrowers). All have concentrated on one, agreeing that there is no difference between the two.[20] As Mr Seervai points out, in a rather peculiar form of drafting, parties are not described at the head of the document. They are instead set out at length in Schedule III to it.[21] All that the main body of the document says is that the pledge is between the pledgor and the borrower in favour of the pledgee. Schedule III lists the three borrowers, RPW Projects Private Limited, and the 5th and 4th Defendants. The pledgor is World Crest. The pledgee is Catalyst. It is said to have been appointed by Security Trustee Agreements mentioned in the table following as a security trustee for the benefit of "secured parties". Then the details of the borrowers and the Security Trustee Agreement are set out in a table. There follow details of each of the borrowers. Details of the Loan Agreements are mentioned. The initial pledged securities are then set out and in Clause 10, it is said that the pledge is to rank pari passu to a charge created or to be created in favour of Catalyst on behalf of lenders for facilities to various entities tabulated below. YBL is not mentioned in Schedule III. YBL is therefore not a 'party' to the Pledge Agreement. It is not the pledgee. But the pledge itself mentions in recital 'A' the role of YBL as a lender and the borrowing in question. Lenders or banks are defined at page 243 thus:

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**20** Pages 241–271. The second pledge deed is titled "amended", but all agree that this only relates to another set of borrowers.

**21** Pages 269–271.

> "**"Lender(s)" or "Bank(s)"** shall mean the banks and financial institutions who have agreed to grant the Facility(ies) to the Borrower in accordance with the Facility Letter, Agreement and other Transaction Documents executed in relation thereto."

**44.** Those definitions also include definitions of "Initial Pledged Securities", "Pledge", "Securities" and "Security Assets" and finally, "Secured Party" or "Secured Cover". We set out these definitions below:

> **"Initial Pledged Securities"** shall have the meaning ascribed to it in Schedule III hereof;
>
> **"Pledge"** means the grant of a security interest in, and the pledge of, the Security Assets provided for in Clause 2.1 hereof;
>
> **"Securities"** shall mean to include the initial Pledged Securities and the Additional Securities and shall include the securities as stated in Section 2(b) of the Securities Contracts (Regulation) Act, 1956 and shall include any renewals, substitutions, sub-division, consolidation and proceeds thereof including without limitation all rights and accretions in connection therewith or accruing thereto and proceeds arising therefrom for the time being and from time to time, any distributions received/ to be received and moneys, including but not limited to interests, dividends, income and revenue therefrom"
>
> **"Security Asset"** means any or all of:
>
> (a) the Pledgor's DP Accounts;
>
> (b) the Securities;
>
> (c) instruments, records, forms, confirmations, consents, approvals, agreements, writings, powers of attorney, deeds and documents

relating to the Pledgor's DP Accounts and the Securities together with all rights in connection therewith or accruing thereto and proceeds arising therefrom from time to time and any securities and monies derived from such Securities, including but not limited to:

(i) dividends paid or payable in cash and other than in cash in respect of, and instruments and other property received, receivable or otherwise distributed in respect of, or in exchange for any of the Securities.

(ii) dividends and other distributions paid or payable in cash in respect of or in connection with any liquidation or dissolution or in connection with a reduction of the share capital of the Company; and

(iii) cash paid, payable or otherwise distributed in respect of buy-back of, or in exchange for any Securities;

provided that any monies contemplated in paragraphs (i) to (iii) above that have been paid in accordance with the Transaction Documents shall, upon such payments being made not be included as part of the Security Assets."

**"Secured Party" or "Secured Parties"** shall mean the Lender(s).

**"Security Cover"** shall mean the security cover that Obligors are required to maintained in relation to Facility(ies) and as mentioned in Schedule III hereof;

**45.** The next important clause is Clause 2 captioned "Security". For our purposes we are concerned with Clause 2.1, "pledge".[22] It reads:

> **2.1 Pledge**
>
> In consideration of the Lender(s) having lent and advanced and/or agreed to lend and advance the Facility(ies) to the Borrower on the terms and subject to the conditions set out in the Transaction Documents, the Obligors hereby confirm that for securing the due payment, repayment or reimbursement, as the case may be, of the Secured Obligations, each Pledgor;
>
> (a) pledges in favour of the Pledgee, the Inittal Pledged Securities all of which are in dematerialised form and deposits and delivers by way of actual/constructive delivery (*as the case may be)*, the Initial Pledged Securities to the Pledgee by instructing the respective Pledgor's Participant to:
>
> (i) debit the respective Initial Pledged Securities from the free/locked in balances of the relevant Pledgor and credit the Initial Pledged securities as pledged balances of such Pledgor;
>
> (ii) communicate the details of the pledge to the Pledgee's Participant for confirmation by the Pledgee of creation of the Pledge; and
>
> (iii) make entries in their records accordingly, with intent to create the Pledge thereon to secure the due payment, repayment or reimbursement, as the case may be, of the Secured Obligations.

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**22** Pages 245–246.

**OR**

(a) having on or before the execution of these presents delivered to the Pledgee, as and by way of pledge, the certificate/ documents of title together with duly executed transfer deeds in respect of the Initial Pledged Securities as are represented by certificates or other documents of title;

(b) **as an owner of the Securities, pledges all of its rights (*including voting rights in or rights to control or direct the affairs of the Company*),title and interest in and to the Securities, and all certificates and other instruments representing the Securities, to the Pledgee with such rankings as detailed in Schedule III hereto;**

(c) pledges, assigns, transfers, hypothecates and charges to the Pledgee, as a continuing security interest, **all of its benefits, allotments, powers, authorities, claims and demands whatsoever in, to under or in respect of the Securities** and any indemnity, warranty or guarantee payable by reason of loss to or otherwise with respect to any of the Securities;

(d) pledges and agrees to charge to the Pledgee with such rankings as detailed in Schedule III hereto all dividends and other distributions, income, cash flows, revenue, profits, payments and other property due, accruing or owing to, to be turned over to or to be disbursed to, such Pledgor after the date of this Deed with respect to any of the Securities (including by way of redemption, bonus, preference or option or in situation or by way of conversion, distribution or exchange for or otherwise derived from, any of the Securities, but excluding any distributions and other payments permitted to be paid to the Pledgor(s)

pursuant to and in accordance with the (Transaction Documents); and

(e) pledges and agrees to charge to the Pledgee with such rankings as detailed in Schedule III hereto all proceeds, products and accessions of and to any of the property described in paragraphs (a) through (d) above.

