

(2018) 01 DEL CK 0052

In the Delhi High Court

Case No : 385 of 2003

IN THE MATTER OF ROYAL AIRWAYS LTD.

APPELLANT

Vs

NIL

RESPONDENT

Date of Decision : 11-01-2018

Acts Referred:

[Contract Act, 1872](#), [Section 176](#) -
Pawnees right where pawnor makes default

Citation : (2018) 01 DEL CK 0052

Hon'ble Judges : Yogesh Khanna

Bench : Single Bench

Advocate : Atul Sharma, Abhishek Sharma, Dayan Krishnan, Pratishtha Vij, Aakash Lodha, Sanjeev, Arvind K Nigam, Manmeet Arora, Tarang Gupta, Keshav Sehgal, Mikhil Sharda

Judgement

CA No.1540/2013

1. The applicant in this application has prayed for the following:- "(a) In terms of the judgment and order dated November 9,2012 passed in Company Appeal No.1 and 2/2011 and Company Appeal No.28/2010 passed by the Hon''ble Division Bench of this Hon''ble Court, decide the question of and effect of the alleged sale of the Pledge Shares and purported receipt of consideration of Rs. 1.39 crores by Malanpur on the alleged sale of the Pledged Shares;

(b) direct that the alleged transfer of the 55,60,000 Pledged Shares by the Respondent No. 1 to be nonest and void ab initio; and

(c) direct that the Pledged Shares of the Applicant in question be released to the registered owners, the Investment Companies; and

(d) direct that the Respondent No.1 be directed to collect the principal amount of Rs. 3.5 crores already lying deposited with the Registrar of this Hon''ble Court pursuant to the sanctioned Scheme of Compromise; and

(e) direct that any balance amount deposited in this Hon''ble Court as amount to be distributed for second tranche under the Scheme of Compromise, be directed to be refunded to the Applicant, together with interest; and

(f) direct that the Respondent Nos. 2-4 be directed to accept the shares or amount as the case may be; and/or pass such other and further order or orders as this Hon''ble Court may deem fit and proper in the facts and circumstances of the case and in the interest of justice."

2. Before coming to the question as to if the reliefs sought need to be granted to the applicant, I may refer to the factual matrix of the case as put by the applicant herein:- i) In November 1995 respondent No.1 had extended an inter corporate deposit of Rs.5,00,00,000/- at interest rate of 20% p.a. to the Applicant (Spicejet) against the pledge of a total 55,60,000 shares of the Applicant, held by: a). respondent No.2 (34,00,000 shares), b). respondent No.3 (6,60,000 shares) and c). Respondent No.4 (15,00,000 shares)

ii) In February 1997 the winding-up Petition - C.P. No.68/1997 was instituted by Indian Oil Corporation against applicant.

iii) In April, 1997 Respondent No.1 filed a Civil Suit bearing CS No.161-A of 1997, against the Applicant as well as Respondent Nos.2-4, before the High Court of Kolkata praying, inter alia: a) for decree of sum of Rs.5,83,96,465/-; b) declaration that the shares of the Applicant standing in the name of the Respondents No. 2-4 are all hypothecated and/or pledged in favour of Respondent No.1; c) a declaration that the Respondent No.1 herein is entitled to sell the said shares by public auction and/or private treaty and realize the sale proceed thereof in satisfaction of its claim; d) a mandatory injunction directing Applicant and Respondent Nos. 2 to 4 to execute and furnish fresh blank transfer deeds in respect of shares; and e) a decree for sale of the said pledged shares and appropriation of the proceeds thereof by Respondent No.1.

iv) The respondent No.1 in paragraph 18 of the said plaint averred that the validity of blank transfer deeds executed in 1995, in respect of shares, had all expired.

v) On 22.04.1997 I.A. No. GA 1539 of 1997 was filed by Respondent No.1 in the aforesaid suit seeking, inter alia:

a. Liberty to sell the shares (pledged shares) and realize the sale proceeds thereof;

b. Injunction restraining the Applicant, Respondent Nos. 2, 3 &4, their officers, servants etc. from dealing with the disposing of, alienating and encumbering any of its assets, shares and investments:

c. The Respondent No.1 also sought a direction to execute fresh blank transfer deeds against the Respondent Nos. 2 to 4.

vi) On 23.04.1997 interim order was passed by the High Court of Kolkata

restraining the Applicant and Respondent Nos. 2-4 from dealing with, disposing of, alienating or encumbering any of their assets, shares and investments and restraining the Applicant from operating its bank accounts without leaving a sum of Rs.5,83,00,000/-. No order was passed granting liberty to the Respondent No. 1 sell the pledged shares.

vii) On 08.09.1997 the High Court of Kolkata passed a judgment and decree upon admission against the Applicant for the entire amount totaling to Rs.5,83,96,465/- as prayed for by the Respondent No.1. The interim order dated 23.04.1997 was directed to continue. The civil suit No.161A of 1997 as regards prayers seeking liberty to sell the pledged shares held by Respondent No. 2-4 was kept pending.

viii) On 29.04.1998, an Official Liquidator was appointed by this Court in C.P. No.68 of 1997 for the applicant company.

ix) In May 1998 Respondent No.1 filed an Execution Petition No.154 of 1998 in C.S. No.161-A of 1997 for execution of judgment and order dated 08.09.1997 before the High Court of Kolkata. The Respondent No.1 duly acknowledged in the said application that the suit has been directed to be kept pending with regards to the other reliefs claimed in the plaint.

x) On 23.06.1998 the High Court of Kolkata stayed proceedings in the Execution Petition No.1545 of 1998 on account of appointment of Official Liquidator by High Court of Delhi.

xi) On 07.12.1998 Respondent No.1 alleges that it issued a separate letter each to Respondent No. 2-4 informing that the Respondent No. 1 had sold the pledged shares. No details of the alleged sale were averred in the said letter. The letter allegedly called upon the Respondent No. 2-4 to execute the fresh Transfer Deeds.

xii) On 19.03.1999 Respondent No.1 alleged that the Respondent No.2 to 4 in turn furnished new sets of Transfer Deeds, in respect of the pledged shares along, with covering letters dated 15.03.1999.

xiii) Further in 1999, three Companies namely, Twenty Four Carat Investment Pvt. Ltd., RR Stock & Shares Brokers Ltd. and Prasad & Co. Pvt. Ltd. (hereinafter referred to as the "Alleged Purchasers")thereafter applied to the Applicant Company for transfer and registration of 40,48,200 shares and enclosed the fresh Transfer Deeds dated 1999 allegedly issued by the Respondent No. 2 to 4.

