

NATIONAL COMPANY LAW TRIBUNAL, MUMBAI BENCH
COURT I

3. IA 1286/2022 IA 1942/2022 IN C.P. (IB)/1231(MB)2021

CORAM: SHRI. H.V.SUBBA RAO, MEMBER (J)
SHRI. SHYAM BABU GAUTAM, MEMBER (T)

ORDER SHEET OF THE HEARING OF MUMBAI BENCH OF THE NATIONAL
COMPANY LAW TRIBUNAL ON **04.05.2023**

NAME OF THE PARTIES: Reserve Bank of India

V/s

RELIANCE CAPITAL LTD.

SECTION 7 OF INSOLVENCY AND BANKRUPTCY CODE, 2016

ORDER

Sr. Adv Ravi Kadam, Adv Rohan Kadam a/w Adv Abhishek Adke and Adv Sagar Vichare i/b Adv Abhishek Adke, counsel appearing for the Applicant and Sr. Counsel Mr. Janak Dwarkadas, a/w T.N Tripathi I/b T.N Tripathi and Co. appearing for the Respondent in I.A.1286/2022 are present through virtual hearing.

I.A.1286/2022

Order pronounced in the open court vide separate order. In the result, the above I.A. is **allowed**.

After pronouncement of the order Sr. Counsel Mr. Janak Dwarkadas, and Mr. Ashish Kamat, counsel appearing for the Respondent orally requested for grant of stay of the impugned order and the same is **rejected**.

I.A. 1942/2022

In terms of order passed in I.A. 1286/2022 nothing survives in I.A. 1942/2022. Hence, the I.A. 1942/2022 stands **disposed of as Rejected**.

Sd/-
SHYAM BABU GAUTAM
Member (Technical)

Sd/-
H.V.SUBBA RAO
Member (Judicial)

//SKS//

**IN THE NATIONAL COMPANY LAW TRIBUNAL,
MUMBAI BENCH-I**

IA No. 1286/MB/2022

In

C.P (IB) No. 1231/MB/2021

Under Section 60(5) of the Insolvency and Bankruptcy, 2016 r/w Rule 11 of the National Company Law Tribunal Rules, 2016.

Filed by

**Reliance Capital Limited,
Through its Administrator Mr. Nageswara Rao Y
...Applicant**

Versus

**IDBI Trusteeship Services Limited
...Respondent**

In the matter of

**Reserve Bank of India
...Petitioner/Financial Sector Regulator**

Versus

**Reliance Capital Limited
... Respondent**

Order Pronounced on: 04.05.2023

Coram:

Hon'ble Member (Judicial) : Mr. H.V. Subba Rao

Hon'ble Member (Technical) : Mr. Shyam Babu Gautam

Appearances:

For the Applicant : Mr. Ravi Kadam, Sr. Counsel

For the Respondent : Mr. Janak Dwarkadas, Sr.
Counsel

ORDER

Per Coram:

1. This Application is filed under Section 60(5) of Insolvency and Bankruptcy Code, 2016 r/w Rule 11 of the National Company Law Tribunal Rules, 2016 for seeking following reliefs:
 - a. That this Tribunal be pleased to direct the Respondent to return the custody and control of 25,15,49,920 (Twenty Five Crore Fifteen Lakhs Forty Nine Thousand Nine Hundred and Twenty) shares of Reliance General Insurance Company Limited held by it to the Corporate Debtor and to do all such other acts, deed, matters and/or thing as may be necessary for effectively effectuating the transfer of custody of 25,15,49,920 (Twenty Five Crore Fifteen Lakhs Forty Nine Thousand Nine Hundred and Twenty) Shares of Reliance General Insurance Company Limited in favour of the Corporate Debtor including transferring and/or depositing the same into the demat account of the Corporate Debtor, being Reliance Capital Limited, bearing DP ID NSDL No: IN300319 and Client ID No: 10000115.
 - b. Pending hearing and final disposal of the present

Application, this Tribunal be pleased to pass an order restraining the Respondent, its directors, employees, agents, servant, officer and/or any other persons claiming through or under them transferring, selling, alienating, encumbering and/or creating any third party right, title and/or interest or dealing with 25,15,49,920 (Twenty Five Crore Fifteen Lakhs Forty Nine Thousand Nine Hundred and Twenty) shares of Reliance General Insurance Company Limited in any manner whatsoever, which are presently in the Respondent's custody;

- c. Ad-interim reliefs in terms of prayer clause (b) above;
- d. For costs; and
- e. Pass such other and further orders as this Hon'ble Tribunal may deem fit and proper in the facts and circumstances mentioned above.

Submissions of the Applicant by way of Interlocutory Application:

- 2. The Applicant is the Administrator of Reliance Capital Limited, ("Corporate Debtor"). The Corporate Debtor owns 25,15,49,920 (Twenty-Five Crore Fifteen Lakhs Forty-Nine Thousand Nine Hundred and Twenty) shares of Reliance General Insurance Company Limited ("RGICL"). The ownership of the Subject

shares are duly reflected in the balance sheet of the Corporate Debtor. The Respondent is IDBI Trusteeship Services Limited and acts as a security/debenture trustee for certain secured lenders. The Subject Shares appear to have been pledged in favour of the Respondent by the Corporate Debtor for the benefit of certain secured lenders under an Amended and Restated Pledge Agreement dated 26.06.2019 ("A&R Pledge Agreement") to secure the facilities/transactions that were extended by the secured lenders under broadly 4 transactions.

3. Following certain events of default on the part of the borrowers, on 24.10.2019, the Respondent issued a notice to the Corporate Debtor for exercising its enforcement rights under the A&R Pledge Agreement. However, the Insurance Regulatory & Development Authority of India ("IRDAI") passed orders dated 04.12.2019 and 27.12.2019 that the share transfer to the Respondent was null and void ab initio on the ground that it violated Section 6A(4)(b)(iii) of the Insurance Act, 1938. The orders were appealed and was set aside by the Securities Appellate Tribunal ("SAT") to the extent that IRDAI held the transfer/pledge is null and void. However, SAT also recorded the Respondent's stand that it was holding the shares only in the

capacity as a trustee/custodian and that ownership had not been transferred to it. The Respondent has not challenged this observation.

4. The Respondent by its own admission stands only as custodian and/or trustee of the Subject shares. The same has not been transferred to it and it is not the owner of these shares. It cannot exercise any control nor exercise any voting rights. It is thus merely in bare possession/ custody of the Subject Shares.
5. The Administrator is required to take control and custody of assets of the Corporate Debtor and function as per duties in law, including under Section 18 (f) and Section 25(2)(a) of the IBC. Further, the Administrator is required to preserve and maximize the value of the assets of the Corporate Debtor, in order to ensure a successful resolution for all creditors, and other stakeholders. Thus, the Applicant by this Application seeks an order directing the Respondent to hand over custody and control of the Subject Shares including transferring and/or depositing the same into the Demat account of the Corporate Debtor.

