NATIONAL COMPANY LAW TRIBUNAL
NEW DELHI BENCH (COURT-II)

IA. NO. 3114/ND/2023
IN
Company Petition No. (IB)-943/(PB)/2020

IN THE MATTER OF:

Srei Infrastructure Finance Limited **... Applicant/ Financial Creditor**

Versus

Worlds Window Infrastructure & Logistics Private Limited

... Respondent/ Corporate Debtor

AND IN THE MATTER OF IA. NO. 3114/ND/2023:

HDFC Bank Limited
Having its registered office at:
HDFC Bank House,
Senapati Bapat Marg,
Lower Parel (West),
Mumbai-40013 Maharashtra
Ahmedabad – 380004 **... Applicant**

VERSUS

1. Manish Agarwal
(Resolution Professional of
Worlds Window Infrastructure
& Logistics Pvt. Ltd.)
IBBI/IPA-002/IP-N000223/
2016-2017/10904
Address:
588, Sheel Kunj,
Meerut-250001
Email- cirp.wwilpl@gmail.com **... Respondent No. 1**

2. Srei Infrastructure Finance Limited
Address:
Vishwakarma, 86 C,
Topsia Road (S),
Kolkata-700046
Email-corporate@srei.com **... Respondent No. 2**

SECTION: **Section 74 r/w Section 60(5) of IBC 2016**

Order Delivered on: 04.07.2023

CORAM:

SH. ASHOK KUMAR BHARDWAJ, HON'BLE MEMBER (J)p

SH. L. N. GUPTA, HON'BLE MEMBER (T

PRESENT:

For the Applicant	**:**	Sr. Adv. A.K. Ganguli, Adv. Shailwal Srivastava, Adv. Apoorv Shukla for CoC (Applicant), Adv. Bheem Sain Jain in IA. No. 3114/2023
For the Respondent	**:**	Adv. Anirbarn Bhattacharya with Adv. Rajeev Choudhary for R-2 in IA. No. 3114/2023
For the RP	**:**	Mr. Arjun Syal, Mr. Shreyan Das for RP

ORDER

PER: SH. ASHOK KUMAR BHARDWAJ, MEMBER (J)

The succinct and salient issue espoused by the Applicant in the captioned IA is, "the equity shares held by Corporate Debtor in Sanjvik Terminals Private Limited could not have been sold by the Respondent No. 2 as in the wake of the order dated 07.03.2022, passed by this Adjudicating Authority, moratorium, as provided in terms of the provision of Section 14 of IBC, 2016 was in operation on the date of sale".

2. As has been alleged in the application, when in the 9th meeting of CoC, the Ex-Directors of CD duly informed it regarding the filing of IA No. 1915 of 2023 before this Adjudicating Authority, to seek direction for

handing over the equity shares (ibid) to the Respondent No. 1, the Respondent No. 2 did not apprise the CoC about the fact that the shares i.e., 4,52,809 equity shares held by CD in Sanjvik Terminals Private Limited had already been sold.

3. The shares in question could be sold by Respondent No. 2 on 11.04.2023. The letter dated 11.03.2023 regarding the sale of the shares and the certificate of sale are placed on record as Annexure-A5 and Annexure-A6 to the IA. Having alleged, disobedience of the order dated 07.03.2022 passed by this Adjudicating Authority, the Applicant has questioned the sale of the shares (ibid) and has sought action against the Respondent No. 2 under Section 74 of the IBC, 2016. The prayer made in the application reads thus:

"i. Allow the present Application;

ii. Direct the Respondent No. 2 to hand over the sale amount/proceeds as received by them from the sale of 4,52,809 equity shares held by the Corporate Debtor in Sanvik Terminals Private Limited to the Respondent No. 1.

iii. Pass appropriate orders/directions against the Respondent Nos. 1 and 2 as per Section 74 of the Code.

iv Pass such other or further order or orders or such directions as this Hon'ble Tribunal may deem fit and proper in the facts and circumstances of the case and to meet the ends of justice."

