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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
% *Date of decision: 2nd April, 2024*

+ **CS(COMM) 635/2017**

STCI FINANCE LTD. Plaintiff

Through: Mr. Tanmay Mehta, Mr. Abhinav Mukhi and Mr. Shantanu Tomar, Advocates.

versus

MR. LT. COL. HARDEEP SINGH BEDI (RETD.) & ANR

..... Defendants

Through: Mr. Ashim Vachher, Mr. Abhilash Mathur and Mr. Kunal Lakra, Advocates.

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+ **O.M.P. (COMM) 340/2017**

STCI FINANCE LTD. Petitioner

Through: Mr. Tanmay Mehta, Mr. Abhinav Mukhi and Mr. Shantanu Tomar, Advocates.

versus

SUKHMANI TECHNOLOGIES PVT. LTD Respondent

Through: Mr. Ashim Vachher, Mr. Abhilash Mathur and Mr. Kunal Lakra, Advocates.

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+ **O.M.P. (COMM) 444/2017**

SUKHMANI TECHNOLOGIES PRIVATE LIMITED Petitioner

Through: Mr. Ashim Vachher, Mr. Abhilash Mathur and Mr. Kunal Lakra, Advocates.



versus

STCI FINANCE LIMITED

..... Respondent

Through: Mr. Tanmay Mehta, Mr. Abhinav Mukhi and Mr. Shantanu Tomar, Advocates.

CORAM:
HON'BLE MS. JUSTICE NEENA BANSAL KRISHNA

J U D G M E N T (oral)

CS(COMM) 635/2017

1. The admission/denial of the documents have not been filed by the Defendant despite an opportunity and the right has been closed *vide* Order dated 01.05.2018.
2. Following issues arise from the pleadings:
 - (a) Whether the plaintiff is entitled to recovery of Rs.91,73,86,780.84 from the Defendant No. 1 and 2 jointly and severally? OPP
 - (b) Whether the plaintiff is entitled to interest? If yes, at what rate and for what period? OPP
 - (c) Whether the Suit is barred by limitation? OPD 1 and 2
 - (d) Whether the parties entered into a facility agreement dated 10.02.12? OPD 1 and 2
 - (e) Relief.
3. No other issue arises or is pressed.
4. List of witnesses be filed within 15 days.
5. List before the learned Joint Registrar for recording of evidence on



20.05.2024.

O.M.P. (COMM) 340/2017 & O.M.P. (COMM) 444/2017

6. The present Petitions have been filed under *Section 34 of the Arbitration and Conciliation Act, 1996* on behalf of the petitioner and the respondent respectively, to challenge the Award dated 11.08.2017, passed by the learned Sole Arbitrator.

7. The **facts in brief** are that the Petitioner Company STCI Finance Limited (formerly known as Securities Trading Corporation of India Limited), is a systematically important non-deposit taking Non-Banking Financial Company (NBFC) registered with Reserve Bank of India and is a Public Limited Company under the provisions of the Companies Act, 1956.

8. The respondent is also a Company registered under the Companies Act, 1956.

9. In the month of January, 2012, on the request of the respondent Company, through its Director Mr. H.S. Bedi, the petitioner *vide* Letter of Intent (**LOI**) bearing No. STCI/LAS/STPL/2011-12/1676 dated 08.02.2012, agreed to sanction the loan for the facility of Rs.50 Crores against Pledge of shares of Tulip Telecom Limited, to the respondent Company subject to certain terms and conditions and upon execution of certain security documents. The respondent Company *vide* its Board Resolution dated 08.02.2012, accepted the LOI and authorised Mr. H.S. Bedi to execute the loan documents. Similarly, in terms of LOI, the Cedar Infonet Pvt. Ltd. i.e. the Pledger Company *vide* its Resolution dated 08.02.2012, resolved that it shall assist the respondent Company in raising funds to the tune of Rs.50 Crores, by providing security in the form of pledge of equity shares of Tulip Telecom Limited, owned by it in favour of the petitioner. Pursuant to the



LOI dated 08.02.2012, the petitioner and the respondent entered into and executed various loan/security documents, all dated 10.02.2012, including (i) Facility Agreement (ii) Irrevocable Power of Attorneys, (iii) Declarations along with (iv) along with post-dated cheques, to secure the loan being granted to the respondent.

10. As agreed by the respondent Company, in order to secure the loan facility granted by the petitioner under the Loan Facility Agreement, the respondent Company, through Mr. H.S. Bedi and Cedar Infonet Pvt. Ltd. and the petitioner *inter alia* executed a *Share Pledge Agreement dated 10.02.2012 (SPA)*, wherein it was stipulated in Clause 2.1 and 2.3 that pursuant to the terms of the Facility Agreement, the pledgers shall pledge shares equivalent to 200% of the loan amount. It further provided that even on the invocation of the pledged shares by the lender, the shares so invoked shall not become the property of the lender even though transferred in the account of Lender with the Depository. Further, *vide* Clause 3.5.4 of the Share Pledge Agreement, it was agreed between the parties that the Lender shall not be liable for any claim or losses arising out of any sale of shares or any postponement thereof, howsoever caused and whether or not any better price could have been obtained upon the said sale. Personal Deed of Guarantee dated 10.02.2012 was also executed by Mr. H.S. Bedi, in favour of the petitioner, thereby unconditionally guaranteeing to repay the outstanding amount within a period of three days of demand in writing and without demur, upon the petitioner sending a demand notice. Also, the said guarantee was a continuing guarantee making the guarantor i.e. Mr. H.S. Bedi, jointly and co-extensively liable along with the respondent to the ultimate balance payable. Pursuant to the aforesaid, Mr. H.S. Bedi and