I. The Code obligates the Administrator to take control and custody of all assets of the Corporate Debtor.

6. The Administrator discharges the functions of the IRP and RP under Rule 9 of the “Insolvency and Bankruptcy (Insolvency and Liquidation Proceedings of Financial Service Providers and Application to Adjudicating Authority) Rules, 2019 (“the FSP Rules”) Rule 9 of the FSP Rules reads as follows:

“9. Insolvency Professional -

(1) For the purpose of these rules, only an Administrator proposed by the appropriate regulator and appointed as such by the Adjudicating Authority shall act as an insolvency professional, interim resolution professional, resolution professional or liquidator, as the case may be.

(2) An Administrator shall have the same duties, functions, obligations, responsibilities, rights, and powers of an insolvency professional, interim resolution professional, resolution professional or liquidator, as the case may be, while acting as such in an insolvency resolution and liquidation proceedings of a financial service provided.

(3) The appointment or replacement of the Administrator may be made by the Adjudicating Authority on an application made by the appropriate regulator in this behalf.

(Emphasis Supplied)

7. By virtue of Rule 9 (2) of the FSP Rules, the Administrator discharges the duties and obligations of the IRP and RP.

8. Section 18 defines the duties of the IRP. Section 18 reads as follows;

Section 18: Duties of interim resolution professional: -(1)
The interim resolution professional shall perform the following duties, namely—

- (a) collect all information relating to the assets, finances and operations of the corporate debtor for determining the financial position of the corporate debtor, including information relating to-
 - (i) business operations for the previous two years;
 - (ii) financial and operational payments for the previous two years;
 - (iii) list of assets and liabilities as on the initiation date; and
 - (iv) such other matters as may be specified;
- (b) receive and collate all the claims submitted by creditors to him, pursuant to the public announcement made under Sections 13 and 15;
- (c) constitute a committee of creditors;
- (d) monitor the assets of the corporate debtor and manage its operations until a resolution professional is appointed by the committee of Creditors;
- (e) file information collected with the information utility, if necessary; and
- (f) *take control and custody of any asset over which the corporate debtor has ownership rights as recorded in the balance sheet of the corporate debtor, or with information utility or the depository of*

securities or any other registry that records the ownership of assets including-

- (i) assets over which the corporate debtor has ownership rights which may be located in a foreign country;
- (ii) assets that may or may not be in possession of the corporate debtor,
- (iii) tangible assets, whether movable or immovable;
- (iv) intangible assets including intellectual property;
- (v) securities including shares held in any subsidiary of the corporate debtor, financial instruments, insurance policies;
- (vi) assets subject to the determination of ownership by a court or authority;
- (g) to perform such other duties as may be specified by the Board.

Explanation. For the purposes of this 58 [section], the term "assets" shall not include the following, namely-

- (a) assets owned by a third party in possession of the corporate debtor held under trust or under contractual arrangements including bailment;
- (b) assets of any Indian or foreign subsidiary of the corporate debtor; and
- (c) such other assets as may be notified by the Central Government in consultation with any financial sector regulator.

(Emphasis Supplied)

9. Thus, under Section 18(1)(f) of the Code, the Administrator is bound to take custody and control of any asset over which the corporate debtor has ownership rights as recorded in the balance

sheet.

10. By virtue of Section 18 (1)(f)(ii) of the Code, the Administrator is obligated to take custody of all assets, even if they are not in possession of the Corporate Debtor.
11. The obligation under Section 18(1)(f) (ii) to take custody of assets that are not in the Corporate Debtor's possession plainly imposes a corresponding duty on a person holding the Corporate Debtor's assets to handover the same to the IRP/Administrator.
12. The duty to take custody of all assets is an important and central facet of the insolvency resolution process. This position is apparent from the factum that such a duty is cast upon the RP under Sections 23(2) and 25.
13. Section 23 provides that the resolution professional shall conduct the insolvency resolution process. Section 23 *reads as follows*;

23. Resolution professional to conduct corporate insolvency resolution process.-(1) *Subject to Section 27, the resolution professional shall conduct the entire corporate insolvency resolution process and manage the operations of the corporate debtor during the corporate insolvency resolution process period:*

[Provided that the resolution professional shall continue to manage the operations of the corporate debtor after the expiry of the corporate insolvency resolution process period, until an order approving the

resolution plan under sub-section (1) of Section 31 or appointing a liquidator under Section 34 is passed by the Adjudicating Authority.]

(2) The resolution professional shall exercise powers and perform duties as are vested or conferred on the interim resolution professional under this Chapter.

(3) In case of any appointment of a resolution professional under sub-sections (4) of Section 22, the interim resolution professional shall provide all the information, documents and records pertaining to the corporate debtor in his possession and knowledge to the resolution professional.

(Emphasis Supplied)

14. Section 23 (2) directs the RP to exercise the same functions as the IRP. Thus, he is bound to take custody and control of all assets as directed under Section 18(1)(f). The Administrator is likewise bound.

15. Section 25 (1) imposes a duty on the Resolution Professional to preserve and protect the assets of the Corporate Debtor. For that purpose, he is enjoined by Section 25(2) (a) to take immediate custody and control of all the assets of the corporate debtor. Section 25 interalia reads as follows;

"25. Duties of resolution professional

25. (1) It shall be the duty of the resolution professional to preserve and protect the assets of the corporate debtor, including the continued business operations of the corporate debtor.

(2) For the purposes of sub-section (1), the resolution professional shall undertake the following actions, namely:-

(a) take immediate custody and control of all the assets of the corporate debtor, including the business records of the corporate debtor;

(b) represent and act on behalf of the corporate debtor with third parties, exercise rights for the benefit of the corporate debtor in judicial, quasi-judicial or arbitration proceedings;

(Emphasis Supplied)

16. By virtue of Sections 18(1)(f), 23(2) and 25 of the Code, the Administrator is **obligated to take custody of all assets of the Corporate Debtor, irrespective of whether the same is in the latter's possession.**

17. The statutory purpose behind enjoining the IRP/RP/Administrator to take custody of the assets is to preserve the value of the Corporate Debtor's property and its status as a going concern in order to facilitate its insolvency resolution.

II. The RGICL Shares are admittedly owned by the Corporate Debtor.

18. The RGICL Shares are owned by the Corporate Debtor and its ownership is duly reflected in its Balance sheet.

19. By virtue of Sections 18(1)(f) (ii), Section 23(2) and 25, the Administrator is bound to take custody of all assets of the Corporate Debtor even if they are not in its possession.

20. An obligation to take custody of assets not in the possession of the Corporate Debtor clearly implies a corresponding duty on the part of the possessor (in this case the Respondent) to cede custody and possession to the Administrator.
21. At present, the possession of the RGICL shares is currently with the Respondent. The Respondent holds the RGICL shares under a Pledge created by the Corporate Debtor under the restated and amended Pledge Agreement.
22. Under English law, a pledge is a bailment of goods that is kept by the creditor as security for a debt. The general property in the goods remains with the Pledgor and only a right to sell the goods passes on to the Pledgee. Thus, the Pledgor retains ownership of the goods, and the Pledgee only has a right to sell them to recover his debt. It is only after a sale that a Pledgor loses his ownership rights.
23. Pertinently, a pledge is not a class/specie of mortgage. In a mortgage, general property interest in the goods passes on to the mortgagee. There is no such transfer under a pledge. A pledge

only enables a pledgee to sell the goods to recover his debt.

