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***PLEDGING OF SHARES WITHOUT CONSENT OF THE 'BENEFICIAL OWNER'***

*Ritu Janjani & Mrigendra Upadhyay*

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## PLEDGING OF SHARES WITHOUT CONSENT OF THE 'BENEFICIAL OWNER'

*Ritu Janjani\**

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**[Abstract:** *Securities, whether in the demat form or as physical share certificates can be pledged with the banks and other financial institutions. As per the Indian Contract Act 1872, Pledge can be created by the 'owner' of goods in respect of which pledge is created or with the consent of the owner. The registered owner in respect of dematerialized shares is deemed to be the concerned depository. However, any right with respect to creation of pledge on such securities lies with the 'beneficial owner'. This is in accordance with Section 10(3) of 'The Depositories Act 1996.*

*In the year 2019, a major scam was unearthed wherein, a depository participant by the name of 'Karvy stock Brokers Limited' was engaged in pledging of its client's securities without their due consent. In this respect, this article analysis such fundamental aspects as discussed in the case of HDFC bank v. SEBI (2022 SCC OnLine SAT 9) with respect to the validity of such pledge, rights of the pledgee in case the broker defaults in repayment of loan and SEBI's action towards curbing such activities from taking place in the future.]*

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## I

### INTRODUCTION

The Securities and Exchange Board of India (SEBI) was established in 1992 under the SEBI Act 1992 with the goal of protecting investors' interests, maintaining market integrity, securing investors' trust, and simultaneously promoting investments for the economy's healthy growth.<sup>1</sup> SEBI has legislative, execution, and adjudicatory powers to accomplish this goal. SEBI also has extensive authority under Section 11 of the Act<sup>2</sup> to enquire into the interests of investors and the orderly development of the market.<sup>3</sup>

This paper examines one such case under SEBI's jurisdiction in which an important question is raised with respect to 'Pledge of securities' by a broker or depository participant without the consent of its clients. As a result of such unauthorized pledges, it is critical to ascertain the rights and obligations of the pledgee who pledges such shares without due notice of ownership. This paper places reliance on the SAT's Judgement in the case of '*HDFC v. SEBI*'. This case discusses in detail the rights of a bonafide pledgee who has acted diligently to identify the real owners of the shares before granting loan to its clients.<sup>4</sup> However, it has so happened in recent times that the brokers have misused the 'Power of Attorney' given to them and unauthorizedly pledged its clients' securities. As, a consequence to this, the regulator has come up with several guidelines to curb such practices and achieve the ultimate goal of protecting its investors.

## II

### BROKERS AUTHORITY OVER SHARES OF ITS CLIENTS

#### *Authority by 'Power of Attorney'*

Power of attorney is executed between the broker and the client. A power of attorney is not generally required for opening a demat account or to buy shares. However, a POA is required to sell shares or to pledge. Lately, the power of attorney began to be misused by the brokers/ DPs for activities which

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<sup>1</sup> The Securities Exchange board of India Act, 1992, S.11.

<sup>2</sup> *Id.*

<sup>3</sup> *Shankar Sharma v. SEBI*, (2001) SCC OnLine SAT 20.

<sup>4</sup> *HDFC Bank Ltd. v. Securities & Exchange Board of India* (2022) S.C.C. OnLine S.A.T. 9.

were not even authorized in the POA as observed in the case of *Karvy Stock brokers Ltd.*<sup>5</sup>

In light of this, the SEBI released a Circular (SEBI/HO/MIRSD/DOP/CIR/P/2020/158) on August 27, 2020, outlining specific parameters for the execution of Power of Attorney (PoA) supplied by clients to stockbrokers and depository participants (DPs). The guidelines are stated as follows:

- 1) *PoA is an optional and should not be insisted on for opening the account.*
- 2) *PoA executed in favour of broker/DP by the client shall be utilized only for: SE<sup>6</sup> related settlement obligation and for pledging / re-pledging of securities in favor of TM/CM margin requirements.*<sup>7</sup>

### ***Broker as 'Trustee of Shares'***

Trust as per the 'Indian Trusts Act 1882' is defined as "an obligation annexed to the ownership of property, and arising out of a confidence reposed in and accepted by the owner, or declared and accepted by him, for the benefit of another, or of another and the owner".<sup>8</sup> Brokers are merely trustees, holding the shares in their clients' beneficial ownership. According to this rationale, they are only required to preserve safe custody of their clients' shares and do not have the authority to sell or place any charge on them.