(f) In case Securities hereunder are pledged in physical form, the Pledgor(s) shall dematerialise the said Securities within the time period provided by the Pledgee. Further, the Pledgor(s) absolutely, irrevocably and unconditionally agrees and confirms that any transfer of the Securities which are pledged hereunder in physical form, by the Pledgee to the Pledgor(s), shall only be made on trust and for the sole purpose of converting such Securities into dematerialised form, upon dematerialisation of which, the dematerialized Securities shall constitute part of the Security Assets and the pledge created hereunder.

This Deed is being executed in favour of the Pledgee to secure the Secured Obligations. Notwithstanding anything contained in this Deed, it is hereby clarified that the Pledge shall at all times be subject to the provisions of Sections 19(2) and 19(3) of the Banking Regulation Act, 1949 (*as amended from time to time)*, and no Lender(s) which is a banking company shall at any point in time, have a cumulative beneficial interest in the Pledge over the Securities in excess of the limits set out under the Banking Regulation Act 1949 (*as amended from time to time).*

(*Emphasis added*)

**46.** Straightway this tells us that under Clause 2.1(b), World Crest agreed as an owner of the pledged shares to pledge all its rights ***including voting rights in or rights to control or direct the affairs of the Dish TV, its title and interest in and to the security to Catalyst World Crest with such rankings (i.e pari passu) as mentioned in Schedule III.*** This is the contract that World Crest entered into with Catalyst. This is the 'bargain that it struck'.

**47.** Then we turn to Clause 5.[23] This is important because it deals with World Crest's rights qua pledgor at or during a particular period of time, that is to say before the occurrence of an event of default. Before an event of default occurred,[24] Catalyst would not, it was agreed, seek to "transfer" any part of the pledged shares. World Crest was entitled to receive all dividends, distribution and financial benefits etc; and also to exercise voting and other rights attached to the pledged shares in a manner consistent with the transaction documents. Therefore, this clause clearly spells out who could act on the pledged shares *before an Event of Default*.

**48.** The mirror image, as it were, of Clause 5 is to be found in Clause 7, the contentious clause. Clauses 7 and 7.1 (we are not concerned with the rest) read thus:

> **"7. EVENTS OF DEFAULT AND ENFORCEMENT OF SECURITY**
>
> **7.1 Enforcement of Security**

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**23** Page 249.

**24** "Unless and until an Event of Default occurs and is continuing …"

**If any Event of Default occurs and is continuing**, the **Pledgee shall be entitled to enforce the security** created pursuant to this Deed and to exercise immediately or as and when it may deem fit and without any further consent, notice of any kind (other than as contemplated by paragraph (c) below, demand or authority on the part of the Pledgor(s), any and every power possessed by the Pledgee by virtue of this Dees, other Transaction Documents and available to a secured creditor (in the name of the pledgor(s) or otherwise) under Law, and in particular (but without limitation), the Pledgee shall have the power to.

(a) enforce all or any part of the security interest created by this Deed and take possession of or dispose of all or any of the Security Assets in any manner permitted by Law upon such terms as the Pledgee determines;

(b) collect, recover or compromise and to give a good discharge for any moneys payable to the Pledgor(s) in respect of any of the Security Assets, including dividends and other distributions;

(c) **cause all or any part of the Security Assets to be transferred into the name of the Pledgee <u>or their nominees</u>**;

(d) apply against any Secured Obligations, or refrain from so applying, as it seems fit, moneys received on the enforcement of this Deed or hold any moneys in a suspense account without liability to pay or credit interest and apply it against Secured Obligations as they fall due;

(e) subject to giving notice to each Pledgor in accordance with Clause 8, sell, call in or convert into money all or any part of the Security Assets in any manner, publicly or privately, anywhere in the world with such powers as are conferred by Law and for

such consideration as the Pledgee considers appropriate without being liable to or account for any amount by which the proceeds of such sale, conversion or calling may be less than the market or true value of such Security Assets;

(f) take over, settle or compromise or take any other action in any suits or proceedings in connection with the Security Assets;

(g) **exercise any voting rights and any powers or rights which may be exercised by the Person or Persons in whose name or names the Security Assets are registered or who is the holder or bearer of them, to the exclusion of such Person. Upon the Pledgee exercising its right to vote in terms of this Deed and sending an intimation thereof to the Pledgor, the Pledgor shall ensure that, the Pledgee is permitted to attend and exercise the voting rights (including but not limited to e-voting) in respect of the Securities pledged hereunder or any matter at any meeting of the members of the Company.** The Pledgor shall also arrange for forwarding copies of the notices of the meetings to the Pledgee as and when such notices are issued to the shareholders including, inter alia, in the manner provided in the Companies Act, 1956 (as amended and/or replaced with the new Companies Act, 2013) and by providing the Company, the address of the Pledgee and depositing with the Company amounts sufficient to defray the expenses of providing the notices by registered post with acknowledgement due. The Pledgor shall execute and deliver to the Pledgee all proxies and such other instruments as the Pledgee may require for exercising such voting (including but not limited to e-voting) and other rights as are granted by this

Deed and/or available under any applicable Law/regulation.