24. A pledge is consequently a lower form of security interest than a mortgage.
25. The position is no different under the law of pledge as codified under sections 172 to 176 of the Contract Act.
26. Under Section 172, a pledge is a bailment of the goods as security for payment of a debt or performance of a promise. Section 173 entitles a pledgee to retain the goods pledged as security for payment of a debt and under Section 175 he is entitled to receive from the pledgor any extraordinary expenses he incurs for the preservation of the goods pledged with him. Section 176 deals with the rights of a pledgee and provides that in case of default by the pledgor, the pledgee has (1) the right to sue upon the debt and to retain the goods as collateral security and (2) to sell the goods after reasonable notice of the intended sale to the pledgor. Once the pledgee by virtue of his right under Section 176 sells the goods, the pledgor's right to redeem them stands extinguished. The pledgee is bound to apply the sale proceeds towards satisfaction of the debt and pay the surplus, if any, to the pledgor.

Till the time the sale does not take place, the pledgor is entitled to redeem the goods on payment of the debt.

27. A pledgee does not have legal title to the goods pledged to him. He only has a right to sell the shares for recovering the debt due. The general property and title to the shares remains with the pledgor till the time the shares are sold.
28. The law of Pledges was restated by the Supreme Court in *PTC India Financial Services Ltd v V. Kari & Anr*, (2022 SCC Online SC 608), and it clarified that the same governed pledged dematerialized shares. It held;
- i. It reiterated the settled position that a pledgee/Pawnee did not have a right of ownership but a limited right of possession of the shares till the debt was paid and/or to sell the same after giving reasonable notice. (*paras 29-36*).
 - ii. It reiterated the settled law that a sale of pledged goods by a pledgee/pawnee to itself was void and would amount to conversion/ theft in law. (*paras 63-64*).
 - iii. It held that a transfer of pledged shares by a pledgee to himself and a recording of the pledgee as a 'beneficial owner' in the depository records did not constitute a sale. The pledgor/pawnor's rights (including ownership) continue till 'actual sale' of the shares. (*paras 81-85*).

29. Thus, the Respondent remains a pledgee of the RGICL Shares under the Restated Pledge Agreement. Its possession and custody of the shares is qualified and limited to selling the same for recovering debts owed. The Corporate Debtor retains ownership and the general property of the shares.

30. This position has been admitted by the Respondent's beneficiaries before the Securities Appellate Tribunal in IRDAI Appeal No.10 of 2010

31. In fact, the Securities Appellate Tribunal had recorded that the Respondent is merely a custodian/trustee of the RGICL Shares and is not the owner thereof.

32. It further restrained the Respondent from exercising voting rights in respect of those shares, a judicial interdiction inconsistent with ownership.

III. The Respondent is prohibited from selling the RGICL shares by virtue of the moratorium declared by this Hon'ble Tribunal and Section 14 of the Code. It is legally bound to handover the shares to the Administrator by virtue of Sections 18, 23, 25 and other provisions of the Code.

33. The Respondent has not sold the RGICL shares. It is now

prohibited from doing so and it must hand over the same to the Administrator due to the following reasons:

34. The Corporate Debtor is a Financial Services Provider. By virtue of Rule 5 (b) of the Insolvency and Bankruptcy (Insolvency and Liquidation Proceedings of Financial Service Providers and Application to Adjudicating Authority) Rules, 2019, an interim moratorium shall commence on and from the date of filing of petition for insolvency under clause (a) till its admission or rejection.

35. The Petition was filed on 2nd December 2021. An interim moratorium came into force by virtue of Rule 5 (b) of the Insolvency and Bankruptcy (Insolvency and Liquidation Proceedings) of Financial Service Providers & Application to AA Rules, 2019 from that date. The Petition was thereafter admitted on 6th December 2021 and a moratorium under Section 14 of the IBC was also declared by this Tribunal on that date in terms of Admission of the Corporate Debtor.

36. Section 14 reads as follows;

14. Moratorium.—(1) Subject to provisions of sub-sections (2) and (3), on the insolvency commencement date, the Adjudicating Authority shall by order declare moratorium for prohibiting all of the following, namely-

- a) *the institution of suits or continuation of pending suits or proceedings against the corporate debtor including execution of any judgment, decree or order in any court of law, tribunal, arbitration panel or other authority;*
- b) *transferring, encumbering, alienating or disposing of by the corporate debtor any of its assets or any legal right or beneficial interest therein;*
- c) *any action to foreclose, recover or enforce any security interest created by the corporate debtor in respect of its property including any action under the Securitization and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (54 of 2002);*
- d) *the recovery of any property by an owner or lessor where such property is occupied by or in the possession of the corporate debtor.*

[Explanation—For the purposes of this sub-section, it is hereby clarified that notwithstanding anything contained in any other law for the time being in force, a license, permit, registration, quota, concession, clearances or a similar grant or right given by the Central Government, State Government, local authority, sectoral regulator or any other authority constituted under any other law for the time being in force, shall not be suspended or terminated on the grounds of insolvency, subject to the condition that there is no default in payment of current dues arising for the use or continuation of the license, permit, registration, quota,

concession, clearances or a similar grant or right during the moratorium period.]

(2) The supply of essential goods or services to the corporate debtor as may be specified shall not be terminated or suspended or interrupted during moratorium period.

[(2-A) Where the interim resolution professional or resolution professional, as the case may be, considers the supply of goods or services critical to protect and preserve the value of the corporate debtor and manage the operations of such corporate debtor as a going concern, then the supply of such goods or services shall not be terminated, suspended or interrupted during the period of moratorium, except where such corporate debtor has not paid dues arising from such supply during the moratorium period or in such circumstances as may be specified.]

[(3) The provisions of sub-section (1) shall not apply to-

[(a) such transactions, agreements or other arrangements as may be notified by the Central Government in consultation with any financial sector regulator or any other authority;]

(b) a surety in a contract of guarantee to a corporate debtor.]

(4) The order of moratorium shall have effect from the date of such order till the completion of the corporate insolvency resolution process:

Provided that where at any time during the corporate insolvency resolution process period, if the Adjudicating Authority approves the resolution plan under sub-section (1) of Section 31 or passes an order for liquidation of corporate debtor under Section 33, the

moratorium shall cease to have effect from the date of such approval or liquidation order, as the case may be.

(Emphasis Supplied)

37. Section 14 prescribes the legal consequences emanating from a moratorium declared by this Tribunal and the prohibitions that ensue. Specifically, Section 14 (c) prohibits, "**(c) any action to interest created by security foreclose, recover the corporate debtor** *in respect of its property including any action under the Securitization and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002;*"
38. Section 2 (31) defines "security interest" to mean, "*right, title or interest or a claim to property, created in favour of, or provided for a secured creditor by a transaction which secures payment or performance of an obligation and includes mortgage, charge, hypothecation, assignment and encumbrance or any other agreement or arrangement securing payment or performance of any obligation of any person.*"
39. It is beyond cavil that the Respondent's pledge over the RGICL shares is a 'security interest.