Cedar Infonet Private Limited pledged 1,37,13,000 equity shares of Tulip Telecom Pvt. Ltd. from time to time, in favour of the petitioner, to secure the loan amount granted to the respondent Company.

11. On 17.09.2012, a Joint Lender Meeting was convened in which Mr. H.S. Bedi also participated along with the other lenders and keeping in view the alarming dip in the scripts of Tulip Telecom Pvt. Ltd. over the last few trading, offered petitioner to provide additional security by way of mortgage over his immovable properties and also offered a revised payment schedule to regularize the interest payment.

12. The respondent despite giving assurance on 17.09.2012, to give any additional security kept on dilly-dallying and failed to furnish any additional security. However, as requested by the respondent, the petitioner *vide* its Letter dated 01.10.2012 bearing No. STCI/LAS/STPL/2012-13 agreed in principle to accept the Second charge over the property in their favour subject to NOC from HDFC Limited, who was having First charge and Guarantee by Mr. H.S. Bedi and Mrs. Maninder Singh Bedi, in favour of the petitioner.

13. Since the respondent failed to provide the requisite security margin and also because of a steep fall in the price of the pledged shares, the petitioner in terms of the Facility Agreement and Share Pledge Agreement dated 10.02.2012, invoked the shares so pledged on different occasions and in total invoked 1,01,50,000 equity shares on different dates on or about 03.10.2012. The petitioner could manage to sell only 1,69,099 shares and was able to recover only a sum of Rs.28,35,396.08/- which was duly credited and reflected in the account statement of the respondent, maintained by the petitioner.



14. Since there was still security shortfall, the respondent passed a Board Resolution dated 05.10.2012 and Mr. H.S. Bedi and Mrs. Maninder Bedi, executed a joint and several guarantee dated 19.10.2012, thereby irrevocably and unconditionally guaranteeing to repay to the petitioner jointly and/or severally, the outstanding loan amount along with the interest within 15 days of the demand in writing.

15. The respondent Company was unable to pay its dues in terms of the Agreement and on its request, the petitioner *vide* its Letter of Intent dated 06.02.2013, agreed to renew the loan amount for a period of six months from the date of renewal i.e. 10.02.2013 at the interest rate of 15% p.a. with monthly rests w.e.f. 10.02.2013, which was subject to the terms and conditions as mentioned therein, as well as, in the Facility Agreement dated 10.02.2012. The LOI dated 06.02.2013 was accepted by the respondent and executed various loan/security documents.

16. However, the respondent again failed to pay the dues in respect of the first Renewal and approached the petitioner for second Renewal of the loan facility. The petitioner again agreed for the second Renewal and issued Letter of Intent dated 18.11.2013. The second Renewal was to be secured by pledging further 1,35,43,901/- equity shares of Tulip Telecom Ltd. and by creating collateral security by way of exclusive charge on the property as well as by executing the loan/security documents.

17. The respondent duly executed the Acknowledgement of Debt on 04.04.2014, thereby acknowledging the dues of Rs. 50 Crores plus interest as on 28.04.2014 and balance from time to time secured by the existing security/loan documents.

18. The petitioner claimed that the respondent Company had been



defaulting in making payments towards the loan account since January, 2014 and despite several reminders and demand, has failed and neglected to make the payment and regularize its loan account, which constituted an Event of Default as per Clause 10.1 of the Facility Agreement dated 10.02.2012. The petitioner thus, issued a Letter dated 19.05.2014 to the respondent to clear its entire dues of Rs.52,48,96,540/- as on 01.01.2014, at the earliest.

19. The respondent *vide* its Letter dated 23.07.2014, not only admitted its pending dues and balance from time to time but also made a categorical admission to the effect that the non-payment of dues towards interest and principal amount, is due to the financial crunch faced by the respondent Company. It was asserted by the petitioner that at no stage did the respondent Company raise any objection with regard to the alleged non-credit of the sums of money received by way of selling the pledged shares.

20. Because of the defaults committed by the respondent, a Loan Recall Notice dated 02.09.2014 was served upon the respondent but it failed to make the payment and thereby committed a default Clause 10.1 (a) of the Facility Agreement. The respondent issued a Reply dated 15.09.2014 and for the first time, raised an objection about non-credit of the proceeds of sale of pledged shares in its account.

21. Another legal notice dated 15.09.2014, was again issued by the petitioner, to remind the guarantors/mortgagers i.e. Mr. H.S. Bedi and Mrs. Maninder Bedi that an amount of Rs.55,21,68,064/- was due as on 02.09.2014 and since they have failed to make the payment, they were invoking the Guarantees.

