



INDIAN INSTITUTE OF INSOLVENCY PROFESSIONALS OF ICAI

(Company formed by ICAI under Section 8 of the Companies Act 2013)

IBC Case Law Capsule

Volume 04 | Number 36

(September 10, 2021)

**MAITREYA DOSHI Vs. ANAND RATHI GLOBAL FINANCE LTD. AND KANAK JANI, RP
COMPANY APPEAL (AT INSOLVENCY) NO. 191 OF 2021
DATE OF NCLAT JUDGMENT: AUGUST 25, 2021**

A Corporate Debtor cannot be permitted to back out from the documents and promises made as Co-borrower on account of being a Pledgor.

Facts of the Case: -

Maitreya Doshi, the Appellant, erstwhile Director of *M/s Doshi Holdings Pvt. Ltd.* (Corporate Debtor) challenged the NCLT, Mumbai order for initiation of CIRP on the ground that it was not a debtor of the loan because it had only pledged shares.

In this case, *Anand Rathi Global Finance Ltd.* (Respondent -1), an NBFC, disbursed loan to the tune of Rs.6 Crore to *M/s Premier Ltd.* under three separate Loan cum Pledge Agreements. The terms of the said loans were extended by way of various addendums. According to Appellant, in the amounts disbursed to *M/s Premier Ltd.*, the *Doshi Holdings* had pledged shares held by it in *M/s Premier Ltd* in favour of the Respondent No. 1, the Financial Creditor (FC).

Citing Loan Pledge Agreements, the Appellant argued that the sole obligation of *Doshi Holdings* was limited to only pledging shares held by it in *M/s Premier Ltd.* and that *Doshi Holdings* was not liable and/or obliged towards Respondent No.1 for the amounts disbursed to *M/s Premier Ltd.* The Appellant also claimed that the *Doshi Holdings* was not a beneficiary from the loan disbursed to *M/s Premier Ltd.* and is not liable to pay the amounts. When default occurred, it is claimed that the Appellant sought payment of the amount defaulted from *M/s Premier Ltd.* and not from the *Doshi Holdings*.



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NCLAT's Observations: -

The Court while referring to a catena of landmark judgements of *Phoenix ARC Pvt. Ltd. Vs. Ketulbhai Ramubhai Patel*, and *Anuj Jain Vs. Axis Bank Ltd.* etc. stated that the obligation of *Doshi Holdings* was limited to that of a pledgor of shares. "If there had been 'only a security interest' like pledging of shares, it would have been different," said the NCLAT.

However, the scrutiny of loan agreement and other records reveal that *Doshi Holdings* and *M/s Premier Ltd.* were co-borrowers of the loan. The Loan cum Pledge Agreements were found to have various clauses binding *Premier Ltd.* and *Doshi Holdings* to repay the loan and the Appellant signed this Agreement on behalf of *Premier Ltd.* as well as separately for *Doshi Holdings* as Authorized Signatory. (p.13) The Court expressed surprise that the Appellant was denying liability on account of *Doshi Holdings* after signing joint documents in favour of Respondent No.1 as Authorised Signatory for both the Companies. Besides entering into Agreement with the Financial Creditors as Co-borrower, *Doshi Holdings* also received loan as Co-borrower.

Order: -

NCLAT held that *Doshi Holdings* is Co-borrower of the loan. Therefore, it is Corporate Debtor under the IBC. The Court decline to interfere in the order of NCLT.

Case Review: - Appeal Dismissed.