(h) **exercise all rights under the applicable Law including the right envisaged under section 176 of the Indian Contract Act, 1872 as amended from time to time**.

(j) execute and do all such acts, deeds and things as the Pledgee may consider being necessary or appropriate for or in connection with any of the above purpose."

(*Emphasis added*)

**49.** On the face of it, Clause 7 begins to operate only once there is an Event of Default. It continues so long as the Event of Default continues, i.e., until the default is cured. Given that this is a question of a pledge there are only two ways in which the curing of a default can happen: either by redemption by the pledgor or by a sale to the third party. (We leave aside the so-called 'third' route, of Catalyst filing a recovery suit, because even there the pledgor would be required to make payment to retrieve the pledged shares). But what is to happen in the meantime is the question.

**50.** Two clauses are of particular importance, 7.1(c) and 7.1(g). Although Mr Seervai did makes some strenuous arguments on Clause 7.1(g), in view of Mr Khambata's submission, that need not detain us. He says that no part of his case is based on 7.1(g) and Catalyst has not invoked any rights under 7.1(g) at all. It has fully implemented Clause 7.1(c) by causing the pledged shares to be transferred to its name as the beneficial owner. He points out that

parties agreed that this transfer could be the name of Catalyst or to Catalyst's 'nominee'.

**51.** Mr Seervai's submission is that the law relating to pledges as now enunciated, explained and clarified by the Supreme Court in *PTC India* does not allow the transfer of security or secured assets in a manner such that the transferee-pledgee acquires full or general property in the shares. That would amount to an impermissible sale-to-self; and that would amount to conversion. Consequently, parties cannot contract to such a transfer if it amounts to a sale-to-self. The transfer by Catalyst to itself can only be for the purposes of securing the assets until one of the permissible eventualities arise, either sale to a third party or a redemption or, to save the asset for the purposes of a suit by Catalyst for recovery.

**52.** Mr Seervai, therefore, frames this case like this:

**(a)** Under the Pledge Deed, it is only Catalyst that can exercise contractual rights; and it can do so only in a manner not inconsistent with the law declared by the Supreme Court regarding pledges.

**(b)** Catalyst is a security trustee and holds the pledge shares for YBL's benefit.

**(c)** YBL has no locus. It is not a party. It cannot take these shares in any capacity at all, whether as transferee or nominee or in any other capacity.

**(d)** Once Catalyst transferred the shares to itself (and which it could do only for the purposes mentioned

above) clauses 7.1(c) of the Pledge Deed was exhausted. Catalyst has no further right, such as to a successive transfer. He points out that in Schedule III, the pledgee is said to be Catalyst and that is said to include its successors, transferees and assignee but not nominees.

**(e)** There is no power in the Pledge Deed itself, i.e., even in the contract in question, given to Catalyst to effect any kind of a second-stage downstream transfer to anyone, whether YBL or anyone else.

**(f)** The moment Catalyst transferred the suit pledged shares to YBL, it amounted to a sale-to-self and, therefore, conversion. This is forbidden. In other words, without actually formally putting the pledged shares to sale, by the device of a mere transfer, Catalyst sought to constitute YBL as a full-spectrum owner of the pledged shares. This, in his submission, it could not do.

**(g)** Thus, in his formulation, YBL is a totally illegal transferee of the pledged shares. It has no rights under the Pledge Deed.

**(h)** Finally, this entire action of Catalyst and YBL in purporting to vest YBL with the complete envelope of ownership rights in respect of the pledged shares is directly contrary to the Supreme Court decision in *PTC India*.

**53.** We come now to that decision. Both sides have read this at such length to us that we would probably be required to reproduce the whole of it as part of this judgment. Evidently, that is unworkable. We will endeavour, instead, as best we can to draw out the emergent principles. As we noted at head of this judgment, the Supreme Court had before it a question arising under Regulation 58. The law on pledges under Sections 176 and 177 has long been settled including, authoritatively by the exposition by Chagla CJ in the Division Bench judgement of this Court in *The Official Assignee of Bombay vs Madholal Sindhu & Ors*,[25] a pronouncement that that *PTC India* emphatically reaffirms.

**54.** Mr Seervai began by taking us to paragraphs 28, 29, 30, 32 and 33 of *PTC India*. This is where the Supreme Court analysed the law of pledges. That section of the judgment itself is divided into parts. These paragraphs deal with the nature of a pledge, and, importantly for our purposes, the difference between ownership pledge (and mortgage**)** and the rights of the pawnee or pledgee. A pledge creates an estate or a right in the pledgee. The owner has a right of possession, right of enjoyment and right of dispossession. A pledgee does not have a right of ownership. He has a limited right to retain possession until the debt is paid or the promise is performed. His right of dispossession is limited to the dispossession of the pledge rights only and the right to sale after notice. Even if the pledgor defaults, the pledgor continues to have a right to redemption until there is an actual sale. A pledgee may, in our understanding, have a right of dispossession of the pledge itself but

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**25** 1946 SCC OnLine Bom 47 : ILR 1948 Bom 1 : (1946) 48 Bom LR 828.

not of the pledged security except by way of a sale. As to the question of special or general rights, the pledgee has what is described as "special property in the pledge" but the general property remains with the pledgor. That property reverts to him *on discharge of the debt*. The right to property vests in the pledgee only to the extent necessary to secure the debt. The pledgor as, we have noted, has an absolute right of redemption. But in order to do this he must tender the amount advanced. That right of redemption is lost if the pledgee in the meantime sells the pledged property. Of course, the proceeds of the sale must be appropriated to the debt and, it is now too well settled to admit of dispute that in the circumstances set out in both *Madholal Sindhu* and *PTC India* Limited, reasonable notice is necessary before a sale, but this is not an aspect that has been canvased before us.