xiv) On 04.09.1999, Applicant Company did not affect registration of transfer on the following three grounds: a) original transfer deeds pledged to the Respondent No. 1 had expired; b) interim order dated 23.04.1997 passed by the High Court of Kolkata was subsisting and it restrained the Applicant and Respondent No.2 to 4 from dealing with or disposing off its assets; and c) the Respondents No.2 -4 specifically disputed execution of the alleged fresh transfer deeds now provided by the alleged purchasers. It informed the Applicant

Company that the said transfer deeds are forged and fabricated. It has now been established that the officer, Mr. Kuldeep Bhatnagar, who had allegedly signed the fresh transfer deeds in March 1999 was not authorized to sign the same as he had left the employment of the companies at the material time (a fact which has been confirmed by the Company law Board). The alleged new sets of Transfer Deeds, have thus been found to be forged and fabricated.

xv) The aforesaid sale was additionally invalid as Respondent No. 1 failed to give the mandatory notice under Section 176 of The Indian Contract Act, 1872 to the Respondent No.2 to 4 before selling the pledged shares. In view of the same, the purported sale is illegal, invalid, null and void.

xvi) The purported sale was in violation of the interim orders dated 23.04.1997 and 08.09.1997 passed by the High Court of Kolkata in CS No.161-A of 1997. The Respondent No.1 did not seek prior permission of the Court before carrying out the purported sale. It is a matter of record that the Respondent No.1 had specifically prayed for grant of liberty to sell the pledged shares. However, the Court refused to grant the liberty.

xvii) As per the case of the Respondent No.1, it has sold shares to (a) Twenty Four Carat Investment Ltd. and (b) RR Stocks and Shares Brokers on 07.12.1998. It is a matter of record that sale consideration from Twenty Four Carat Investment Ltd. to the Respondent No.1 was outstanding (at least till 2011), as recorded in the charge sheet filed by Police in FIR No.31 Of 2005 on the complaint of respondent No.1. The charge sheet filed by Police in FIR No.31/2005 through record the shares were sold by the Respondent No.1 to Twenty Four Carat Investment Ltd. and RR Stocks and Shares Brokers on 07.12.1998 but it also recorded RR Stocks and Shares Brokers made payments to the Respondent No.1 on 12.04.1999, 20.04.1999, 26.04.1999 and 12.05.1999 and whereas Twenty Four Carat Investment Ltd did not make payments to the Respondent No.1 and the said fact has been admitted by Twenty Four Carat Investment Ltd. in its reply dated 19.09.2005 to the police. This is in violation of The Securities Contracts (Regulation) Act, 1956 and for this reason additionally sale is null and void. Reliance is placed by the applicant upon the dictum of the Supreme Court in Bhagwati Developers Pvt. Ltd. vs. Peerless General Finance and Investment Company Ltd. & Anr. 2013 (9) SCC 584.

xviii) In September, 1999 one of the Alleged Purchasers - 24 Carat Investment Pvt. Ltd, allegedly holding 18,09,000 pledged shares filed a Co. Petition 12/11/99 under section 111A of Companies Act before the Company Law Board praying that Applicant be directed to register the transfer. However, on 13.01.2000 the said petition was dismissed by the Company Law Board vide its order dated 13.01.2000 on the grounds that a) the transfer deeds, purportedly forwarded along with covering letters dated 15.03.1999, were held to be forged and not genuine; and b) letter dated 07.12.1998 was never received by the Respondent No. 2 to 4. The finding of the Company Law Board to this effect in its order dated 13.01.2000 passed in C.P. 12/11/99 has attained finality.

xix) On 06.03.2000 an appeal was filed by Twenty Four Carats Investment Pvt Ltd bearing Co. A. No.2 of 2000 against the order dated 13.01.2000 passed by the Company Law Board. Issue of revalidation and non-registration of transfer of pledged shares was raised in the appeal. However, the said appeal was dismissed for non-prosecution vide order dated 16.07.2010 and thus finding of the Company Law Board viz the transfer deeds procured in 1999 by the Respondent No. 1 were forged and fabricated attained finality.

xx) On 07.03.2000 alleged purchasers got the transfer deeds executed in 1995 revalidated and submitted the same to the Registrar and Transfer Agent, M/s Karvy Consultants Ltd, for transfer and registration of 40,48,200 pledged equity shares on 19.02.2000. The Registrar and Transfer Agent rejected the transfer on 07.03.2000 due to the pending litigation and for requirement of fresh signatures of the transferors on the 1995 transfer deeds. This issue was also raised in the appeal Co. A.2/2000 filed before this Court against the order dated 13.01.2000.

xxi) In the year 2000 Criminal Complaint was filed by the respondents No.2 to 4 complaining about the illegal sale of pledged shares and criminal breach of trust. However, no action was taken in this regard. Accordingly, the Respondent No.2 to 4 filed an application under Section 156(3) of The Code of Criminal Procedure, 1973 seeking direction for registration of FIR against the Respondent No.1 and alleged purchasers. On 24.04.2014, the Metropolitan Magistrate, Saket Court, Delhi directed for the registration of FIR No.375 of 2014 against the Respondent No.1 and alleged purchasers under Section 406, 420 and 468 of the Indian Penal Code, 1860.

xxii) The applicant then filed scheme of compromise under Section 391/394 of The Companies Act, 1956 before this Court being C.A. 410 of 2000.

xxiii) In May, 2000 Applicant filed modified scheme of compromise before this Hon'ble Court being C.A. 797 of 2000.

xxiv) On 07.08.2000 the Court in C.A. 555 of 2000 was pleased to direct that decrees/ final orders, if passed against the Applicant Company, shall not be executed without the leave of this Court.

xxv) In January, 2001 Respondent No. 1 filed an application bearing GA No. 2293/2001 in CS 161A/1997 praying for direction to the Applicant herein and its transfer agent M/s Karvy Consultants Ltd (hereinafter referred to as "Karvy") to register transfer of 40,48,200 and 15,11,200 shares each in the names of Alleged Purchasers.

xxvi) On 03.05.2001, appointment of Provisional Liquidator was recalled in C.P. No. 68 of 1997.

xxvii) On 22.08.2001 an order was passed by the High Court of Kolkata in GA 2293/2001 holding the order of CLB was binding on transferees so long as the same was not set aside by High Court of Delhi and the Respondent No.1 was trying to get relief in indirect way. The Respondent No.1 filed an appeal against

the order dated 22.08.2001 with APO No.317/2001 in APOT No.615/2001 in October, 2001 before the Division Bench of the High Court of Kolkata.

xxviii) On 20.12.2001 an order was passed by this Court in CA 1889/2001 in CA 797/2000 directing that decrees/ final orders passed against the applicant company will not be executed, without leave of this Court.

xxix) In March 2003, Applicant Company herein filed C.A. No.265 of 2003 in C.A. 797 of 2000 against Mr. S.K. Modi and Respondents No.2- 4 Companies praying that board meeting dated 31.07.1996 wherein 11624472 equity shares (pledge shares) had been made fully paid up, be declared void.