40. 'It is consequently prohibited under Section 14(c) and by the moratorium declared by this Hon'ble Tribunal from enforcing its pledge and selling the shares.
41. As set out above, Section 18(1)(f) (ii) and 25 obligate the Administrator to take possession of all assets of the Corporate Debtor over which it enjoys ownership rights. Indeed Section 18(1)(f)(ii) makes it clear that custody of even those assets must be taken which are not presently in the possession of the Corporate Debtor.
42. A statutory duty cast upon the Administrator to take custody of all assets (including those not in the Corporate Debtor's possession) carries with it a corresponding duty on a party in possession of an asset to hand over the same to the Administrator.
43. Section 238 of the Code confers overriding effect to the Code; It reads as follows;

238. Provisions of this Code to override other laws.—The provisions of this Code shall have effect, notwithstanding anything inconsistent therewith contained in any other law for the time

being in force or any instrument having effect by virtue of any such law.

44. Section 238 thus stipulates that the Code would override all other laws, **including an instrument having effect by virtue of any such law**. The phrase 'Instrument' includes an 'Agreement' having effect by virtue of a law. It follows that any Agreement that is inconsistent with the provisions of the Code will be over-ridden to the extent of that inconsistency. *(See Para 79-83 of Gujarat Urja Vikas Nigam Ltd v Amit Gupta, 2021 7 SCC 209)*
45. The Respondent's right to possession of the RGICL shares and the right to sell the same flows from the Amended and Restated Pledge Agreement. **This Agreement and the right of pledge is enforceable and has effect by virtue of Sections 172 to 176 of the Contract Act, 1872.**
46. **The Pledge Agreement is plainly an 'Instrument' having effect by virtue of any law.**
47. In the event of inconsistency, the provisions of the Code by virtue of Section 238 will override the Respondent's pledge rights

flowing from the Pledge Agreement.

48. In the present case, Section 14 prohibits the Respondent from selling the RGICL shares. Sections 18(1)(f)(ii) and 25 impose a duty upon it to handover custody and possession of the shares to the Administrator. These provisions by virtue of Section 238, will necessarily prevail over the Respondent's pledge rights under the Pledge Agreement.
49. In **Encore Asset Reconstruction Company Pvt. Ltd. v. Charu Sandeep Desai & Ors (NCLAT Appeal No. 719/2018)**, Dena Bank had taken possession of a mortgaged property owned by the Corporate Debtor under the SARFAESI Act, 2002. It retained possession even after commencement of the CIRP and a declaration of a moratorium under section 14. The Hon'ble NCLAT directed Dena Bank to hand over possession of the property to the RP. It issued these directions inter alia on reasoning that section 238 of the Code would prevail over the Bank's rights to take possession under the SARFAESI Act, 2002.
50. In *Ananjan Mitter v. Lavasa Corporation (Chamber Summons No.*

78 of 2019), the Bombay High Court had earlier directed the Corporate Debtor's Bank to deposit the former's money in a no lien account for satisfying a decree that was pending execution before it. Pursuant to the admission of the Corporate Debtor into the CIRP and upon the RP's application, it directed the Bank to release the funds to the RP. It did so after noticing that the Code imposed an obligation to take custody of all assets of the Corporate Debtor and that execution proceedings had been stayed by the moratorium. In doing so, it recognized that there was a duty cast on a person in possession of the Corporate Debtor's assets to hand over the same to the RP.

51. In both cases, the Hon'ble Court and the Hon'ble Appellate Tribunal recognized that there was a corresponding duty on a party in possession of an asset to hand over the same to the RP.
52. In the present case, the Respondent does not even enjoy a mortgage. It is a mere pledgee. It cannot stand on a higher footing.
53. These principles would equally apply here. The moratorium precludes the Respondent from selling the RGICL shares. It is

bound to hand over possession of the shares to the Administrator.

IV. The Respondent's reliance on the SAT Order is wholly misplaced and misconceived.

54. The Respondent has relied on the SAT Order to urge that there is a judicial imprimatur on its possession of the RGICL shares, its possession of the same is inviolate and it cannot be directed to give up the same. This stand wholly misconceived and legally unsustainable.

a) It is well settled that a judgment is only an authority for what it **decides in the facts of that case. It is impermissible in law to draw inferences and /or deduce reasoning that is not otherwise reflected in the decision.**

(Para 12, Internal Pg. 5 of State of Orissa v. Sudhansu Sekhar Misra, AIR 1968 SC 647)

Submissions of the Respondent by way of Reply:

55. **Shares in question:** 25,15,49,920 equity shares of Reliance General Insurance Co. Ltd (“**RGICL**”) held by the CD. Under the amended and restated pledge agreement dated 26th June, 2019 (“*Amended and Restated Pledge Agreement*”). These shares were pledged by the CD in favour of IDBI, on a first ranking *pari*

passu basis (“**Pledged Shares**”).

56. The Respondent advanced their submissions by way of response to the grievances raised by the Applicant which is as follows:

56.1. Grievance No.1 – The Administrator is required to take control and custody of CD’s assets and function as per duties in law, including under Section 18(f) and section 25(2)(a) of the Insolvency and Bankruptcy Code, 2016

IDBI’s submission:

(i) Handing over possession of the Pledged Shares would amount to an extinguishment/relinquishment of IDBI’s security interest which is only contemplated in the liquidation proceedings.

(ii) In this context, the relevant statutory provisions may now be noted.

(a) THE INDIAN CONTRACT ACT, 1872 (“ICA”).

(I) A pledge is a contract for bailment of goods as security for payment of debt or performance of promise. Section 172 of the ICA defines 'pledge', 'pawner' and 'pawnee' as under:

"The bailment of goods as security for payment of a debt or performance of a promise is called "pledge". The bailor is in this case called the "pawner". The bailee is called the "pawnee".

(II) "Bailment" is defined under Section 148 of the ICA as under:

A 'bailment' is the delivery of goods by one person to another for some purpose, upon a contract that they shall, when the purpose is accomplished, be returned or otherwise disposed of according to the directions of the person delivering them.

(III) By virtue of Section 173 of the ICA, the pawnee is entitled to retain the goods pledged for the payment of the debt. Section 173 reads as under:

Pawnee's right of retainer—The pawnee may retain the goods pledged, not only for payment of the debt or the performance of the promise, but for the interests of the debt, and all necessary expenses incurred by him in respect of the possession or for the preservation of the goods pledged. "

(IV) It is now established law including in *PTC India Financial Services Ltd. v. Venkateswarlu Kari & Anr* [2022 SCC Online SC 608] ("**PTC Judgment**") that by virtue of Section 173 of the ICA, the pawnee has a special property or interest in the thing pledged. The special interest exists in the pawnee so that the pawnee can compel payment of the debt or sell the goods when the right to do so arises.

(V) As per Section 176 of the ICA, when a pawnor makes a default in payment of debt or performance of a promise, the pawnee may bring a suit against the pawnor upon such debt or promise and retain the goods pledged as collateral security, or he may sell the goods pledged upon giving the pawnor reasonable notice of the sale.