4. On 07.06.2023, when the IA came up for hearing afresh, the Ld. Counsel for Respondent No. 2 in IA i.e., the Petitioner in IB-943(PB)/2020 could make a reference to the SO 464(E) dated 30.01.2020. At the strength of the said SO, he espoused that due to a breach of terms of the contract, the Respondent No. 2 had become the owner of the shares in issue and was entitled to retain the same as assets for itself or to dispose of the same to realize its dues.

5. We have heard the counsels for the parties and perused the record. Indubitably, in terms of the provisions of Section 14 of IBC, 2016, in the wake of the order dated 07.03.2022, passed by this Adjudicating Authority, the enforcement of any security interest created by the CD in respect of the aforementioned shares stood prohibited. Neither the IBC, 2016 nor IBBI (Insolvency Resolution Process for Corporate Persons) Regulations 2016 provides for disposal of security held by a secured creditor, after admission of CD to CIRP and declaration of the moratorium, during CIRP, though Regulation 21A of IBBI (Liquidation Process) provides for an option to secured creditor to take a decision either to relinquish its security interest to the Liquidation estate or to realize the same as the case may be. In the normal course, the Respondent No. 2 could not have disposed of the shares held by CD in Sanjvik Terminals Private Limited, pledged with it

(Respondent No. 2) as security, after the order dated 07.03.2022 passed by this Adjudicating Authority, unless and until the same could be transferred to it prior to commencement of moratorium. Nevertheless, in the present case, in terms of the order dated 08.10.2021 passed by Kolkata Bench of this Adjudicating Authority, in a petition filed under Section 227 read with Section 239 (2)(zk) of the IBC, 2016, read with Rules 5 and 6 of I and B (Insolvency and Liquidation Proceedings of Financial Service Provider and Application to Adjudicating Authority) Rules 2019, the Respondent No. 2 was admitted to Insolvency and Liquidation Proceedings. In the wake, at the strength of SO 464(E) dated 30.01.2020 issued by MCA, there being a breach of the Shares Pledge Agreement dated 07.07.2018 by the CD, the Respondent No. 2 was entitled to retain the shares in issue for itself or to dispose of the same to realize its dues. The proviso to Part-2 of the SO reads thus: -

> *"Provided that when such assets shall not be returned by the Administrator, due to breach of the terms of the contract, the financial service provider has become entitled to retain such assets for itself or dispose of the same to realize its dues."*

6. Even otherwise also, in terms of the provisions of Clause 2.5 (a)(iv) of the Share Pledge Agreement (ibid), on default being committed by the CD in returning the secured loan, the Respondent No. 2 was entitled to sell the collateral in full or in part. The Clause reads thus: -

"2.5 Remedies upon the occurrence of an Event of Default

a) The Pledgor irrevocably agrees that at any time after an Event of Default occurs, the SREI shall have the right, in its sole discretion, to exercise all the rights, powers and remedies vested in it (whether vested in it by this Agreement or by the other Financing Documents or by Applicable Law) for the protection and enforcement of its rights in respect of the Collateral, and the SREI shall be entitled, without limitation, to exercise any or all of the following rights, powers and remedies:

(i) to receive all amounts payable in respect of the Collateral or otherwise payable under Clause 2.4 (Dividends and other Distribution) above to the Pledgor;

(ii) xxxxx

(iii) xxxxx

(iv) to sell the Collateral (or any part thereof) in exercise of the power conferred under Section 6 (Power of Sale) hereof, at public or private sale or at any broker's board or on any securities exchange for cash, upon credit or for future delivery or transfer or procure registration in the name of the SREI or any of its nominees at the cost of the Pledgor, as the SREI may deem commercially reasonable and apply the proceeds thereof towards payment of the Obligations, provided that the SREI shall not be obliged to make any sale of any Collateral if they determine not to do so, regardless of the fact that notice of sale may have been give; and/or"

(v) ……

In the wake, the IA is found to be misconceived and devoid of merits, and is rejected accordingly.

Sd/-	**Sd/-**
(L. N. GUPTA)	**(ASHOK KUMAR BHARDWAJ)**
MEMBER (T)	**MEMBER (J)**