## **III**

### **CREATION OF PLEDGE WITHOUT OWNERSHIP**

#### ***Creation of Unauthorized Pledge under the Indian Contract Act***

In the case of *Gtl Limited v. IFCL Ltd & Ors.*<sup>9</sup> the court held that a person cannot pledge the goods of another person unless he has been expressly authorized by the owner. The pledgee should not pledge the goods with

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<sup>5</sup> MOTILAL OSWAL, *Power of Attorney for your Demat account*, available at- <https://www.motilaloswal.com/blog-details/power-of-attorney-for-your-demat-account-/20344> (last visited 20 Oct., 2022).

<sup>6</sup> Shareholder Equity is referred to as SE.

<sup>7</sup> Circular no. CIR/MRD/DMS/13/2010 *SEBI circular on execution of Power of Attorney (PoA) by the Client in favour of the Stock Broker / Stock Broker and Depository Participant*, available at- [https://www.sebi.gov.in/legal/circulars/aug-2020/execution-of-power-of-attorney-poa-by-the-client-in-favour-of-the-stock-broker-stock-broker-and-depository-participant\\_47423.html](https://www.sebi.gov.in/legal/circulars/aug-2020/execution-of-power-of-attorney-poa-by-the-client-in-favour-of-the-stock-broker-stock-broker-and-depository-participant_47423.html) (last visited 30 Jun., 2022).

<sup>8</sup> The Indian Trusts Act, 1882, S.3.

<sup>9</sup> *Gtl Limited v. IFCL Ltd & Ors.*, (2011) S.C.C. OnLine Del 3628.

himself, if he knows that the pawner has no authority over the goods pledged. If he still pledges the goods after having due notice of the defect in title, he is not protected as a bonafide pledgee under Section 178<sup>10</sup>

That it is essential to note that the fundamental rule that flows from 'Section 178 of the Indian Contract Act' is that 'One cannot transfer a better title than what he himself has'.<sup>11</sup> Hence, pledge can be created either by the owner himself or with the consent of the owner.

In another case of *Central Bank Ltd. v. United Industrial Bank Ltd.*<sup>12</sup> The two main questions involved is that 'Is the consent of the owner under section 30(2)<sup>13</sup> of mandatory?'<sup>14</sup> and secondly that 'whether the validity of such consent is negitivated if such consent has been obtained by fraud or undue influence?'. In this regard, a number of high courts have referred to English cases pertaining to the following legislations i.e.- 'The factories Act' and the 'Sale of Goods' Act of England which almost have the same language. **As per the English law-**

Obtaining goods on the basis of false pretence does not exclude the operation of factories Act or Section 30(2) of the SOGA, 1930.<sup>15</sup> However, the position is not the same if such consent is obtained by 'fraud or trick' as there would be *no consensus- ad -idem*. Hence, transfer on fraudulently made, without the consent of the actual owner, such contract can be rescinded for non-meeting of minds of the parties.<sup>16</sup>

### ***Beneficial Owner v. Real Owner***

**In *JR Commissioner of Income Tax v. Mukesh D Ambani***<sup>17</sup>, The Income tax appellate tribunal has discussed the difference between the 'real owner' of the shares and the 'beneficial owner'. It is well acknowledged that, a person/entity registered as the beneficial owner in the register of depository establishes prima facie evidence of title in his favour. However, the same is not decisive and hence, the courts can always decide as to who is the real owner based on the intention of the parties.

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<sup>10</sup> The Indian Contract Act, 1872, S.178.

<sup>11</sup> *Firm Poonamchand Shankarlal and Co. Bombay v. Firm Deepchand Sireymal, Ujjain & Others*, A.I.R. (1972) MP 40.

<sup>12</sup> *Central Bank Ltd. v. United Industrial Bank Ltd.*, A.I.R. (1954) S.C. 181.

<sup>13</sup> The Sale of Goods Act, 1930, S.30 (2).

<sup>14</sup> *Id.*

<sup>15</sup> *Id.*

<sup>16</sup> *Lake v. Simmons*, 1927 AC 487.

<sup>17</sup> *JR Commissioner of Income Tax v. Mukesh D Ambani*, 2006 7 SOT 521 Mum.

The judgement also discusses the rights of *bona fide* third party who enters into a contract with the beneficial owner, as shown in the register is not affected and the real owner cannot enforce his rights as against such third party.

This ruling is problematic, as when it is established that the real owner is the one to whom the title actually belongs, he is the one whose rights are affected in reality. In such a situation, if a broker is registered as a beneficial owner, whereas the real ownership belongs to his clients, the client is actually affected and it is the client's securities that are pledged without his due consent in the present case. This is not a valid pledge as per the 'Indian Contract Act'.