(b) IB Code

- (I) Admittedly, IDBI is acting for and on behalf of the secured parties with respect to (3) three transactions. If the CIRP of the CD was to be unsuccessful and the CD was to go into liquidation, IDBI will be free to exercise its rights as a secured creditor over the pledged shares under Section 52 of the Code.
- (II) Section 52(1) of the IB Code provides (2) two ways for realizing the outstanding amount of the assets due to the secured creditors. First, the secured creditors can either relinquish their security interest to the liquidation estate by virtue of section 52(1)(a) of the IB Code or second, the secured creditors can realize their security interest in terms of section 52(1)(b).
- (III) Section 52(1) of the IB Code reads as under:

52. (1) *A secured creditor in the liquidation proceedings may—*

(a) relinquish its security interest to the liquidation estate and receive proceeds from the sale of assets by the liquidator in the manner specified in section 53; or

(b) realise its security interest in the manner specified in this section.

(IV) If the secured creditor chooses to relinquish its security interest, the distribution would be in accordance with Section 53(1)(b)(ii) which sets out the order of priority for the distribution of assets in liquidation. Section 53(1)(b)(ii) of the IB Code reads as under:

53. (1) *Notwithstanding anything to the contrary contained in any law enacted by the Parliament or any State Legislature for the time being in force, the proceeds from the sale of the liquidation assets shall be distributed in the following order of priority and within such period and in such manner as may be specified, namely: -*

.....

(b) the following debts which shall rank equally between and among the following: -

(i) workmen's dues for the period of twenty-four months preceding the liquidation

commencement date; and

(ii) debts owed to a secured creditor in the event such secured creditor has relinquished security in the manners set out in section 52;

(V) However, once a secured creditor opts to realise its security interest, Section 52(1)(b) provides that the creditors can take recourse to Section 52(4) which reads as under:

(4) A secured creditor may enforce, realise, settle, compromise or deal with the secured assets in accordance with such law as applicable to the security interest being realised and to the secured creditor and apply the proceeds to recover the debts due to it.

(VI) From the above, it is clear that the IB Code does not contemplate a situation where a secured creditor is compelled to give up its security during CIRP. Any relinquishment of security interest by a secured creditor is only contemplated in case of liquidation under IB Code.

(VII) It is IDBI's case that handing over the custody of the Pledged Shares as prayed for by the Administrator, would amount to a situation wherein a secured creditor is compelled to give up its security interest, which is against the intent of the IB Code at the

CIRP stage. It is submitted that IDBI cannot, against its will, be compelled to surrender its security when the IB Code doesn't even / contemplate such a situation.

(VIII) The fact that a secured creditor has an option to either relinquish or retain its security during the liquidation of a corporate debtor, would mean that the security of a secured creditor is not to be disturbed during CIRP. Thus, the attempt of the Administrator to take over the Pledged Shares would thus be in contravention of the intent of the IB Code.

(IX) Further there is no contradiction or inconsistency between the relevant provision of ICA and IBC. Rather, the provisions of the ICA and the IB Code can be harmoniously construed and applied together.

(X) In this regard, it is pertinent to note that the sale of the Pledged Shares by IDBI would have been consummated prior to the corporate insolvency resolution process, but for the conduct of the CD which refused to provide details and documentation sought by the prospective bidders.

56.2. Grievance No.2 – Pledged Shares are owned by the CD

AND

Grievance No.3 – IDBI is prohibited from selling the Pledged Shares by virtue of Section 14 of the IB Code.

IDBI's submission:

(a) Both the debt and default has been admitted by the CD. The outstanding debt as it stands today is admittedly undischarged.

(b) IDBI has vested rights under the Order dated 27th February, 2022 passed by the Hon'ble Securities Appellate Tribunal ("SAT"): -

(i) IDBI has vested rights under the Order dated 27th February, 2022 passed by the Hon'ble SAT = which includes the right to take possession of the Subject Shares and deal with and/or dispose of the same ("**Vested Rights**"). The aforesaid Order passed by the Hon'ble SAT is hereinafter referred to as the "**SAT Order**".

(ii) Creation of the pledge over shares of RGICL in IDBI's favour (for the benefit of the secured parties) at all times have been an admitted position by the CD. The pledge was validly created in accordance with all the applicable laws and all the relevant charge filings in relation to the pledge were undertaken by the CD and

the same was in public domain since its creation.

- (iii) Pursuant to the default committed by the CD, enforcement actions were taken by IDBI at the behest of the secured parties under the Amended and Restated Pledge Agreement for each of the transaction. However, the CD failed to comply with its payment obligations.
- (iv) Having received no payment, and pursuant to the receipt of the requisite approval from the secured parties, IDBI issued the notice of invocation of the Pledge dated 24th October 2019 to the CD. It is pertinent to note that the creation of the Pledge and also the invocation has neither been disputed nor been challenged by the CD at any point in time before the IRDAI or before the SAT.
- (v) It is an admitted position that the CD was unable to discharge the debt, which position has been accepted by the CD before the Hon'ble SAT.
- (vi) As more particularly set out in paragraph nos. 3.2; 3.6 and 3.7 of the Affidavit in Reply dated 15th June, 2022 filed by IDBI ("**Reply**"), in respect of the secured parties, the SAT Order therefore, recognized the valid creation of the Pledge, its invocation and also affirmed the unconditional Vested Rights in favour of IDBI, who is today in possession of the Pledged Shares (for and on

behalf of the secured parties).

- (vii) The SAT Order has not been challenged or set aside by the Hon'ble Supreme Court or the Hon'ble National Company Law Tribunal. Having failed successfully challenge, the SAT Order has attained finality. Therefore, the Vested Rights which have accrued in favour of the Respondent pursuant to the SAT order is uncontested and cannot now sought to be controverted in any manner. Qua 238 of the IB Code, given that there is no inconsistency, the SAT Order will prevail over the IB Code. Even assuming, whilst denying that Section 14(1)(c) of the IBC does not permit sale of the pledged shares during moratorium, that by itself will not confer right of possession to the CD in a manner thereto to destroy the security interest.
- (c) CD has waived its right of redemption to the Pledged Shares by not reserving its right under the Amended and Restated Pledge Agreement as also in the SAT order. Even assuming, whilst denying that despite the SAT Order attaining finality, the right of redemption survives, the CD is not entitled to demand possession of the pledged shares without discharging the debt secured by the pledge.
- (i) At the outset, it is submitted that as per Clause 7(a) of the Amended and Restated Pledge Agreement (*Pg. 698, Vol*

IV of the IA), the CD has expressly waived its rights to raise any objection to sale. Clause 7(a) of the Amended and Restated Pledge Agreement is quoted as under:

7. ENFORCEMENT OF THE PLEDGE

.....

7.4 No objection to the sale

(a) The Pledgor shall not raise and shall procure that RGICL shall not raise, and shall not be entitled to raise, any objections regarding the regularity of any sale or disposal and/or actions taken by the Trustee nor shall the Trustee be liable or responsible for any loss that may be occasioned from the exercise of such power and/or may arise from any act or default on the part of any broker or auctioneer or other Person or body engaged by the Trustee, for the said purpose.