xxx) On 29.07.2003 this court observed that updated scheme in C.A. No. 797 of 2000 was bonafide and reasonable as well as in public interest and should be sent for consideration under Section 397(1) of the Companies Act, 1956. Objections raised by the Respondent No. 1 against the scheme were rejected. No appeal was filed against this order.

xxxi) On 06.09.2003 meeting of ICD and staff creditors was held. Respondent No.1 participated in the meeting of ICDs. Applicant filed the present CP 385 of 2003 for sanction of the scheme of arrangement.

xxxii) On 07.07.2005, respondent No.1 filed second execution application being E.C. No.54 of 2005 before the High Court of Kolkata for execution of order dated 08.09.1997. The said execution application was allowed and the accounts of the Applicant were attached. The applicant company preferred an appeal APO.T 469/2005 against the aforesaid Order dated 07.07.2005. The Division Bench of the High Court of Kolkata allowed the appeal on 20.07.2005 and vacated the aforesaid order dated 07.07.2005 as stated herein after.

xxxiii) On 15.07.2005 this Court sanctioned the Scheme of Compromise being C.P. No.385 of 2003. The objections of Respondent No. 1 to the scheme of compromise were dismissed. As per the scheme: a) The Respondent No.1 was held to be entitled to only receive 70% of the principal amount advanced to the Applicant Company; and b) Respondent No.1 was directed to return the shares deposited with it as security to the Court.

xxxiv) On 20.07.2005, APO.T 469/2005 filed by the Applicant Company against order dated 07.07.2005 was allowed. The Appellate Court held the Respondent No.1 was deemed to be in same class as unsecured creditors and that the scheme is binding on Respondent No.1 and it must not proceed with execution proceedings.

xxxv) The appeal filed by Respondent No.1 against the Single Judge's order dated 22.08.2001 was heard and orders reserved in December 2003. The appeal was disposed off by the Division Bench of High Court of Kolkata vide its judgment dated 11.07.2005 directing the Applicant and Karvy to register the transfer of 40,48,200 and 15,11,200 shares in the name of respective purchasers. The Applicant and Karvy were restrained from returning shares without affecting the

transfer. They were further restrained from recalling 15,11,200 shares which they had returned, without affecting any transfer. It is alleged this order was passed by the Division Bench without considering the effect of the scheme which was pending consideration and ultimately sanctioned on 15.07.2005 and that the effect of the sanction rendered the order dated 11.07.2005 otiose. Further S.L.P. No.17474 of 2005 was filed by the Applicant against judgment dated 11.07.2005 and by an Order dated 12.09.2005 the Supreme Court of India stayed the direction of the transfer of shares as contained in order dated 11.07.2005 of the Division Bench of Kolkata.

xxxvi) On 26.11.2008 Memorandum of Settlement was executed between Modi Global Enterprises, Royal Holdings, Applicant and Mr. B.S. Kansagra. The dispute regarding rights shares including pledge shares being partially paid and whereby the parties to the said settlement agreed to settle inter-se their all disputes. It was agreed the pledged shares would be kept by the nominee of the Applicant in escrow till the time the issue of transfer of such share is decided by the Court. Pledge shares were treated as fully paid on investment companies agreeing to transfer 12 lakh shares to the nominee of the applicant for sale and realization towards payment of the call money.

xxxvii) On 16.01.2009, C.A. 265 of 2003 was dismissed as withdrawn. Issue regarding transfer of pledged shares in favour of the alleged purchasers was kept pending subject to determination of SLP No. 17474 of 2005. The Respondent No. 1 was given liberty to raise its contentions in this regard before the Supreme Court.

xxxviii) By an order dated 06.07.2009, the Supreme Court disposed off SLP 17474 of 2005 (filed against order dated 11.07.2005) of Division Bench. The respondent No.1's plea that there is no impediment in transfer of shares was not accepted. The Supreme Court directed this Court to decide the issue of transfer of shares in accordance with law and till such time the issue is decided, status quo was directed to be maintained with respect to transfer of shares.

xxxix) On 14.07.2010 C.A. 1130 of 2005 filed by the Respondent No. 1 for review of order dated 15.07.2005 in C.P. 385 of 2003 was dismissed by this Court. The Company Court upheld the validity of the scheme.

xl) On 04.01.2011, SLP filed by Applicant against orders dated 14.07.2010 was withdrawn since remedy of appeal was available.

xli) On 23.11.2011, The Single Judge of the High Court of Kolkata in CS 161A of 1997 has after taking note of the order of the Division Bench dated 11.07.2005 held: "it is said by the applicants (Respondent No. 2 to 4 herein) that the above shares have till date not been registered. I only observe that if such is the case, any right arising out of such nonregistration or subsequent registration is kept open."

xl ii) On 09.11.2012, Appeals 1 & 2 of 2011 filed by Applicant and Respondent

No. 2 to 4 and cross appeal of Respondent No.1 against Order dated 14.07.2010 were adjudicated by the Division Bench of the this Court. The Division Bench upheld the classification of Respondent No. 1 as an unsecured creditor and held sanction scheme to be valid and binding on the Respondent No.1. However the issue of alleged sale of shares and purported receipt of Rs. 1.39 Crs by Respondent No.1 on the sale of pledged shares was not adjudicated upon. The Division Bench observed this issue can be decided by this Court.

xlili) In March 2014, an application bearing Co. Appl No. 5459 of 2014 was filed by the Respondent No.1 before the Division Bench of the this Court seeking clarification of paragraph 32 of Judgment dated 09.11.2012.

xliv) On 02.05.2014, the Division Bench of this Court dismissed the clarification application preferred by the Respondent No.1 stating that no clarification was required in the Judgment dated 09.11.2012.

xliv) On 10.11.2014, the Metropolitan Magistrate, Saket Court, New Delhi has allowed the release of the original share certificates of 40,48,200 shares and handed over of the same to the Respondent No. 2 to 4 on superdari.

3. Hence the issue now before this Court remain to be decided in this application is if the sale of the pledged shares by respondent no.1 to the alleged purchasers is non-est and if giving such a declaration would upset the finding dated 11.07.2015 of Division Bench of the Kolkata High Court.

4. The learned senior counsel appearing on behalf of the respondent No.1 argued the question of transfer of shares could not be agitated now as has already been adjudicated upon by the Division Bench of this Court in its judgment dated 09.11.2012 and if the present application is allowed, it shall be reopening of the same issue which has attained the finality in various court proceedings. The respondents No.2 to 4 should not be allowed to reopen the issues which have attained the finality.