### ***Identifying the Beneficial owner***

In the view of the above, it is pertinent to note that SEBI had issued certain guidelines for '*Identification of Beneficial owners*' in the year 2013. The present guidelines mandate that SEBI shall conduct sufficient due diligence to identify their clients. SEBI has prescribed uniform Know Your Client (KYC) requirements for the securities market vide circular nos. **CIR/MIRSD/16/2011** dated - August 22, 2011 and **MIRSD/SE/Cir-21/2011** dated October 5, 2011. Lastly, Prevention of Money Laundering Rules, 2005 also mandate a banking or financial institutions to take all reasonable steps to identify the identity of a 'beneficial owner'.<sup>18</sup>

## **IV**

### **DOES PLEDGE TRANSFERS OWNERSHIP RIGHTS?**

It has been established in a number of cases that a 'pledgee' never becomes the owner of the pledged goods. He only has a right of retention until his advanced payment claim has been entertained, with the authority to sell the pledged goods after a due notice if the pledger is in default of payment.<sup>19</sup> The pledgee only acquires a separate ownership of the pledged item, with the pledgor's joint ownership remaining untouched.<sup>20</sup>

Also, in another case it was held that it is a mortgage that transfers absolute legal interest over the property. Pledge or hypothecation conveys only a special interest over the property.

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<sup>18</sup> Circular *Guidelines on Identification of Beneficial Ownership*, available at [https://www.sebi.gov.in/legal/circulars/jan-2013/guidelines-on-identification-of-beneficial-ownership\\_24206.html](https://www.sebi.gov.in/legal/circulars/jan-2013/guidelines-on-identification-of-beneficial-ownership_24206.html) (last visited 19 Jun., 2022).

<sup>19</sup> *R.S. Nawal Kishore v. The Union of India Through General*, (1969) S.C.C. OnLine Del.

<sup>20</sup> *MR Dhawan v. Madan Mohan*, (1969) S.C.C. OnLine Del 36.

*“The pledgee or pawnee never has absolute ownership of the goods, but has a special right to sell and transfer them to a purchaser on default of payment at the stipulated time, if any, or at a reasonable time after demand and non-payment if no time for payment is agreed upon.”*<sup>21</sup>

## V

### RIGHTS OF THE PLEDGEE ON DETERMINING UNAUTHORIZED PLEDGE OF SHARES

#### *If Pawnee acts in Good Faith*

Supreme court in a case *D. Rama Subba Reddy v. P.V.S. Rama Das And ors* has established that ‘In order to claim an agent’s pledge, the pledgor must have acted in good faith and not realize that pledgor lacked authority to pledge the commodities at the time of the pledge. The individual contesting the legitimacy of the pledge bears the burden of proof for both of these factors. If a thing is judged or done in a good faith, if it is done honestly, regardless of whether it is done negligently,<sup>22</sup> according to clause 20 of section 3 of the General Clauses Act 1897. Although gross negligence can be evidence of bad faith, they are not the same and will not carry the same penalty.’

#### *If Pawnee acts Negligently*

In *Pearson v. Rose & Young Ltd.*,<sup>23</sup> the Appellate Court had held that:

*“Where the book had been stolen from the owner by the mercantile agent, the latter could not pass a good title to an innocent third party.”*

The judgement was criticized on this very ground that the innocent purchase’s right should not be extinguished unless, the following is ensured-

- i. possession by an agent of goods or title deeds with the consent of the owner; <sup>24</sup>and
- ii. pledge or sale to an innocent transferee.

In yet another case of *Indian Bank Ltd. v. Sheshagiri Rao & Sons Co.* the question before the court was ‘whether the 589 and odd caster seed bags pledged by the 1st defendant in O. S. 1/1961 belonged to the 3rd defendant-firm and whether the 1st defendant had no agency or power on behalf of the 3rd defendant to pledge the

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<sup>21</sup> *Sri Raja Kakarklhpuudi Venkata Sudarsana Sundara Narasayamma Garu and others v. The Andhra Bank Ltd. Vijayawada and others*, (1959) S.C.C. OnLine AP 114.

<sup>22</sup> *D. Rama Subba Reddy v. P.V.S. Rama Das and ors*, (1967) S.C.C. OnLine AP 103.

<sup>23</sup> *Pearson v. Rose & Young Ltd.*, (1950) 2 CH. D. 1027.

<sup>24</sup> The Indian Contract Act, 1872, S.178.