.....

- (i) In any event, it is IDBI's case that by virtue of the SAT Order, which conferred unconditional Vested Rights in favour of IDBI, which included the right to sell, the CD could no longer be said to have a right to seek possession of the Pledged Shares.
- (ii) In so far as the judgment of the Hon'ble Supreme Court in PTC Judgment is concerned, it is submitted that the ratio laid down in the said case cannot have any application to the facts of the present case in view of the legal and binding effect of the SAT Order which has

attained finality. The judgement of the Supreme Court in *PTC India* judgement which has heavily been relied on by the Administrator is distinguishable.

- (iii) In this context, it is also submitted that a subsequent pronouncement on a question of law cannot take away a right vested by virtue of principles of res judicata which have attained finality.
- (iv) The CD by its own act of non-traverse vis-à-vis the pledge creation and the enforcement of the Pledged Shares coupled with the non-challenge to the SAT Order, has accepted the position that the SAT Order has attained finality. It is IDBI's submission that the CD at all times had knowledge of the above position and consciously by non-contesting the same (including any challenge to the enforcement notice dated 17th October, 2019 Exhibit B, Pg. Nos. 45 to 46 of the Affidavit in Reply dated 15th June, 2022 filed by IDBI) cannot now seek to be controvert in any manner these facts,
- (v) In this regard, it is also submitted that the Corporate Debtor was fully right in waiving its statutory right as a statutory right which is for the benefit of an individual can in proper circumstances be waived by the party for whose benefit the provision has been made. (Judgment dated 19th November, 1958 passed by the Hon'ble Supreme Court in *Basheshar Nath v. Comm. IT (AIR 1959 SC149)*) It reads as follows:

“50. There is, I think, a three-fold classification: (1) a right granted by an ordinary statutory enactment; (2) a right granted by the Constitution; and (3) a right guaranteed by Part III of the Constitution. With regard to an ordinary statutory right there is, I think, no difficulty. It is well recognised that a statutory right which is for the benefit of an individual can in proper circumstances be waived by the party for whose benefit the provision has been made. With regard to a constitutional right.....”

- (d) In view of the SAT Order (which has attained finality), IDBI (for and on behalf of the secured parties) has an irrevocable crystallised right of possession and sale. In view thereof, the Administrator cannot seek re-adjudication on this issue.
- (e) In any event and without prejudice to the above, given the continuing default, CD can no longer claim possession of the Pledged Shares unless and until it discharges the outstanding debt in full. The Administrator, merely because the CD is under CIRP, now cannot take a different position than the CD.

57. It is submitted that the SAT Order recognizes, and crystalises the Vested Rights created in favour of IDBI over the Pledged Shares for the benefit of the secured parties. Neither the CD nor the

Administrator has raised any objection to the SAT Order nor has filed any application before the SAT to alter the SAT Order on the terms and conditions governing the Pledged Shares. Therefore, now, the Administrator cannot act in contravention of a judicial order (which has attained finality) by claiming custody and control over the Pledged Shares, in the absence of any findings by the SAT on this aspect.

Submissions of the Applicant by way of the Rejoinder:

58. The Applicant had argued, inter alia, the following points:
- i. The Code obligates the Administrator to take control and custody of all assets of the Corporate Debtor;
 - ii. The RGICL Shares are admittedly owned by the Corporate Debtor; and
 - iii. The Respondent is prohibited from selling the RGICL shares by virtue of the moratorium declared by this Tribunal and Section 14 of the Code. None of these points have been effectively addressed by either the Respondent or Federal Bank.
59. The Applicant had also, inter alia, submitted that the Respondent is legally bound to handover the shares to the Administrator by virtue of Sections 18, 23, 25 and other provisions of the Code.

A. Response to the arguments made by the Respondent, IDBI

Trusteeship Services Ltd.

IDBI's first submission: Handing over possession of the RGICL shares would amount to an extinguishment/relinquishment of the Respondent's pledge over the RGICL Shares.

Answer

60. This argument is misconceived. The object of the Code is not to efface or extinguish the security interest of secured creditors but to make their rights in security interests subservient to the CIRP contemplated under the Code till the time resolution plans are received and/or resolution fails.
61. The Applicant only seeks possession in accordance with Sections 18(1)(f) and 25 of the Insolvency & Bankruptcy Code, 2016 ("Code") for the purpose of reviving the Corporate Debtor and the CIRP.
62. Sections 18 and 25 of the Code obligate the RP to take possession of all assets over which the Corporate Debtor has ownership rights.
63. By virtue of Section 238, the Code categorically overrides all rights under any other conflicting laws and/or contracts/

instruments having effect by virtue of said laws. This would include the Pledge Agreement. Till such time that the CIRP is on-going to revive the Corporate Debtor, the rights of the Respondent pledgee and other secured creditors to enforce their security stand suspended and are subservient to the CIRP.

64. It is not the Applicant's case that the pledge stands relinquished.
65. Handing over possession of the shares for the CIRP will not extinguish the Respondent's security. Under the Code, the Respondent is entitled to enforce its security interest only in two scenarios;
 - i. In a situation where the resolution plan contemplates payment of a sum to the Respondent, and permits him to enforce its security interest to recover that payment. In other words, if the RP provides for payment of INR 100 crores to the Respondent and no method of payment specified, Respondent can enforce its interest to recover INR 100 crore, (see paragraphs 9 and 16-22 of *India Resurgence ARC Private Limited v. Amit Metaliks Limited & Anr (2021 SCC OnLine SC 409)*).
 - ii. In the event of the CIRP being unsuccessful and the Corporate Debtor going into liquidation, the Respondent

will be free to exercise its rights as a secured creditor over the pledged shares under section 52 of the Code.

66. Neither of these situations have happened. The Respondent admittedly does not own the RGICI shares. The shares have not been sold to a third party. Therefore it brooks no argument that the Corporate Debtor retains ownership of the RGICL shares. By virtue of sections 18 and 25, the Respondent is bound to handover possession.
67. The present case is on all force with the Hon'ble NCLAT's decision in Encore case. Even in that case, the secured creditor who had taken possession of the mortgaged property under the SARFAESI Act, was directed to hand over possession to the RP.
68. The same principle would apply to the Respondent's case.
69. Further it is important to note that possession is of two kinds: (a) *de jure*/constructive possession, and (b) *de facto*/ physical possession.
70. In Halsbury's Laws of England (5th Edn., Vol. 80, p. 851, Para 834), "physical and legal possession" is distinguished as under:

"834. Physical and legal possession distinguished Possession is a word of ambiguous meaning and its legal senses do not coincide with the popular sense. It's meaning depends on the context in

which it is used. In English law it may be treated not merely as a physical condition protected by ownership, but as a right in itself. The word possession may mean effective, physical or manual control, or occupation, evidenced by some outward act, sometimes called de facto passion or detention as distinct from a legal right to Possession.....