5. The argument of learned Senior counsel for respondent seems to be misplaced. The Division Bench of this Court in its judgment dated 09.11.2012 has rather left the issue open as observed in para No.32 of said decision, as is extracted below:- "Learned counsel for the Modi Group and Spice Jet had argued and contended before us that sale and transfer of 55,60,000 pledged shares by Malanpur was null and void and contrary to law. Reference was made to the orders passed in the Civil Suit at Calcutta. It will not be appropriate and proper for us to go into and examine the said orders of the Calcutta High Court and proceedings as it is clearly beyond what is required and mandated by the Supreme Court in the order dated 6th July, 2009. We cannot examine or go into the question on merits relating to the proceedings pending before the Calcutta High Court and the orders passed therein. We express no opinion in this regard. We further clarify that we have not examined or gone into the question of and the effect of alleged sale of shares and purported receipt of consideration of Rs.1.39 crores by Malanpur on the sale of said shares. This is not a subject

matter in the impugned orders or in the appeal. If required and necessary this aspect/ question, when raised, can be decided by the Company Judge."

The Division Bench of this Court did not examine the effect or validity of the alleged sale of shares and purported receipt of consideration as was not a subject matter in appeal and rather left it open for determination by this Court.

6. The respondent No.1 then filed a clarification application bearing CA No.5459/2014 in Company Appeals No.1 & 2 of 2011 raising the plea of alleged transfer of shares/purported receipt of consideration cannot be re-agitated in view of judgment dated 11.07.2005 of Division Bench of Kolkata but the Division Bench dismissed the said application on 02.05.2014. Hence, the respondent No.1 cannot say the issue qua the sale of shares and receipt of consideration had attained finality.

7. The learned senior counsel for the respondent No.1 though argued the validity of sale of the pledged shares in fact has been upheld by the Division Bench of Kolkata High Court in its decision dated 11.07.2005 hence the objections qua the validity of the sale of the pledged shares ought to have been raised only before the Kolkata High Court and the Company Law Board proceedings did not have any bearing in the matter. It was argued the judgment dated 11.07.2005 noted the transfer deeds executed in the year 1995 were not in dispute and its revalidation was subsisting, hence consequential effect thereof ought to have been given and since issue of revalidation has not been challenged before any appropriate forum it could not be the subject matter of challenge in appeal. He also argued the objections raised by the respondents No.2 to 4 of the locus standi of respondent No.1 to defend the proceedings or the issue qua sale being bad for violation of Section 176 of the Indian Contract Act has since been rejected by the Division Bench of the Kolkata High Court in its judgment dated 11.07.2005 and the objection under Securities Contracts (Regulation) Act, 1956 too ought to have been raised only before such Court.

8. To appreciate this issue, the following observations of the Division Bench of Kolkata in its judgment dated 11.7.2005 seems relevant:- xxx

As we have already indicated that the fresh transfer deeds, which were signed by K. Bhatnagar in 1999, is not an issue before this Court. The appellant before this Court is seeking an order on the basis of the revalidated transfer deeds, which were undisputedly executed in the year 1995 on behalf of the respondent No. 1. Therefore, in our opinion, even if an order passed in this proceeding may consequentially render the proceeding before the Delhi High Court infructuous, the subjectmatter in issue in the proceeding before this Court and proceeding before the Delhi High Court is not the same.

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One fact, which is required to be considered, is that the execution of the transfer deeds of 1995 is undisputed and/or cannot be disputed by the respondent No. 1.

The only question is its revalidation in accordance with law. The statutory authorities have been empowered to carry out such revalidation. Therefore, so long as such revalidation is subsisting the consequential effect thereof should be given.

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we are of the opinion that the prayers as prayed for in the plaint is such that the consequential order directing registration of shares can be given by the Court so as to make the order fully effective as between the parties. Since the prayer for sale of the shares have been made consequential registration of the same is required to be made so as to make the sale fully effective. In the facts and circumstances of the case justice and equity demands that appropriate order should be passed to perfect the sale by directing registration of shares in favour of the purchasers.

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With regard to the contention that the appellant has no locus standi as title to the shares have been transferred to the purchasers, we are of the view that though in case of a share of a company the title may have passed, but such title has not yet been perfected by reason of refusal on the part of the respondent No. 1 to register of the shares. By reason of the specific statutory requirement the share register of a company is required to be changed and/or altered by inserting the name of the subsequent purchasers of the shares. In the instant case, such rectification of share register has not yet taken place. Therefore, the title would be perfect only when the share register is rectified by inserting the names of the purchasers and not otherwise.

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The shares have been duly sold. Therefore, until and unless the sale is perfected, the whole object and purpose the selling of shares would be rendered infructuous.

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In support of the proposition that the proper forum for registration of shares would be in New Delhi since situs of shares is in New Delhi, the respondent has relied upon the decision reported in AIR 1963 SC 21. In the said decision the Hon"ble Supreme Court while discussing as to which Court would be the competent Court in the facts and circumstances of the said case observed that the proper Court would be the Court where the situs of the shares lay.

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We see no reason why this Court should be divested of its jurisdiction to pass appropriate orders. We have already indicated that the direction to transfer the shares would be consequential to the main orders as prayed for. Since the sale of shares has already been concluded the only thing remains is to perfect the sale.

9. It is alleged the order dated 11.07.2005 of the Division Bench of Kolkata High Court was based on a premise the sale is valid and the court proceeds from this point to make consequential orders. The Court did not consider issue of validity of sale of shares. The learned senior counsel for applicant rather submits the Division Bench ignored the fact such sale was never ordered by the High Court in Suit No.161 A (supra) and the reasonable notice prior to sale, as required under Section 176 was never given/received as held in order dated 13.01.2000 of the Company Law Board, New Delhi.

10. Even otherwise, the decision of the Division Bench of Kolkata High Court was challenged by the applicant by filing SLP No.17474/2005. The applicant in its SLP raised various issues, interalia as follows : xxx

I. For That the High Court at Calcutta did not have territorial jurisdiction over the situs of shares and, thus, could not have adjudicated disputes in respect thereof.

J. For That the Hon''ble Court has wrongly observed that the subject matter of Appeal pending in the High Court of Delhi is relating to transfer deed which were signed by K.Bhatnagar in the year 1999 and therefore the matter before the Calcutta High Court (which is on the basis of revalidated transfer deed issued in the year 1999) is different. It is submitted that the Hon''ble High Court of Calcutta erred in as much as (i) Twenty Four Carat have specifically alleged in the Appeal that the Petitioner has refused to transfer the shares on the basis of revalidated transfer deeds (ii) the said partly paid shares are part of the Scheme of compromise and the successful working of the scheme is also dependent on the sale of the partly paid shares (iii) Company Petition 265 of 2003 is relating to the forfeiture and sale of the partly paid shares (for which the direction is granted in the Impugned Order) is pending.

K. For that the Hon''ble Court failed to appreciate that it is not the transfer deed which are the subject matter pending in the High Court of Delhi, it is the said partly paid shares which are dealt in the Scheme of compromise. ...