**55.** At this stage, we must reproduce Sections 176 and 177 of the Contract Act.

> **Section 176. Pawnee's right where pawnor makes default.**
>
> **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**.
>
> If the proceeds of such sale are less than the amount due in respect of the debt or promise, the pawnor is still liable to pay the balance. If the proceeds of the sale are

> greater than the amount so due, the pawnee shall pay over the surplus to the pawnor.
>
> **Section 177. Defaulting pawnor's right to redeem.**
>
> If a time is stipulated for the payment of the debt, of performance of the promise, for which the pledge is made, and the pawnor makes default in payment of the debt or performance of the promise at the stipulated time, **he may redeem the goods pledged at any subsequent time before the actual sale of them; but he must, in addition, any expenses which have arisen from his default**.
>
> (*Emphasis added*)

**56.** When there is a default by the pledgor, i.e., the pledgor does not fulfil his promise to pay the debt, the pledgee has the right (but not an obligation) to sue on the date and to continue retention of the pledged goods as a collateral security and also the right to sell the goods but after reasonable notice of the proposed sale to the pledgor. Once sold, the pledgor's right of redemption is extinguished and forever lost. Until the sale actually occurs, the pledgor is entitled to his right of redemption, *again on payment of debt*. What happens when a pledgee brings suit for recovery of the debt? Although the pledgee is entitled to retain the goods, he must return them on payment of the debt (and expenses). The Supreme Court in *PTC India* also reaffirmed that a pledgee has only "special property in the pledge" but the general property remains with the pledgor. What is that "special property"? It is said to be a right in the pledged goods higher than the mere right of detention but less than the general property right. This is explained: the pledgee has a right to transfer the general property rights in the pledged items,

i.e., to pass title, so long as the pledge is not redeemed. This is also said to be a 'conditional general property interest'. i.e. subject to the condition that the general property can be passed to a third party if the pledged goods are brought to sale. This means that a pledgee can validly pass full tile in the pledged goods, i.e. plenary ownership and general property rights to a third party on sale. The pledgee cannot validly acquire these rights by a sale to itself. Until that sale to a third party happens or takes place the pledgor has a right to redeem and this redemption means that the pledgor gets back the entirety of the general property rights in the pledged goods.

**57.** Mr Seervai then takes us to paragraph 53 and 55 to 60 of *PTC India*. This follows after a discussion from paragraphs 43 to 49 of *Madholal Sindhu*. Paragraphs 27 to 51 of *PTC India* say:

> **47.** Chagla J., in his concurring opinion, referring to Section 176, held that **when the pawnor makes a default in the payment of the debt, the pawnee may sell the pawned goods on giving the pawnor reasonable notice of sale. He agreed that the requirement of giving the pawnor reasonable notice of sale is mandatory and it is not open to the parties to contract themselves out of this section.** Section 176 of the Contract Act, unlike some of the sections of the Contract Act, does not specifically provide that the contractual terms can override the provision by using the expression "in the absence of the contract to the contrary" or "subject to special contract to the contrary". **The notice, that is to be given for the intended sale by the pawnee, is a special protection that the statute has given to the pawnor, and the parties cannot agree that the pawnee may sell the pledged goods without notice to the pledgor.** Dwelling on the aspect of the pawnor's right of redemption under Section 177, **the judge held that the**

**right remains till the 'actual sale' of the pledged goods. The expression 'actual sale' in Section 177 must be a sale in conformity with the provisions of Section 176 which gives the pledgee the right to sell; and if the sale is not in conformity with those provisions, then the equity of redemption with the pledgor is not extinguished.**

48. **The sale by the pawnee to himself being void does not put an end to the pledge, but the pawnor is bound by resale(s) duly effected by the pawnee to the third parties after such abortive sales to himself.**

49. Chagla J. on the rights of the pawnee held that the Contract Act **provides two rights to the pawnee when the pawnor makes a default in payment of the debt : (a) bring the suit against the pawnor for the debt and retain the goods pledged as collateral security; and (b) sell the goods pledged, which power, however, can be exercised in terms of Section 176 on giving the pawnor a reasonable notice for sale.**

50. While upholding that the right of redemption given to the pawnor vide Section 177 of the Contract Act ends on the sale of the goods by the pawnee in conformity with the requirements of Section 176 of the Contract Act and not on unlawful or unauthorised sales, **Chagla J. after extensively referring to the case law on the subject held that: (1) the pawnor does not become entitled to the possession of the goods pledged without tendering the amount due on the pledge; or in other words, without seeking to redeem the pledge; and (2) that without a proper tender of the amount due on the pledge, the only right of the pawnor in respect of the unlawful or unauthorised sale is in tort for damages actually sustained by him. Therefore, without tendering the amount, action of trover and detinue are not maintainable.**

> 51. The decision in *Madholal Sindhu* (supra) was carried in appeal to the Federal Court, wherein the court by majority overruled the decision of the Bombay High Court solely on a factual basis that, given the assent of sale of shares by the pawnor therein and the acquiescence thereof by the Official Assignee, the sale was good. However, it is to be espied that the question of whether the pawnor could enter into a contract contrary to the provisions of Section 176 or whether want of notice is a mere irregularity not affecting the title of the bona fide purchaser for value did not arise for consideration before the Federal Court.
>
> (*Emphasis added*)