Possession may mean legal possession: that possession which is recognised and protected as such by law. The elements normally characteristic of legal possession are an intention of possessing together with that amount of occupation or control of the entire subject matter of which it is practically capable and which is sufficient for practical purposes to exclude strangers from interfering. Thus, legal possession is ordinarily associated with de facto possession; but legal possession may exist without de facto possession, and de facto passion is not always regarded as possession in law A person who, although having no de facto possession, is deemed to have possession in law is sometimes said to have constructive possession.

71. In the present case, prior to the invocation of pledge, it is an admitted position that the Respondent only had de jure constructive possession and not physical possession of the shares.
72. Physical possession of the shares were with the Corporate Debtor

and only constructive possession was with the Respondent.

73. It is only after invocation of the pledge, that the respondent took physical possession of the shares by transferring the same into in demat account. As on date, the Respondent now has de jure/constructive and de facto/physical possession at the same time.
74. By the present Application, the Applicant seeks possession in either form, for facilitating the insolvency during CIRP.
75. Without prejudice to its case that it is entitled to physical possession, the Applicant submits that at the de minimis, it must be granted constructive/ de jure possession of the RGICL Shares for the purpose of the CIRP. Whilst the CIRP is ongoing, physical possession of the RGICL shares can remain with the Respondent.

IDBI's second submission: The present stage is not the stage to handover the Respondent's security. The factum of the moratorium does not lead to the Administrator getting all the assets of the Corporate Debtor and the Respondent cannot be called on to handover custody.

Answer:

76. This argument is in the teeth of the express provisions of the Code which mandates handover of all assets to the IRP/ RP/

Administrator.

77. The purpose and object is to preserve the value of the Corporate Debtor's property and its status as a going concern for facilitating its revival as a going concern and to maximize value for all stakeholders.
78. This is apparent from the statutory scheme under the Code:
- a. Upon Section 14, a moratorium first kicks in upon admission of the Petition. The entire purpose is to stave off any sales or transfers of the Corporate Debtor's assets by its creditors, thus preserving its property value and its corporate status.
 - b. Pertinently, Section 23(2) obligates the RP to exercise the powers and discharge the duties of the IRP. Thus, the RP is bound to take all steps to preserve the value of the corporate debtor's property and to take custody of the assets.
 - c. Section 25 reiterates that obligation. Section 25 (2) directs the RP/Administrator to take custody and control of all assets of the Corporate Debtor.
 - d. The object behind Parliament's repeated statutory emphasis upon the IRP/RP/Administrator taking custody of all the assets of the Corporate Debtor is apparent, the Legislature desired the preservation of all assets of the Corporate Debtor in order to stave

off civil death, facilitate its revival as a going concern and fetch the best possible resolution plan that will inure to the benefit of all creditors and stakeholders.

- e. Parliament's object is frustrated and jeopardized when a party unlawfully withholds possession of assets (even if they are mortgaged and/or pledged) that are owned by the Corporate Debtor.
- f. It would lead to a situation where security interests in the possession of secured creditors stands outside the CIRP of the Corporate Debtor. Effectively, a resolution would then proceed without all the assets of the Corporate Debtor. Such a scenario would clearly imperil the Corporate Debtor's revival and will destroy value (instead of maximization) for all stakeholders. (see paragraphs 21-22 of *India Resurgence ARC Private Limited v. Amit Metaliks Limited & Anr (2021 SCC OnLine SC 409)*)
- g. There is thus a clear conflict arises when a secured creditor under the Contract Act retains custody of pledged shares and does not permit the RP to take custody of those assets for the purposes of CIRP. That is why Section 238 of the Code kicks in and overrides contractual rights.

IDBI's third submission: The Respondent has a vested right under the SAT Order. Citing *BSNL v. UOI* (2006) 3 SCC 1, Respondent argued that the Hon'ble Supreme Court's judgment in the case of *PTC India Financial Services Ltd v V. Kari & Anr*, (2022 SCC Online SC 608) would not reverse the binding nature of the SAT Order and/ or the vested rights that have accrued in favour of the Respondent thereunder.

Answer:

79. This argument is misplaced. There are no vested rights.
80. First, the Respondent has singularly failed to explain its own statement before SAT that it is not the owner of the RGICL shares and that it is only a custodian/trustee of the same pending sale.
81. The Respondent has not dealt with this position at all.
82. Furthermore, PTC India's case is a binding Supreme Court judgment that binds this Tribunal and it elucidates and elaborates the law relating to pledges as it has always stood (and which was understood to be applicable by the Respondent who admittedly did not claim ownership of the RGICI shares) and in relation to dematerialized shares. It is not a statute vesting rights. No right vested in the Respondent by virtue of him taking possession of the shares.

83. The Hon'ble Supreme Court held as follows:
- a. It reiterated the settled position that a pledgee did not have a right of ownership but a limited right of possession of the shares till the debt was paid and/or to sell the same after giving reasonable notice. (See paras 29-36).
 - b. It reiterated the settled law that a sale of pledged goods by a pledgee/Pawnee to itself was void and would amount to conversion/ theft in law. (See paras 63-64).
 - c. It held that the Pledgor enjoyed a right of redemption on and up to an actual sale. In other words, the Pledgor retained ownership and only lost title after a sale to a third party.
 - d. It held that a transfer of pledged shares by a pledgee to himself and a recording of the pledgee as a beneficial owner' in the depository records did not constitute a sale. The pledgor/pawnor's rights (including ownership) continue till 'actual sale' of the shares. (See paras 81-85).
 - e. The Respondent has not been able to displace these fundamental legal principles. These fundamental propositions elucidates the law and no argument contrary to the Supreme Court's decision ought to be countenanced.
84. There are no vested rights under the SAT Order, hence, no rights

can be taken away. The very premise of this submission is without any underlying basis.

85. There are no vested rights in the Respondent's favour under the Code. The SAT Order did not decide any issues in relation to the Code. The Hon'ble Tribunal applied its mind to the sole issue before it, namely if there had been a violation of the IRDAL Act and Regulations
86. There was to other issue before it and neither did it evince any other opinion.
87. As a matter of fact, the Hon'ble SAT pronounced its order on February 27, 2020. The insolvency proceedings of the Corporate Debtor commenced on December 6, 2021. Therefore, there was no question of SAT evincing any opinion vis-a-vis the Code as the present insolvency proceedings were yet to commence.
88. Thus, it is respectfully submitted that the SAT Order has no bearing on the issues involved in this Application, handing over possession of the RGICL shares owned by the Corporate Debtor for completing its CIRP.
89. The Respondent has failed to explain its statement in the SAT Appeal, namely that:

"It is respectfully submitted that it is settled that a pledge does not amount to a transfer of ownership of the underlying security // property. It is submitted that in the present case, there was a transfer of the ownership From Reliance Capital and the placing of shares in the demat account of IDBI Trusteeship was merely a measure to take possession/custody of shares until a buyer was identified. The only purpose of placing the shares in the demat account of IDBI Trusteeship is to dispose of the shares and realise the value from such disposal (paragraph 29, Annexure Z, page 812, Vol. 5 of the Application).

IDBI's fourth submission: The Corporate Debtor had waived its right of redemption to the pledged shares by not reserving its right in the Hon'ble SAT order.