*commodities with the appellant-Bank?* 'The court observed that it was the paramount duty of the bank to not act negligently and find out whether the pledge was with the explicit authority of the real owner or not.<sup>25</sup>

### ***Pawnee's Right over Third Party's Right***

In the case of *Bank of Bihar v. The State of Bihar & Ors.* while the goods were pledged with the bank, the District magistrate ordered to coercively remove the bags. The bank was denied payment in lieu of the pledged good on the pretext that such removal was in pursuance of lawful orders. The supreme court in the case held, that mere presence of an order, would not deprive the bank of its right to recover its money.<sup>26</sup>

*Harshad Shantilal Mehta v. Custodian and Ors. (1998) 5 SCC 1* The Supreme Court ruled that if a notified person's mortgaged/pledged property was already mortgaged/ pledged to the bank on the date of the attachment, the property could not be attached. Furthermore, the proceeds from which distribution is to be made must be the proceeds related to the informed person's right title and interest in the property. When a third-party right is created, the third party's interest in the attached property cannot be sold or distributed to satisfy the notified person's liabilities.<sup>27</sup>

## **VI**

### **SEBI GUIDELINES POST THE KARVY SCAM**

The above discussed case is the first in the history of the securities market wherein the investments of the clients have been unauthorizedly pledged by the broker. As a result, SEBI issued the following circular on June 20, 2019.<sup>28</sup> SEBI vide circular dated 20<sup>th</sup> June 2019 deleted clause 2.5 of the 2016 circular. Relevant clauses of both of the circulars are reproduced as under-

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<sup>25</sup> *Indian Bank Ltd. v. Sheshagiri Rao & Sons Co.*, A.I.R. 1971 AP 287.

<sup>26</sup> *The Bank of Bihar v. The State of Bihar & Ors.*, (1972) 3 S.C.C. 196.

<sup>27</sup> *Harshad Shantilal Mehta v. Custodian and Ors.*, (1972) 3 S.C.C. 196.

<sup>28</sup> S. Kalyanasundaram, *Banks have no right over shares pledged sans consent*, THE HINDU BUSINESSLINE (Dec. 15, 2019) available at- <https://www.thehindubusinessline.com/opinion/banks-have-no-right-over-shares-pledged-sans-consent/article30161582.ece> (last visited 12 Jun., 2022).

According to Clause 2.5 of the 2016 Circular,

*“a stock broker is entitled to a lien on clients’ securities to the extent of the customers’ debts to the stock broker, and the stock broker may pledge those securities to that extent.”*<sup>29</sup>

Clause 4.8 of circular dated 20<sup>th</sup> June 2019

*“Further, the client’s securities already pledged in terms of clause 2.5 of SEBI Circular **SEBI/HO/ MIRSD/MIRSD2/CIR/P/2016/95** dated September 26, 2016 and clause 2(c) of SEBI circular CIR/HO/MIRSD/MIRSD2/CIR/P/2017/64 dated June 22, 2017 shall, by August 31, 2019, either be unpledged and returned to the clients upon fulfillment of pay-in obligation or disposed of after giving notice of 5 days to the client. 4.9 Accordingly, the Clause 2.5 of SEBI Circular **SEBI/HO/MIRSD/MIRSD2/CIR/P/2016/95** dated September 26, 2016 and clause 2(c) of SEBI circular CIR/HO/MIRSD/MIRSD2/CIR/P/2017/64 dated June 22, 2017 stands deleted with effect from June 30, 2019.”*<sup>30</sup>

## VII

### LAWS GOVERNING PLEDGE OF SECURITIES

#### *The Indian Contract Act, 1872*

The basic law governing pledge is in the section 172 of Indian Contract Act 1872.<sup>31</sup>

It’s worth noting, however, that 'The ICA, 1872<sup>32</sup>' does not apply to shares held in dematerialized form.

- I. If shares are established in dematerialized form, the DA, 1996<sup>33</sup> must be observed.
- II. Further Regulation 58 of the Depository Participant Regulations 1996<sup>34</sup> prescribes the *Manner of creating pledge or hypothecation*.

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<sup>29</sup> Master Circular no. SEBI/HO/MRD2/DDAP/CIR/P/2021/18, available at- [https://nsdl.co.in/downloadables/pdf/2021-0009-Policy\\_SEBI%20Circular%20dated%20February%202005,%202021.pdf](https://nsdl.co.in/downloadables/pdf/2021-0009-Policy_SEBI%20Circular%20dated%20February%202005,%202021.pdf) (last visited 5 Oct.,2022).

<sup>30</sup> *Id.*

<sup>31</sup> CS Vikas Gupta, *all about Pledging of Shares*, TAXGURU (26 May, 2016) available at- <https://taxguru.in/sebi/pledging-shares.html> (last visited 5 Oct., 2022).