22. In view of the dispute that had arisen, the petitioner issued an Arbitration Notice dated 12.02.2016, invoking the Arbitration Clause as



envisaged in Clause 21.12 of the Facility Agreement. The learned Sole Arbitrator was appointed and he entered the reference.

23. The petitioner submitted its *statement of claim*, thereby seeking a recovery of a sum of Rs.70,21,97,219.05 and *pendente lite* and future interest @ 18% p.a. The respondent contested the claims of the petitioner by filing its Reply. The oral evidence was led by both the parties before the learned Arbitrator.

24. The learned Sole Arbitrator passed a '*Nil Award*' dated 11.08.2017, by observing that immediately on the invocation of the pledge by STCI, the pledger becomes the "*beneficial owner*" entitled to the credit of the value of shares pledged. It was further opined that if the invoked shares had been sold promptly at the time of invocation, STCI could have recovered the outstanding principal and interest amount from Sukhmani Technologies Private Limited, the respondent.

OMP (COMM) No. 340/2017: Petition under S.34 of the Arbitration & Conciliation Act,1996 by STCI Finance Limited:

25. The petitioner, STCI Finance Limited, aggrieved by the said '*Nil Award*', has preferred objections under Section 34 of the Arbitration and Conciliation Act. The *grounds* taken to challenge the Award are that the impugned Order is *perverse, arbitrary and unsustainable* and has prejudiced the rights of the petitioner in claiming the loan amount so extended to the respondent. It was claimed to be *in conflict with the Fundamental Policy of Indian law* as the Arbitrator has committed serious error of law in not appreciating the law in respect of Pledge and the entire Order is based on the incorrect premise that the petitioner was under obligation to give credit of



the total value of the shares invoked/transferred, prevalent as on that date of transfer.

OMP (COMM) 444/2017: *Petition under S.34 of the Arbitration & Conciliation Act,1996 by Sukhmani Technologies Private Limited:*

26. The respondent equally aggrieved by the said Award dated 11.08.2017, has challenged this *Nil Award* on the grounds that though learned Sole Arbitrator held that on invocation of 1,01,50,000 shares of Tulip Telecom Ltd., by the respondent, it ought to have been given credit of the same on the basis of the share price prevalent in the market on such respective dates but the learned Arbitrator wrongly observed that it was not possible to find out the value of such invoked shares on the respective dates. It is asserted that the entire data was available on record as the respondent had filed the Pledge Master Report clearly showing invocation of 1,01,50,000 shares. Also, during the cross-examination of CW-1, she had produced the share prices of Tulip Telecom Ltd. shares prevalent on the different dates. Despite having all the data, the learned Sole Arbitrator did not determine the excessive amount realized by the claimant, after invoking the various shares of Tulip Telecom Limited. It is asserted that despite all the data being available an inconclusive Award has been given leaving the parties to further litigation instead of putting a quietus to the disputes. It is asserted that the Award is, therefore, liable to be set aside.

27. Both the learned counsels for the petitioner as well as the respondent relied on the latest Judgment of the Apex Court in *PTC India Financial Services Limited vs. Venkateswarlu Kari and Anr.* (2022) 9 SCC 704, to submit that the 'Nil Award' is liable to be set-aside.

28. **Submissions heard.**



29. The Apex Court in recent Judgment of *PTC India Financial Services Limited (supra)*, has observed that even upon becoming the *beneficial owner* of the pledged shares, the pledgee lender continues to be the financial creditor of the Corporate Debtor. The Apex Court emphasized on the concept of actual sale for the purpose of Section 176 and 177 of the Contract Act and held that actual sale means sale of the invoked shares to the third party and not to sell. Till the time such actual sale does not take place, the pledger's right of redemption of the shares, as per the Contract Act, remains alive. Even upon becoming the beneficial owner of the pledged shares, the pledgee lender remains alive.

30. The relevant observations of the Apex Court are as under:-

“119. 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) of 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) of 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.

120. In view of the aforesaid findings, it has to be held that registration of the pawn, that is, the dematerialised shares, in favour of PIFSL, as the “beneficial owner” does not have the effect of sale of shares by the pawnee. The pledge has not been discharged or satisfied either in full or in part. PIFSL is not required to account for any sale proceeds which are to be applied to the debt on the “actual sale”. The two options available to PIFSL as the pawnee under Section 176 of the Contract Act remain and are not exhausted.”

31. In view of the Law, as propounded by the Apex Court, in the Judgment of *PTC India Financial Services Limited (supra)*, it is held that the impugned Award is against the fundamental policy of law and is hereby set-aside.

32. The objections filed by the claimant, as well as, the respondent *vide* the aforementioned two Petitions bearing O.M.P. (COMM) 340/2017 & O.M.P. (COMM) 444/2017, are hereby allowed. Both the parties are at liberty to agitate their respective claims by invoking the Arbitration Clause, in accordance with law.

**(NEENA BANSAL KRISHNA)
JUDGE**

APRIL, 02, 2024/RS