Answer

90. This argument is per se unstateable contrary to settled law. There is no need for the Corporate Debtor to reserve a statutory right already granted under law. There is no concept in law of reserving statutory rights.
91. First no plea of waiver has been even pleaded. Waiver is a question of fact that must be pleaded and cannot be orally argued

across the bar.

92. Section 177 of the Contract Act, 1872 Contract Act") confers a statutory right on the pledgor to redeem the pledged goods/ shares right up to the moment of sale. If the Pledgor retains its right of redemption it plainly retains ownership over the pledged goods right up to the moment of sale.
93. This position in law has been recognised by the Hon'ble Supreme Court in *Jaswantrai Manilal Akhancy vs. State of Bombay (AIR 1956 SC 575) para 11*, the Court has concluded that delivery of the pledged shares to the pledgee merely makes the pledgee a trustee with a special interest in the property (of enforcing his collateral security) whereas the pledged shares continue to be under the ownership of the pledgor, until sale thereof.
94. As a matter of law, the right of redemption cannot be waived.
95. The right of redemption is absolute and cannot be waived, and the creditor's right of sale cannot be unqualified (*Lallan Prasad v Rehmat Ali, AIR 1967 SC 1322; and Official Assignee v Madholal Sindhu (AIR 1947 Bom 217)*).
96. It is well-settled that in a mortgage, there can be no clog on redemption (*Ganga Dhar vs. Shankar Lal & Ors. (AIR 1958 SC 770)*). The same principle has been held to apply to pledges which

have been described as a mortgage of movables. It has also been held that parties cannot contract out of and/or waive the right of redemption provided in Section 177 of the Contract Act. *(Rupchand Dawn v. Kamal Kumari Devi (1954) 1 ILR Cal 220)*.

97. If the Respondent's argument is to be believed, it would create an absurd situation where every pledgee would have to reserve its right of redemption.
98. Even assuming (whilst denying) for the sake of argument that a waiver is possible, it is settled law that a waiver must be clear, unequivocal and reflect a conscious decision of a party after being apprised of all legal consequences. (para 17 of *Shashikala Devi vs. Central Bank of India (2014) 16 SCC 260*).
99. No such clear, unequivocal waiver (after being apprised of all legal consequences) has been made by the Corporate Debtor and recorded in the SAT Order.
100. The basic ingredients of waiver by the Corporate Debtor are wholly absent under the Hon'ble SAT order.

Findings:

101. We have considered the matter in hand in the background of facts

and circumstances stated above.

102. We observe that under Section 18(1)(f)(ii) and 25 of the Code, the Administrator is duty bound to take control of the Assets of the Corporate Debtor even if they are not in the Corporate Debtor's possession. In order to understand, the reasons for incorporation of these provisions by the Legislature, it is useful to bear in mind the purpose of the Code, which is revival of the Corporate Debtor and value maximization of the assets of the Corporate. These objectives of the Code, can be achieved when the Administrator who is in charge of the Corporate Debtor amidst the CIRP process, is given a control of all the assets of the Corporate Debtor so that a correct and fair financial position of the Corporate Debtor is carved out. This exercise of collation of the assets of the Corporate Debtor, will in turn enable the Successful Resolution Applicants, to place competitive bids for acquisition of the Corporate Debtor and fetch a viable Resolution Plan in the interest of all Stakeholders.
103. It is also worthwhile to note that, the fact that the shares are in fact owned by the Corporate Debtor is not in dispute, the Respondent herein only possesses the shares in the capacity of the pledgee and not the owner thereof. Under the Indian

Contract Act, 1872 Section 173 entitles the pledgee to retain the possession of the goods as a security for payment of debt. Thereafter, under Section 176 of the Contract Act, in case of default, the pledgee has right to sue the pledgor and retain the goods as collateral security or sell the goods after reasonable notice being given to the Pledgor.

104. It is an admitted fact, the said shares have not been sold by the Respondent. It is the Applicants contention that as of now, the shares cannot be sold in view of moratorium imposed under the Code. Section 14(1)(c) of the Code prohibits any action to foreclose, recover or enforce any security interest created by the Corporate debtor in respect of its property including any action under the Securitization and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002.
105. Therefore, in view of the Moratorium the Respondent now is restrained from selling the shares in question. The Corporate Debtor was admitted into CIRP on 06.12.2021.
106. The Judgment relied on by the Applicant in the matter of *Encore Asset Reconstruction Company Private Limited vs Charu Sandeep Desai and Ors (2019 SCC Online NCLAT 284)* wherein the Hon'ble NCLAT held as under:

“13. It is not the case of the Appellant that the title of the assets has already been transferred or they have sold the assets in terms of Section 13(4) of the ‘SARFAESI Act, 2002’. It is also not the case of the Appellant that the assets owned by a third party is in possession of the ‘Corporate Debtor’ in terms of Section 18, as it is the duty of the ‘Interim Resolution Professional’ to take control and custody of any asset over which the ‘Corporate Debtor’ has “ownership rights” as recorded in the balance sheet of the ‘Corporate Debtor’. Even if it is not in possession of the ‘Corporate Debtor’, a person who is in possession of the same, including the ‘Dena Bank’ or ‘Encore Asset Reconstruction Company Pvt. Ltd.’ is bound to hand over the same to the ‘Resolution Professional’, when title still vests with ‘Corporate Debtor’.”

107. The Hon’ble NCLAT has crystallized the position of law, on the fact that the Resolution Professional or the Administrator as the case may be depending on the facts of the case, is duty bound to take custody of assets owned by the Corporate Debtor and the person who is in possession of the said assets is also duty bound to hand over the same.

108. The Respondent contends that pursuant to the SAT Order dated

27.02.2022 vested rights are created in favour of IDBI. The matter before the Hon'ble Securities Appellate Tribunal emanates from Orders passed by IRDAI holding that the Respondents transfer of shares into its demat account was null and void for violating Section 6A(4)(b)(iii) of the Insurance Act, 1938. The Respondent assailed the Order passed by IRDAI before the Hon'ble SAT whereby SAT held that the impugned Order that declared the transfer of shares into the demat account of the Respondent as null and void is set aside and also recorded that the Respondent is holding the said shares merely as a custodian/Trustee.

109. Therefore, it is clear the Hon'ble Securities Appellate Tribunal did not create any vested rights in Respondent, the issue before the Securities Tribunal pertains to declaration of transfer of shares in demat account of the Respondent as null and void by IRDAI and not the rights of the Respondent qua the said shares.
110. In the aforesaid backdrop, the Respondent is directed to handover the possession of 25,15,49,920 (Twenty Five Crore Fifteen Lakhs Forty Nine Thousand Nine Hundred and Twenty) shares of Reliance General Insurance Company Limited to the Administrator. Needless, to mention that the security interest of

the Respondent on the said shares by virtue of pledge created shall stand unaltered.

111. With the aforesaid observation present **IA No. 1286 of 2022 In C.P (IB) No. 1231/MB/C-I/2021** stands disposed of as allowed in terms of prayer clause (a).

Sd/-

SHYAM BABU GAUTAM

Member (Technical)

04.05.2023

SAM/Priyal

Sd/-

H.V. SUBBA RAO

Member (Judicial)