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L. ... The Hon''ble Court instead of deciding the fundamental question as to whether the Respondent No.1 can sell the partly paid shares or not, directed that the Petitioner should transfer the partly paid shares as the respondent No.1 had lodged the transfer deeds and the same were properly revalidated.

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N. ... It is submitted that the High Court of Delhi vide its order dated July 29, 2003 while directing the meeting of creditors has specifically stated that the updated scheme sought to be submitted by the petitioner is bonafide and reasonable and prima facie feasible as well as in public interest and in the interest of all the creditors and, therefore, it should be sent for consideration under Section 391(1) of the Act. This fact is also recorded and endorsed in the order dated July 15, 2005 sanctioning the scheme. It is submitted that although

order dated July 29, 2003 was placed before the Hon''ble Calcutta High Court in the appeal the same was not even considered in the impugned order and a finding is given on the bonafides of the Scheme for which the Calcutta High Court has no jurisdiction. The Hon''ble Court also failed to appreciate that the order dated July 29, 2003 was not challenged by Respondent No.1 and was therefore binding on Respondent No.1.

O. ... The Hon''ble Court has by impugned order interfered with the working of the Scheme and dealt with the partly paid shares which are subject matter of Scheme and forfeiture and sale of the partly paid shares will decide the fait and successfulness of the working of the Scheme.

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Q. ... the High Court of Delhi under its widest powers given to it under Section 391 of the Companies Act, while considering a scheme filed by the Petitioner, has given a finding that the shares under question are tainted and have been made fully paid by a stratagem device and that the votes in respect of the tainted shares shall be counted separately and further that the right of the petitioner to forfeit the said partly paid shares is pending in the company petition No. 265 of 2003. In view of the above the Calcutta High Court had no jurisdiction to direct the petitioner to transfer the partly paid shares the validity of which is in question and may be forfeited by the Company under the direction of the Hon''ble High Court of Delhi.

R. ... the Respondent No.1 had sought permission to sell the shares from time to time during the pendency of the proceedings before the Calcutta High Court and such permission was never granted and inspite of the same, the Respondent No.1 allegedly sold the said shares. ...

T. ... the Registrar and Transfer Agent of the petitioner has refused to transfer the partly paid shares as the revalidated transfer deeds were improper and the subject matter of the same is pending in Appeal No.2 of 2002 before the Delhi High Court. Further, there was a direct advice from Bombay Stock Exchange to refuse the transfer of partly paid shares. It is submitted that the Respondent No.1 instead of challenging the BSE order or participating in Appeal No.2 of 2002, malafidely approached the Calcutta High Court to seek direction for rectification of the register to overcome and defy the proceedings pending in the Appeal, BSE opinion and the Scheme of compromise.

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AF. Because the Hon''ble Court failed to appreciate that the application moved by the Respondent No.1 is malafide in as much as respondent had come to know that once the scheme is sanctioned, it shall be binding on Respondent No.1 and in terms of the Scheme Respondent No.1 shall be required to deposit the partly paid shares in the Court and shall be utilized for funding the working of the Scheme. The respondent No.1 in order to over reach the terms of the Scheme

has tried selling the shares and recover money in addition to what Respondent No.1 is entitled to in the Scheme.

AG. Without prejudice to its rights and contentions it is submitted that Respondent No.1 being only the Pledgee of Partly Paid Shares has no locus standi to seek registration of transfer of the pledged shares as the respondent No.1 has allegedly sold the shares in favour of the Purchases.

11. The judgment dated 11.7.2005 of Division Bench was then stayed on 12.09.2005 by the Supreme Court. The order notes: "Issue notice.

Pendency of the matters before this Court shall not stand in way of disposal of Civil Appeal No.265/2003 which is pending before the Delhi High Court.

The direction of the transfer of shares is stayed. Learned counsel for the respondent is granted four weeks" time to file counter affidavit. Thereafter learned counsel for the petitioner is granted three weeks" time to file rejoinder affidavit. Call after eight weeks."

12. Further vide order dated 06.07.2009 the Supreme Court disposed of the SLP (Civil) No.17474/2005 noting:- "By order dated 16th January, 2009 the Delhi High Court in C.M. Nos.1469-1470 of 2008 in Co.P. No.385 of 2003 observed that the question regarding forfeiture of shares is pending in the Supreme Court and it would be open to M/s Malanpur Steel Limited to make its submissions before the Supreme Court. Today when the Special Leave Petition came before this Court the above order was shown to us. We are of the opinion that the High Court should decide the said question in accordance with law. In the meantime, status quo as regards the transfer of shares shall continue till the High Court decides the matter expeditiously. Accordingly, the Special Leave Petition stands disposed of."

13. As the question qua transfer of shares was left open by the Supreme Court, the decision dated 11.07.2005 of the Division Bench cannot be said to have attained finality and rather it merged with the order dated 06.07.2009 of the Supreme Court and then came the judgment dated 09.11.2012 passed by the Division Bench of this Court which also left the issue qua the alleged sale of shares and purported receipt for consideration to be decided by this Court. Hence, the reliance on the judgment dated 11.07.2005 passed by the Division Bench of Kolkata, to say it is final, appears to be misplaced.

14. The second argument raised by the learned Senior counsel for the respondent No.1 was the respondent No.1 has already realised Rs.1.39 Crores by way of sale of pledged shares on 07.12.1998 and it opted for sale of pledged shares as a matter of right available under Section 176 of the Indian Contract Act and hence the sale cannot be held to be bad. It was argued the filing of the suit and right to sell can be exercised simultaneously.

15. Even though the argument of respondent no.1 appears to be plausible viz., a co-existing right of a pawnee to file a suit for recovery and also to sell the pledge

on reasonable notice to the pleader, but then one also need to see if Section 176 (supra) was complied with in its true spirit. Section 176 of Indian Contract Act read as under : "If the pawnor makes default in payment of the debt, or performance; at the stipulated time or the promise, in respect of which the goods were pledged, the pawnee may bring a suit against the pawnor upon the debt or promise, and retain the goods pledged as a collateral security; or he may sell the thing pledged, on giving the pawnor reasonable notice of the sale. 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."

The letter dated 07.12.1998 viz., the alleged notice claimed to have been sent per section 176 of Indian Contract Act notes :-

"Dear Sirs,

We have been holding 15,00,000 Equity Shares of Rs. 10/- each of Modi Luft Limited which have been pledged with us by you as a security against our loan of Rs.5.00 crores given to M/s Modi Luft Limited. These shares have since been sold by us and we request you to kindly give us fresh transfer deeds in the marketable lots for these shares at your earliest."

The notice/letter above cannot by any stretch of imagination be said to be a reasonable notice for sale. It rather discloses the factum of sale of shares. No opportunity was ever given to the applicant to redeem the shares.