**58.** We will therefore take it as now too firmly established to admit of the slightest dispute that the pawnee's/pledgee's right of sale excludes a sale-to-self. The Supreme Court approved the proposition that the terms of Section 176 are mandatory. Parties could not, for instance, contract to waive reasonable notice of sale. The pledgee is never relieved of his obligation to give reasonable notice before the sale. To our minds, the reason for this is self-evident and it is a necessary concomitant of the pledgor's right of redemption. It provides him a sort of terminus-a-quo: the pledgee says effectively that he proposes to sell and thus tells the pledgor that redemption must happen by tendering the amount of debt prior to that sale. That this notice must be reasonable is clear. The Supreme Court, therefore, said that where the Contract Act says a particular term or provision is binding, that is the mandate of the statute. It must be followed by the parties. Neither party can contract out of it. Otherwise, the legislative imperative would be violated by merely incorporating a term of waiver and this would

deprive the weaker party of the benefit of the legal protection. It is a rule of public policy, for the requirement of reasonable notice is to protect and benefit the public. Yet there is a difference between a statutory provision meant for the benefit of a person and one that requires a contract to be in a particular manner. A statutory obligation cannot be waived where the statute restrains explicitly, or mandates explicitly, that parties must contract in a particular manner. Where a statute prescribes a form, it must be followed. Even if there is a general autonomy to contract, that autonomy does not permit parties to enter into an agreement contrary to express provisions of the law.

**59.** At this point, the Supreme Court considered a decision of the Delhi High Court which disagreed with the view taken by Chagla J in *Madholal Sindhu*. This was considered at some length and the Supreme Court finally held that the Delhi High Court's attempt to distance itself from *Madholal Sindhu* could not be supported. The Supreme Court reiterated that Section 177 gives the pledgor a right of redemption until the time of actual sale. Ex-facie this posits payment of the debt due (as also the pledgee's expenses) arising from the pledgor's default. Section 176 for its part requires the pledgee to give the pledgor reasonable notice of a proposed or impending sale. That notice may be in any form but the rights of the pledgor to redeem —by payment of the debt due (and expenses, if applicable) — continues until the date of the actual sale to a third party. A pledgor can always tell a pledgee to go ahead with the sale. That would not violate Section 176.

**60.** Importantly, the Supreme Court also noted that the pledgee cannot, without his consent, be compelled by the pledgor to sell the pledged property.

**61.** We have said earlier that we will take it as established that a pledgee has no right of a sale-to-self. In paragraph 63 of *PTC India* this is explained by once again reaffirming *Madholal Sindhu*. A sale-to-self would be a case of conversion and not actual sale.[26] The reason is again self-evident. The right of property in the pledged goods would immediately be lost to the pledgor and its right of redemption would be extinguished. A pledgee's rights flow from the transaction of the pledge and the creation of what the Supreme Court called the 'special property' in the pledged goods. Once the pledgee assumed to itself in whatever manner the fullness of rights in the pledged goods, the entire security was lost, the pledgor's rights were lost and the pledged goods were no longer available for redemption.

**62.** The Supreme Court then proceeded to consider Regulation 58. This is in the context of Depositories Act 1996. To understand this, the Supreme Court provides some historical perspective as well. The regulation is necessary because of the changes in the manner in which stock or equity or shares in companies are now held. In earlier days, shares were issued in physical form as share certificates. Transfers were effected by physical forms with particulars and physical signatures. With the advent of digitization, these physical shares were "dematerialised". They were rendered

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**26** *PTC India*, para 63.

into a 'demat' form. This presented difficulties of its own and it is for this reason that there came to be established two central depositories, NSDL and CSDL. This introduced the concept of what is called the 'registered owner' — a perhaps infelicitous terms because it may have all kinds of unintended implications and suggestions. The registered owner is of necessity the depository i.e. NSDL or CSDL. All that this signals is that the demat shares in question are lodged with that particular depository. The depository itself is not the 'owner' in law, strictly speaking, of those demat shares. Then there is a Depository Participant or DP. Typically, this is an entity that is an intermediary between the investor and the depository. It is the DP that trades in the demat shares on behalf of the investor. The shares of the company may be listed on or more stock exchanges but when shares are bought and sold, they are required to be moved from one investor's account with his DP to the other investor's account with perhaps another DP. There is no physical transfer of shares simply because there is no longer a physical artefact of a share.

**63.** The right of ownership of a demat security (share) vests in what is known as the "beneficial owner". Every person or entity who or which is recorded as a 'beneficial owner' can transact and deal in securities but must do so through a DP. Section 12 of the Depositories Act permits the pledge and hypothecation of securities held in a depository. In *PTC India*, This Section was held not to be inconsistent with the Contract Act.

**64.** Regulation 58(8) of the SEBI Regulations says that:

> subject to the provisions of the pledged 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.

This was the conundrum before the Supreme Court. Clearly, a 'beneficial owner' could pledge the securities that were registered with the depository. To effect that pledge, the beneficial owner had to instruct his DP to apply to the depository — NSDL or CSDL — to record the pledge. This noting had to be sent to the depository. Within 15 days, the depository had to record the pledge and intimate the DPs of the pledgor and the pledgee. The entry of the creation of the pledge had to be intimated. If the depository did not create the pledge, it had to explain why to both pledgor and pledgee through their DPs. If the pledgee applied to the depository through its DP, the depository could cancel the pledge. The *pledgor* could also seek a cancellation through its own DP, but with the prior concurrence of the pledgee.

