

(2021) 08 CAL CK 0007

In the Calcutta High Court

Case No : IA No. GA 1 of 2021 In Civil Suit No. 138 of 2021

Manav Investment And Trading Co Ltd.

APPELLANT

Vs

DBS Bank India Ltd

RESPONDENT

Date of Decision : 03-08-2021

Acts Referred:

Indian Contract Act, 1872 — Section 176

Citation : (2021) 08 CAL CK 0007

Hon'ble Judges : Moushumi Bhattacharya, J

Bench : Single Bench

Advocate : Anirban Ray, Rajarshi Dutta, Pankaj Agarwal, Ramij Munsil

Judgement

The petitioner is a promoter of Birla Tyres Limited which had taken loan from the respondent against pledge of shares of Birla Tyres. The total

amount of loan taken is approximately Rs.60 crores and corresponding number of shares were pledged by Birla Tyres and its de-merged concern with

the respondent.

Learned counsel appearing for the petitioner seeks stay of two notices of invocation issued by the respondent, both dated 17th July, 2021 by which the

respondent has demanded payment in excess of about Rs.15 crores from the petitioner by 6th August, 2021, failing which the respondent has

threatened to sell the shares of the petitioner. The notice of invocation is under Section 176 of The Indian Contract Act, 1872.

Learned counsel relies on a supplementary affidavit which was permitted to be filed in Court today, which shows that after the invocation notices, the

respondent has proceeded to sell a number of shares of Birla Tyres contrary to the terms of the invocation letter. The date of sale of such shares is

shown to be 30.07.2021. Counsel also places the relevant clause of the Facility Agreement entered into between the parties on 11th February, 2021 which imposes certain obligations on the party who alleges an event of default.

Upon considering the material on record, this Court is of the view that the sale of shares of Birla Tyres, to which the petitioner is a promoter, is

required to be stayed on two grounds. First, Section 176 of the Contract Act â?" Pawneeâ?"s right where pawnor makes default â?" provides for

the rights of a pawnee in the event of default on the part of the pawnor. The Pawnee may either file a suit against the pawnor on the date from

retaining the goods pledged as a collateral security and may also sell the pledged goods but only upon giving reasonable notice of the sale to the

pawnor. Second, the clause 7.1 of the Facility Agreement specifically provides that a cure period of 30 days shall be given in the event of default

where the event of default is capable of a remedy. In the present case, none of the conditions as stated above has been complied with by the

respondent. The respondent has admittedly sold shares of Birla Tyres even before the expiry of the date mentioned in the invocation notice which was

6th August, 2021, there is admittedly no cure period of 30 days or reasonable notice has been given to the petitioner before the shares were sold on

30.07.2021.

For the above reasons, there shall be an order of injunction restraining the respondent from giving further effect to the letter dated 17th July, 2021 for

the purpose of invoking or selling the pledged shares.

Since the petitioner has moved this application ex parte, the order of injunction shall remain operative for a period of three weeks from date.

The respondent shall be at liberty to apply for vacating or modifying the interim order.

List this matter on 20th August, 2021.