16. Moreso, the respondent No.1 could never prove the service of notice/letter dated 07.12.1998 by which he allegedly exercised its option available under Section 176 of the Indian Contract Act. This fact is duly noted by the Company Law Board in Company Petition No.12/11/1999 in its order dated 13.01.2000 as follows:- ".....All the three letters were received by the said companies on the same day i.e. 10.12.98 and bear the stamps of Modiluft Ltd and the initials purported to be of Kuldeep Bhatnagar. It is significant to note that out of the three, Modi Overseas Investment Ltd. has its office at Hemkund Tower 98, Nehru Place, New Delhi whereas the other two associate companies have their office at the other two associates companies have their office at Maidan Gari, Mehruali. Yet surprisingly all the three letters appear to have been received by Kuldeep Bhatnagar on the same date, as the initials alongwith the stamp appear on each of them. It signifies that Kuldeep Bhatnagar was present on the same day in the different office of the associate companies and received the letter on their behalf. It is also surprising that the associate companies found none else but Kuldeep Bhatnagar to receive the letters addressed in the three associate companies. It also appears to be a curious coincidence that some Kuldeep Bhatnagar signed the sale deed to authorized signatory on 15.3.99. Besides it has not been explained as to how the stamp acknowledging receipt of the said letter were of Modiluft (P) Ltd. whereas the letters addressed to associate companies having

separate offices. It is noteworthy that in their reply the Respondent Company had denied that any letter dated 7.12.98 was received by HDCL. In view of the above, the authenticity of the letter dated 7.12.98 and the receipt thereof by the associate companies is doubtful. So far as the letters dated 15.3.99 sent by the associate companies to HDCL enclosing the transfer deeds (Annexure-G to the appeal) are concerned, the same also purports to bear the signature of Kuldeep Bhatnagar. The Respondents have denied having issued any such letters and have stated in their reply that the same has been obtained in collusion with Kuldeep Bhatnagar."

Even an appeal filed by Respondent No.1 against the above order dated 13.01.2000 of the Company Law Board stood dismissed for nonprosecution, hence the issue qua non-service of a reasonable notice u/s 176 Indian Contract Act attained finality.

17. Secondly, the Respondent No.1 admittedly had elected to file a suit No 161 A/1997 for recovery at Kolkata with a prayer to sell such shares. The respondent no.1 rather prayed for a declaration it is entitled to sell the shares by public auction and/or private treaty and realize the sale proceeds thereof in satisfaction of its claim in the Civil Suit, hence in the absence of grant of such declaratory relief by the Single Judge in Suit No.161 A/1997 the pledged shares could not have been sold by the respondent No.1. The High Court never granted any liberty to the respondent No.1 to sell the pledged shares when, admittedly, the transfer deeds though were in possession of the respondent No.1 but had since expired in November, 1996 itself.

18. The alleged transfer/sale of the pledged shares by respondent No.1 was even otherwise, in violation of an interim restraint order dated 23.04.1997 passed by the learned Single Judge in Civil Suit No. 161A/1997 restraining the respondents No.2 to 4 herein from dealing, disposing of, alienating or otherwise encumbering any of the assets, including the pledged shares. As the respondents No.2 to 4 were restrained by Kolkata High Court from effecting any transfer of the shares of the pledged shares, the respondent No.1 could not have asked for issuance of the fresh transfer deeds in view of such restraint order.

19. Further the alleged sale of 55,60,000 plus shares by the respondent No.1 is also hit by the Securities Contracts (Regulation) Act, 1956 as the sale consideration from Twenty Four Carat Investment Limited to respondent No.1 was outstanding even on the date of filing of chargesheet by the police in case FIR No.31/2005 by respondent No.1. The chargesheet of FIR No.31/2005 records the shares were though sold by respondent No.1 to Twenty Four Carat Investment Limited and RR Stocks and Share Brokers on 17.12.1998 but RR Stocks and Share Brokers made the payments to the respondent No.1 on 12.04.1999, 20. 04.1999, 26.04.1999, and 12.05.1999 and Twenty Four Carat Investment Limited did not make any payment to the respondent No.1. It was also admitted by the said company in its reply dated 19.09.2005 to the police. In Bhagwati Developers (P) Ltd. V. Peerless General Finance and Investment

Company Ltd. & Anr. (2013) 7 SCR 547, the Court held as under : 28. As stated in the preceding paragraph of the judgment, the Company Law Board has held that transfer of shares in favour of Bhagwati was also against the provisions of Section 16 of the Regulation Act. Section 16(1) of the Act confers power on the Central government to prohibit contracts in certain cases. Section 16 reads as follows:

"16. Power to prohibit contracts in certain cases.- (1) If the Central Government is of opinion that it is necessary to prevent undesirable speculation in specified securities in any State or area, it may, by notification in the Official Gazette, declare that no person in the State or area specified in the notification shall, save with the permission of the Central Government, enter into any contract for the sale or purchase of any security specified in the notification except to the extent and in the manner, if any, specified therein.

(2) All contracts in contravention of the provisions of sub-section (1) entered into after the date of the notification issued thereunder shall be illegal."

29. From a plain reading of the aforesaid provision it is evident that in order to prevent undesirable stipulation in specified securities in any State or area the Central Government by notification is competent to declare that no person in any State or area specified in the notification shall, save with the permission of the Central Government, enter into any contract for the sale or purchase of any security specified in the notification. The Central Government in exercise of the aforesaid power issued notification dated 27th of June, 1969 and declared that in the whole of India "no person" shall "save with the permission of the Central Government enter into any contract for the sale or purchase of securities other than such spot delivery contract" as is permissible under the Act, the Rules, bye-laws and the Regulations of a recognized stock exchange. The appellant, therefore, can come out of the rigors of Section 16 of the Act only when it satisfies that the transaction comes within the definition of "spot delivery contract".

xxx

33. The second question, therefore, which falls for our determination is as to whether the contract in question is a spot delivery contract. This expression is defined under Section 2(i) of the Regulation Act. It reads as follows:

"2. Definitions - In this Act, unless the context otherwise requires, -

x x x

(i) "spot delivery contract" means a contract which provides for -

(a) actual delivery of securities and the payment of a price therefore either on the same day as the date of the contract or on the next day, the actual periods taken for the dispatch of the securities or the remittance of money therefore through the post being excluded from the computation of the period aforesaid if

the parties to the contract do not reside in the same town or locality;

(b) transfer of the securities by the depository from the account of a beneficial owner to the account of another beneficial owner when such securities are dealt with by a depository;

x x x"

34. According to the definition, a contract providing for actual delivery of securities and the payment of price thereof either on the same day as the date of contract or on the next day means a spot delivery contract. When we consider the facts of the present case bearing in mind the definition aforesaid, we find that the contract in question is not a spot delivery contract. True it is that by letter dated 30th of October, 1987 written by Tuhin to Bhagwati, he had stated that the formal agreement had been executed between them on 10th November, 1986 and as per the agreement he is transferring the entire 3530 shares of Peerless purchased from the loan amount and the transfer is in its repayment. However, the agreement dated 21st November, 1994 between Bhagwati and Tuhin which formed part of the compromise decree provides that the sale of shares took place on 30th October, 1987 and in consideration thereof Bhagwati paid a sum of Rs. 10 lakhs on 21st November, 1994 and further the dividend on the entire shares up to the accounting year 1989-90 amounting to Rs.8,64,850 to be retained by Tuhin. In the face of it, the plea of Bhagwati that the payment of Rs. 10 lakh was made to buy peace, is not fit to be accepted and, in fact, that forms part of the consideration for the sale of shares. Once we take this view, the plea of the appellant that it is a spot delivery contract is fit to be rejected. We agree with the reasoning and conclusion of the Company Law Board and the High Court on this issue.