**65.** In paragraph 79, *PTC India*n considered the impact of the phrase "subject to the provisions of the pledge documents". It held in terms that Regulation 58 (8) does not curtail or restrict the rights of the parties in law but instead respects parties' autonomy and the freedom to decide the terms of the pledge. Regulation 58(8) does not nullify any provision of the Contract Act. The stipulation that the pledgee may invoke the pledge and get itself recorded as the 'beneficial owner' is mandatory: no pledge document could stipulate to the contrary, i.e. the agreement could not provide that the pawnee could not invoke the pledge, or that the depository could not or was prohibited from recording the pledgee as a

beneficial owner. Consequently, the Supreme Court interpreted Regulation 58(8) to have a very limited objective and purpose. A pledgee must record itself as a 'beneficial owner' — and this is important — before he proceeds to sell the pledged security. No such sale by a pledgee in exercise of his Section 176 rights is possible *without* the pledgee being first noted as a 'beneficial owner'. As the Supreme Court put it:

> "to reiterate, this requirement of sub regulation (8) to Regulation (58) does not circumscribe or limit the contractual rights and obligations agreed upon between the parties on the agreed terms including the pawnee's right to sale the pawned goods".

**66.** In the same paragraph, the Supreme Court also said that the terms of the contract between pledgor and pledgee are not permitted to override the Contract Act as explained earlier and the requirement of compliance with Regulation 58(8). Parties cannot contract out of Regulation 58 any more than they can contract out of Sections 176 and 177. In other words, Regulation 58(8) was harmonized with the Contract Law on pledges in Sections 176 and 177.

**67.** Importantly, the Supreme Court explained that the object was to ensure compliance with the procedural requirements for sale of demat securities. Regulation 58(8) was not intended to interfere with the freedom to contract consistent with the Contract Act and other laws. Even if the pledged document violated Regulation 58(8), the pledge itself would not be rendered void or illegal; all that would

happen was that *enforcement* of the pledge would be *unattainable pending compliance with Regulation 58(8).*

**68.** The Supreme Court then proceeded towards the end of the *PTC India* judgment to apply the law as explained it to the facts of the case before it. In that case Clauses 6.1 and 6.2 (set out in paragraph 98) also contemplated a transfer to the pledgee. The Supreme Court said there was a distinction between a mere transfer in the name of the pledgee as a 'beneficial owner' and the actual sale of the pledged shares. That right of sale was without prejudice to any other right under applicable law. The Supreme Court explained this as a two-stage process. The first was the indispensable requirement of reasonable notice. The second was the sale by the pledgee — and in the case of demat securities, this would require to pledgee to get its name entered and recorded as a beneficial owner before any sale could be effected. The clause in the case before the Supreme Court specifically permitted the pledgee to get itself recorded as such a beneficial owner. This was consistent with Regulation 58(8). In paragraph 103, the Supreme Court dealt with another clause and held that until the debt was repaid, the pledgor would remain the beneficial owner of the shares except on a sale made by the pledgee. This is probably a parallel to Clause 5 of the pledge document read with Clause 7. There was then a clause of waiver by the pledgor of rights under the Depositories Act and the SEBI Regulations but the Supreme Court said that this waiver clause would only apply if the Depositories Act or the Regulations or any other law permitted the parties to so contract. It reiterated that a contract cannot be inconsistent with the provisions of existing law including regulations unless the law permits the parties to do so.

**69.** It is therefore Mr Seervai's submission that even viewed more narrowly, or more accurately, viewed from any perspective, YBL cannot acquire any rights in respect of the pledged shares. To reiterate: it is not a pledgee; it is not a party to pledge the document; it is not a nominee; and Catalyst has a restricted right to transfer to itself and to get its name recorded as beneficial owner in its capacity as a pledgee but no further dispositive rights whatsoever. Once, therefore, Catalyst became the beneficial owner it could only sell to a third party. In other words, the moment Catalyst exercised its rights under Regulations 58(8), and which right is to facilitate a sale of the pledged shares, Catalyst made an election in its capacity as a pledgee and took one of the two steps required to give effect to its rights as a pledgee, namely recording itself as a beneficial owner. What would then remain is the question of notice of proposed sale by Catalyst to a third party. Until that sale actually took place, World Crest had the right of redemption.

**70.** At this stage we believe it is important to reproduce paragraph 104 of *PTC India*:

> **104**. PIFSL by the letter dated 23rd January 2018 had informed MHPL in terms of Clause 6.1 that there has been an occurrence of default, which has continued and, therefore, they, on 16th January 2018, in exercise of its right under **Clause 6.1 of the pledge deed, have applied for transfer of the pledged shares in its name. Consequently, all the rights in the pledged shares, including but not limited to the right of attending general body meetings, voting rights, and rights to receive dividends and other distributions, now vests with them as per Clause 2.3(A)(ii)(b)96 of the pledge**

**deed.** This intimation to MHPL is without prejudice to any rights or remedies PIFSL has in terms of the pledge deed or security documents executed in pursuance of the bridge loan agreement. PIFSL expressly reserved its right to transfer and sell pawned shares for value providing five days' notice as required under Clause 6.2 of the pledge deed and Section 176 of the Contract Act. **We would, without hesitation, therefore hold that on becoming the 'beneficial owner' in the records of the 'depository', the pawnee had complied with the procedural requirement of Regulation 58(8) to enforce the right to sell the shares. Thereafter, such a sale should be made according to Sections 176 and 177 of the Contract Act.** Violation of the said provisions, if made by PIFSL, would have its consequences as per the law. **Pawn has not been sold and there is no violation of the Contract Act or for that matter the Depositories Act and the 1996 Regulations. PIFSL has not overlooked its obligations under Sections 176 and 177 of the Contract Act by relying upon sub-regulation (8) to Regulation 58, which has an entirely different object and purpose.** Recording change in the register of the 'depository', whereby PIFSL as the pawnee has become the 'beneficial owner', is only to enable the pawnee to sell and transfer the shares in accordance with the Depositories Act and the 1996 Regulations. **The object and purpose of sub-regulation (8) to Regulation 58 is not to nullify the obligation of MHPL i.e., the pawnor, and PIFSL i.e., the pawnee, under the Contract Act but to enable PIFSL to exercise its rights under Section 176. It also follows that MHPL is entitled to redeem the pledge before the sale to a third party is made.**

(*Emphasis added*)

**71.** Mr Seervai argues that in the first emphasized portion above,

> Clause 6.1 of the pledge deed, have applied for transfer of the pledged shares in its name. Consequently, all the rights in the pledged shares, including but not limited to the right of attending general body meetings, voting rights, and rights to receive dividends and other distributions, now vests with them as per Clause 2.3(A)(ii)(b)96 of the pledge deed.