20. Moreso the sanctioned scheme for compromise with creditors of Royal Airways Limited filed in Company Petition No.385/2003 noted the principal amount due to the respondent No.1 as Rs.5.00 Crores. This scheme was also upheld and it attained the finality. The Division Bench of this Court in its judgment dated 09.11.2012 rejected the pleas of respondent No.1 challenging the scheme and therefore, the contention of respondent No.1 viz. the liberty granted by the Division Bench was only to determine the dues to respondent No.1 under the scheme is misleading. Admittedly, the scheme, as sanctioned on 15.07.2005, records the principal amount payable to the respondent No.1 as Rs.5.00 Crores. The respondent No.1's plea before the Division Bench of this Court, as recorded in its order dated 09.11.2012 was the respondent no.1 has been wrongly categorized as an unsecured creditor in the scheme and now that an amount of Rs.1.39 Crores has been received as a sale's consideration it need to be reduced from the principal amount of Rs.5 crore as recorded in the scheme. Such plea was ignored. The scheme has now attained finality. The debt of respondent No.1 as recorded in the scheme is Rs.5.00 Crores and 70% amount payable to respondent No.1 has been deposited by the applicant: but the respondent No.1 admittedly is not withdrawing said amount and continue to

withhold the pledged shares, hence is acting contrary to the sanctioned scheme.

21. Admittedly on 15.7.2005 this Court sanctioned the Scheme of Compromise being C.P.No.385 of 2003. The objections of respondent No.1 to the scheme of compromise were dismissed. As per the scheme: a. The respondent No.1 was held to be entitled to only receive 70% of the principal amount advanced to the applicant company.

b. Respondent No.1 was directed to return the shares deposited with it as security to the Court.

The Division Bench of the Calcutta High Court in its judgment dated 11.07.2005 did not and could not have considered the effect of the scheme sanctioned on 15.7.2005. No title in the shares had passed as on 15.7.2005 as the transfer had not been recorded. The sanctioned scheme supersedes the judgment dated 11.7.2005 passed by the Division Bench of Calcutta High Court and its effect.

22. On 20.7.2005 the Division Bench of Calcutta High Court vide its subsequent judgment held the respondent No.1 to be in same class as unsecured creditors. The scheme is binding on respondent No.1 and it must not proceed with execution proceedings. The order of the Division Bench of the Calcutta High Court directing registration of shares is dated 11.7.2005. Since, the transfer has admittedly not been recorded/registered with the company; the effect of the sanction of scheme on 15.7.2005 would nullify the alleged sale.

23. Further on 23.11.2011 the Single Judge of Calcutta High Court kept the issue of any right arising out of non-registration of pledged shares or subsequent registration open. This order was passed by the Ld. Single Judge of Calcutta High Court upon considering the judgment dated 11.07.2005 passed by the Division Bench of Calcutta High Court. This order has not been challenged by the respondent No.1 till date.

24. On 9.11.2012 the Division Bench of this Court also did not adjudicate upon the issue of validity of the transfer of shares but rather left the question open to be decided by the Company Court and at paragraph 32 recorded the same as "alleged" and receipt of consideration as "purported". Therefore, the question of validity of ?alleged sale of shares? and ?purported receipt of consideration? has been kept open by the Division Bench of this court for its determination by this company Court. A perusal of the judgment dated 9.11.2012 would reveal these issues have neither been recorded nor adjudicated by the Court.

25. The learned senior counsel for respondent No.1 further argued the issue of forfeiture of the shares was pending adjudication in CA No.265/2003 which was put to rest by memorandum of settlement dated 26. 11.2008 and the said CA No.265/2003 was dismissed as withdrawn by an order dated 16.01.2009 with a liberty granted to the respondent No.1 to raise an issue before the Supreme Court as a matter of abundant precaution, though, it was not at all necessary as the Malanpur's share were never forfeited in terms of the settlement, hence, it

was argued the order dated 06.07.2009 only dealt with an issue of forfeiture of the shares and did not disturb the finding of the Division Bench of Kolkata High Court qua validity of the sale of pledged shares.

26. I disagree. Admittedly the SLP CA No.17474/2005 was filed by the applicant against the judgment dated 11.07.2005 of the Division Bench of Kolkata and it rather challenged the validity of alleged transfer of shares. The question of forfeited shares was never raised by the applicant in the said SLP. The Supreme Court stayed the judgment dated 11.07.2005 passed by the Division Bench of Kolkata High Court and then finally passed an order dated 06.07.2009. It is pertinent to say prior to 06.07.2009, by an order dated 16.01.2009, CA No.265/2003 was dismissed as withdrawn in terms of the memorandum of understanding dated 26.11.2008 and the issue of forfeiture of the shares was put to rest. The respondent No.1 at that stage too had contended there is no impediment in transfer of shares in the name of the transferees and the Company Court granted it liberty to raise such objections before the Supreme Court. However such objection was not accepted and the Supreme Court directed this Court to decide the issue of transfer of shares in accordance with law and pending adjudication of this issue, the status quo qua the transfer of shares was also directed. Thus, in this manner, the judgment dated 11.07.2005 passed by the Division Bench of Kolkata High Court rather merged with the order dated 06.07.2009 of the Supreme Court and hence this Court can surely decide the question of validity of sale. Even otherwise, the Single Judge of Kolkata High Court also on 23.11.2011 kept the issue open of any right arising out of non registration of the pledged shares or subsequent registration. This order has not been challenged by the respondent No.1 till date, hence, the plea of the learned senior counsel for the respondent No.1 viz., the judgment dated 11.07.2005 validates the transfer of shares and had attained finality is wholly misplaced.

27. Admittedly till date the shares have not entered in the Share Register and hence even otherwise the transfer of the shares is not complete as transferee could become the shareholder only when the transfer is registered in the Company's Register. In *Life Insurance Corporation of India vs. Escorts Ltd. and Ors.* AIR 1986 SC 1370, the court held as under: "82. In *Vasudev Ramachandra Shelat v. Pranlal Jayanand Thakkar* (supra), the question arose this way, The donor gifted certain shares in companies to the appellant by a registered deed. She also signed several blank transfer forms to enable the donor to obtain transfer of shares in the register of companies. However, she died before the shares could be transferred to the appellant in the books of the companies. The respondent, a nephew of the donor, filed the suit, claiming the shares on the ground that the gift was incomplete for failure to comply with the formalities prescribed by the Indian Companies Act 1913 for transfer of shares. Noticing that in 53 Indian Appeals, 92 a distinction was made between "the title to go on the register" and "the full property in the shares in a company", the court expressed the view that Section 6 of the Transfer of Property Act also justified such a splitting up of a right constituting "property" on shares just as it was well

recognized that rights of ownership of property might be split up into a right to the "Corpus" and another to the "usufruct" of the property and then separately dealt with. On the delivery of the registered deed of gift together with the share certificate to the donor, the donation of the right to get the share certificate transferred in the name of donor became irrevocable by registration as well as by delivery. Either was sufficient. The actual transfer in the registers of the companies constituted more enforcement of this right to enable the donor to exercise the rights of the shareholder. The mere fact that such transfers had to be recorded in accordance with the Company Law did not detract from the completeness of what was donated. Referring to Regulation 18 of the first schedule to the Companies Act of 1913 which prescribed the mode of transfer of shares, it was observed by the court that there was nothing either in the Regulation or elsewhere to indicate that without strict compliance with some rigidly prescribed form, the transaction must fail to achieve its purpose. It was said, "the subservience of substances of a transaction to some rigidly prescribed form required to be meticulously observed, savours of archaic and outmoded jurisprudence." The Court referred to the passage in Buckley on the Companies Acts XXXI Edn. Page 813 : Non registration of a transfer of shares made by a donor does not render the gift imperfect", and the passage in Palmar's Common Law : 21st Edn. page 334 : A transfer is incomplete until registered. Pending registration, the transferor has only an equitable right to the shares transferred to him. He does not become the legal owner until his name is entered on the register in respect of these shares." The two statements of law were reconciled by the court and it was stated "the transferee under a gift of shares, cannot function as a shareholder recognised by Company Law until his name is formally brought upon the register of a company and he obtain a share certificate as already indicated above. Indeed, there may be restrictions on transfers of shares either by gift or by sale in the articles of association." It was pointed out that, "a transfer of "property" rights in shares, recognised by the Transfer of Property Act, may be antecedent to the actual vesting of all or the full rights of ownership of shares and exercise of the rights of shareholders in accordance with the provisions of the Company law," and that while transfer of property in general was not the subject matter of the companies Act, it deals with "transfers of shares only because they give certain rights to the legally recognised shareholders and imposes some obligations upon them with regard to the companies in which they hold shares. A share certificate not merely entitles the shareholder whose name is found on it to interest on the share hold but also to participate in certain proceedings relating to the company concerned."

28. Last but not the least, it is also important to note the alleged purchasers namely Twenty Four Carat Investment Limited; RR Stocks and Share Brokers and Prasad & Company Private Limited, admittedly, have never come forward to initiate any proceedings against respondent No.1 till date which rather show these purchasers are in the name only and respondent No.1 continues to hold such shares and there has been no sale in fact. Secondly, the respondent No.1

though is arrayed as M/s Malanpur Steels Limited, no longer exist as has merged with M/s Hindustan Engineering and Industries Limited. The BIFR vide its order dated 04.09.2012 has sanctioned the rehabilitation scheme of merger of erstwhile M/s Malanpur Steels Limited with M/s Hindustan Engineering and Industries Limited and hence on 04.09.2012 the respondent No.1 has lost its identity and had ceased to exist as a distinct corporate entity, but is yet being defended under the name of M/s Malanpur Steels Limited.

29. Thus the following facts culled out from the above discussions clinches the issue in favour of the applicant herein:- i) Respondent no.1 sought a direction in CS No.161 A/1997 to sell the pledged shares but could not get the same;

ii) prior to the day of alleged sale of pledged shares, a company petition No. 68/1997 was admitted against the applicant and the Official Liquidator was appointed; hence alleged sale even otherwise is bad per Section 446 of Companies Act, 1956;

iii) sending of notice informing sale of shares under Section 176 of Indian Contract Act was even doubted by CLB in its order dated 20.01.2005; the appeal against it was also dismissed, hence attained finality;

iv) transfer deeds dated 1999 were held to be forged by Company Law Board;

v) order dated 23.04.1997 was passed by Kolkata High Court in Civil Suit no. 161 A/97 restrained respondents no.2 to 4 in dealing with, disposing of, alienating, encumbering assets, such shares etc;

vi) prayer qua liberty to sell pledged shares was never allowed in CS 161 A/1997;

vii) the sale is hit by provisions of Securities Exchange (Regulation) Act;

viii) despite objections by respondent no.1 the Scheme of Arrangement was sanctioned and it become final;

ix) the respondent no.1 was treated as an unsecured creditor and his loan is shown as Rs. 5 crores in the scheme;

x) judgment dated 11.07.2005 of Division Bench of Kolkata did not and could not have examined the scheme;

xi) judgment dated 11.07.2005 of Division Bench was on a premise the shares have been sold and what is left is the consequential relief to be given. It did not consider the issue of validity of sale of shares;

xii) the judgment dated 11.07.2005 of Division Bench of Kolkata was challenged in SLP No.17474/2005;

xiii) the Supreme Court granted stay of transfer of shares by order dated 12.09.2005 in SLP No. 17474/2005;

xiv) the Supreme Court by its order dated 6.7.2005 left this issue open for this

court and so also the Division Bench of this court;

xv) the single judge of Kolkata High Court on 23.11.2011, left the issue open of any right arising out of non-registration of the pledged shares or subsequent registration;

xvi) The shares till date have not been entered into share register;

xvii) the purchasers never came forward for availing its rights.

30. Thus, on aforesaid facts and circumstances the transfer of 40,48,200 shares by respondent No.1 appears to be fishy and hence its transfer is declared as non-est. Hence the remaining pledged shares above of the applicant be released to the registered owners - the investment companies. The respondent No.1 is also directed to collect the principal amount of Rs.3.5 Crores already lying deposited with the Registrar General of this Court pursuant to the sanctioned scheme of compromise, including any interest accrued thereupon, if any. Further, the balance amount deposited in this Court be distributed for second tranche under the scheme of the compromise be also refunded to the applicant together with interest and respondents No.2 to 4 to accept the shares or the amount as the case may be and hence the CA No.1540/2013 stands allowed in terms of above directions.

31. No order as to costs. CO.PET. 385/2003 & CA Nos.2412-13/2011, 2687/2014, 168/2017

32. List for directions before the Roster Bench on 22.02.2018.