The Supreme Court was merely recording the submission being made before it, not return a finding. Mr Khambata would have it exactly otherwise. We do not need to say anything on this. It is enough to note that the Supreme Court did *not* return a finding that the transfer of these voting rights, etc., was contrary to law, i.e. contrary to the Contract Act, the Depositories Act or Regulation 58(8). We do not think we can read such a finding into *PTC India*.

**72.** Mr Chinoy for Dish TV addressed us on a correct reading of the law. His submission was that neither under the pledge document nor in law could Catalyst as the pledgee act as the whole owner with full-envelope dispositive rights over the pledged securities. Regulation 58 introduces a concept of 'invocation', notably absent in Sections 176 and 177, but this was needed because without an invocation there is simply no occasion for a pledgee to call for a change in the depository's records to show the pledgee as the 'beneficial owner'. This change required by Regulation 58 is not a transfer of general property, he submits, but is only for the purposes of sale and is one of the two required stages (the other being reasonable notice). Viewed from any perspective, a nominee falls outside the frame of Regulation 58. To use the 'beneficial owner' change to further transact is illegal. YBL as a nominee gets no rights.

**73.** Mr Khambata for YBL first presented what he described as undisputed facts. The indebtedness of the borrowers to YBL in an amount of Rs. 5,270 crores or more cannot be disputed. There is no attempt to pay or to redeem. There never has been. Transfers under Regulation 58(8) showing Catalyst as the beneficial owner and then on 7th August 2021 YBL as such have already happened. The Extraordinary General Meeting notice has been issued and last Monday, 20th June 2022, YBL already exercised its rights. Historically, the narrative shows that there has been no less than eight previous attempts to stall YBL and to defeat the pledge agreement. This is the ninth.

**74.** He puts his case like this. Under the Companies Act or the Depositories Act, the only person who can vote at any Annual General Meeting is specifically noted in the statute as being the beneficial owner. Only a beneficial owner is a member of the company. *PTC India* does not, as the Plaintiff would have it, create a new or a subsidiary class of company members or shareholders. The argument by Mr Seervai and by Mr Chinoy is, in his submission, one that leads to the creation of some sort of distinct class of beneficial owners (shareholders) with significantly diminished rights because they are pledgees. Once a pledgee becomes a beneficial owner, he can act in all manners as such. Section 47 of the Companies Act, Section 106 of that Act, and Section 10(3) of the Depositories Act all tell us that once an entity is shown as a beneficial owner, it is so for all purposes.

**75.** Further, he submits that the Contract Act itself is not restrictive. Nothing prevents the parties from contracting or agreeing in a manner not inconsistent with their rights. In any case, until Catalyst or YBL effects a sale of the pledged security, both Catalyst and YBL are clear that the shares continue to constitute security. All that World Crest needs to do if it is so very agitated about voting rights is to redeem the pledge that it so solemnly made. Neither Catalyst nor YBL have claimed that they have put the pledged securities to sale. They do not claim that they have sold these to themselves. Any sale would necessarily require a reasonable notice of sale.[27] But when Mr Seervai and Mr Chinoy say that the transfer as a beneficial owner has to be restricted to a future sale to third parties, and until then the beneficial owner can do absolutely nothing, this leads to an unviable and thoroughly inequitable situation. The *PTC India* decision does not interpret Regulation 58(8) as being restrictive. It is only a necessary step to facilitate the sale — without it being operated, i.e. without the pledgee being first recorded as the beneficial owner in the depository's records, the next step of a sale to a third party (after reasonable notice) is not possible. A mere transfer by the pledgee to itself is not inconsistent with Sections 176 and 177. The pledgor's rights are intact until the sale. But, *in the meantime*, there is no restraint on exercising all powers as what we may call a "pledgee-transferee".

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**27** Which is distinct from a notice that the pledge is being invoked, not a requirement of Sections 176 or 177 but only of Regulation 58(8) for the purposes of the pledgee being recorded as the 'beneficial owner'.

**76.** Mr Khambata also points out that the contract, i.e. the pledge document, contain an important negative covenant in clause 10.3, which reads:[28]

> **10.3 Negative Covenant by the Pledgor(s)**
>
> During the currency of this Deed and/or Agreement, the Pledgor(s) shall not.
>
> (a) further pledge, sell, transfer or otherwise create any charges or other encumbrances or liabilities of any nature whatsoever or dispose off or deal with any of the securities without the prior written consent of the Pledgee and nor shall they, in any manner do or permit or cause any act to be done, whereby the securities are in any manner prejudicially affected.
>
> (b) stop or attempt to stop any transfer of securities in favour of and in the name of, the Pledgee or their respective nominee or in the name of any purchasers of the same in the event of the Pledgee exercising their right of sale under and in accordance with this Deed; and
>
> (c) file any application or claim for the rectification, modification or alteration of the register of members or records of the Depository or the Pledgor Participants, in respect of any transfer of the Securities made by the Pledgee.
>
> (d) vote in any manner that is inconsistent with the terms of the Deed and other Transaction Documents or prejudicial to the interest/rights of the Pledgee and/ or the Lender(s) or which would give rise to an Event of Default."

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**28** Page 254.

**77.** What the Plaintiff and a company is now seeking to do, he says is to curtail the rights of Catalyst. All these congeries of legal submissions and litigations have only one purpose: at any cost, and in any circumstances, not to redeem and yet to prevent the pledge document or contract from being operated as promised.

**78.** We believe, on a careful consideration that Mr Khambata is correct on two very broad issues. *First*, whether on this presentation on behalf of World Crest, it can be said that it has made out so overwhelming a prima facie case that an order in its favour had to be made in the impugned order; and since it was not, whether we *must* do so. As the learned single Judge said there are contentious issues. There is the historical background. We are being asked to infer that the recording of Catalyst's name under Regulation 58(8) as the beneficial owner results in it having some severely curtailed rights as a beneficial owner. We find it difficult to accept this proposition especially when we look at it like this: that those rights that Catalyst or Catalyst's transferee or nominee YBL is now exercising can all be brought to an end in none stroke — by World Crest by exercising its right of redemption. This it refuses to do.

**79.** *Second*, we are being asked to presume that the conferment of voting rights in Clause 2.1(b) amounts or equates to 'the general property' in the shares, and the contract or pledge document could not so provide. We are shown no clear interdiction, but are being asked to read it into *PTC India* and the law relating to pledges. Clause 2.1 says that it preserves all rights under Section 176. Therefore, the parties knew exactly what they were about when they

entered into the contract. *PTC India restates* long-standing law on pledges; it does not re-write it. PTC India's focus was, in fact, Regulation 58(8), and whether *this* created any new rights or obligations, and, specifically, whether it changed the law under Sections 176 and 177. The Supreme Court held *that it did not*. Therefore, the law on pledges is, even after *PTC India*, exactly as it stood before; as it stood at the date of the institution of the suit; and as it stood when the pledge agreement was entered it. There are no changed circumstances. Further, it is emphatically not shown that even in the pre-Regulation 58(8) period, a pledgor could not contract to give the pledgee voting rights in the pledged shares. No such prohibition is shown to us.

**80.** An interesting thought experiment might be to consider the situation as its stood before the era of the dematerialization at a time of physical securities when they were accompanied with blank transfer forms. If there was a power of such transfer, Mr Khambata argues, and it was effected surely it could not be suggested that the transferee would be rendered such an emasculated member of the company.

**81.** We do not think we need today to return any final pronouncement of law. That is emphatically not our task in appeal. It might have been had we been required to finally decide the question. For the purposes of an ad-interim application and in an appeal against an ad-interim order, we must only see what *Wander v Antox* and *Mohd Mehtab Khan* permit: is the view of the learned single Judge plausible?

**82.** It is not just a matter of a prima facie case, overwhelming or underwhelming. We are also bound to look at the question of where falls equity. It seems to us that World Crest's case however long on legal argumentation is remarkably short on equity. World Crest refuses to redeem the pledge. The law is clear that it cannot, without Catalyst's express approval, compel a sale of security. Catalyst is not *bound* to sell the security. It may do so. It may also file for recovery. For either case, it must record itself as the beneficial owner. There can be no quarrel with this. But, at the same time, World Crest contends that the security should count for nothing. It is waste, and entirely notional. Clause 2.1(b) is barren. At the cost of repetition, we reproduce it again, without the intervening portions:

> **2.1 Pledge**
>
> In consideration of the Lender(s) having lent and advanced and/or agreed to lend and advance the Facility(ies) to the Borrower on the terms and subject to the conditions set out in the Transaction Documents, the Obligors hereby confirm that for securing the due payment, repayment or reimbursement, as the case may be, of the Secured Obligations, each Pledgor; …
>
> (b) **as an owner of the Securities, pledges all of its rights (*including voting rights in or rights to control or direct the affairs of the Company)*,title and interest in and to the Securities, and all certificates and other instruments representing the Securities, to the Pledgee with such rankings as detailed in Schedule III hereto;**

**83.** We are not shown anything to indicate, even prima facie, that World Crest could not have validly made this bargain. We are asked, instead, as if this is an 'overwhelming prima facie case', to hold that

this clause must be written out of the contract altogether. In other words, we are asked to hold — prima facie — that World Crest is *not* bound by the terms of the bargain it struck. That is merely asking for the impossible. Catalyst cannot be compelled to sell. World Crest will not redeem. In the meantime Catalyst can do nothing. This, we are asked to believe, is an equitable approach that the learned Single Judge should have been mindful of at World Crest's instance.

**84.** In our view, on the equitable considerations, apart from the lakh of a prima facie case, and on the questions of balance of convenience and irretrievable prejudice, World Crest has made out no case whatsoever.

**85.** We find it impossible to fault the decision of the learned Single Judge. He correctly refused to exercise the discretion vested in him. So do we.

**86.** The Appeal has no merit. It deserves to be dismissed. It is. No costs.

**87.** In view of this, the Interim Application does not survive and is also disposed of.

**88.** Finally, we must make some note of the time frames given the evident urgency. We heard the matter for the entire day yesterday (22nd June 2022) until 5.00 pm. We said we would pronounce the judgment in Court today. We have done so from 10.30 am until about 1:30 pm. Meanwhile, though a member of the Bench (Madhav

J Jamdar J) is indisposed, he has joined online. The judgment will be transcribed later today. It will then have to be circulated in draft to both of us for corrections. Court offices are closed on Saturday, 25th June 2022. The earliest this judgment will be uploaded and available online is therefore Monday, 27th June 2022. We note this lest it be said at any stage that the Judgment though pronounced in open Court has not been made immediately available. We reiterate that it will not be available until Monday, 27th June 2022.

**89.** At Mr Seervai's request, however, we have separately released the operative portion of this Judgment.

**(Madhav J Jamdar, J)** **(G. S. Patel, J)**