<sup>32</sup> ICA is referred as Indian Contract Act, 1872.

<sup>33</sup> Depositories Act, 1996.

<sup>34</sup> Regulation 58, Securities Exchange Board of India, (Depositories and Participants) Regulations, 2018.

In *JRY Investments P. Ltd. v. Deccan Leafline Services Ltd. and Ors.*<sup>35</sup> Justice S.A. Bobde, while considering the provisions of the Depositories Act and the principles of the Contract Act held that there is difference between shares stored as share certificates and shares stored in dematerialized form with the depositories. Shares in physical form bear the name of the holder and hence identifiable. Whereas, shares in dematerialized form are in fungible form where, which share belongs to whom is non-identifiable. Therefore, shares in *demat* form are outside the purview of 'The ICA 1872'<sup>36</sup>.

However recently, Supreme court has overruled the JRY investment judgement with respect to application of the 'ICA, 1872'<sup>37</sup>- on dematerialized securities in *PTC India Financial Service Ltd. v. Venkateswarlu Karli*<sup>38</sup> while delivering the judgement Justice Sanjiv Khanna held that Sections 176 and 177 of the Act 1872, are in no manner contradictory to provisions of the Depositories Act. In fact, the objective of these sections is to govern every contract of pledge, for that matter, it would not only apply to pledge of shares in physical form but would apply to shares in dematerialized form as well.

### ***The Companies Act of 2013***<sup>39</sup>

The Companies Act has no minimum prescriptions of the number of shares that a director or promoter can hold.<sup>40</sup> However, a company's Articles of Association may specify a director's qualification shares, but in practice, this is a very small number that has little bearing on share price movement.

Regulation 36<sup>41</sup> stipulates that whenever a business makes a public offering, the promoters must hold a minimum of 20 percent of the shares, which must remain locked for a minimum of three years.

### ***The Banking Regulation Act of 1949 (the Act)***

*"No banking company shall hold shares in any company, whether as pledgee, mortgagee or absolute owner, of an amount exceeding thirty per cent of the paid-up share capital of that company or thirty per cent of its own paid-up share capital and*

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<sup>35</sup> *JRY Investments P. Ltd. v. Deccan Leafline Services Ltd. and Ors.* (2003) S.C.C. Online Bom 1134.

<sup>36</sup> *Id.*

<sup>37</sup> *Id.*

<sup>38</sup> *PTC India Financial Service Ltd. v. Venkateswarlu Karli* (2022) S.C.C. OnLine S.C. 608.

<sup>39</sup> The Companies Act, 2013.

<sup>40</sup> *Supra* note 27.

<sup>41</sup> Regulation 36 of the SEBI (Issue of Capital and Disclosure Requirements) Regulations 2009.

*reserves, whichever is less*" under Section 19(2).<sup>42</sup> Banks and financial institutions will take a company's shares as security in the following situations:

1. Any public limited companies listed and approved shares can be used as collateral for an overdraft.
2. A pledge of shares of publicly traded companies as a secondary or security for a loan or overdraft secured by another primary security. In addition, according to RBI guidelines, the bank holding shares as a pledgee or mortgagee must have them transferred into its own name (see RBI circular no. DBOD.BC.90/13.07.05/98 dated August 28, 1998).<sup>43</sup> This means that promoter shares with a value of more than 30 percent cannot be pledged.

### ***ECB Guidelines (External Commercial Borrowing)***

It is up to the borrower to offer his securities to an overseas lender<sup>44</sup> under ECB standards. However, '**Regulation 8**' of Notice No. FEMA 21/RB-2000<sup>45</sup> and **Regulation 3** of Notice No. FEMA 20/RB-2000 dated May 3, 2000<sup>46</sup>, as amended when it desires, governs the collection of a charge on immovable assets and financial collateral, such as stocks in favour of the foreign lender. As a result, the Reserve Bank reviews requests for encumbrance of a charge on immovable property, financial collateral, and the issuance of corporate or personal guarantees on behalf of the borrower in favour of the foreign lender to secure the ECB through the automatic/approval route.

It has been decided that AD (Authorized Dealers) Category – I banks may not raise a "no objection" under the FEMA<sup>47</sup>, 1999 to create a charge on immovable property, financial securities, and issue of corporate or personal guarantees in favour of a foreign lenders/security manager to secure the ECB to be recalled by the borrower.<sup>48</sup>

## VIII

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<sup>42</sup> The Banking Regulation Act, 1949, S.19(2).

<sup>43</sup> *Supra* note 25.

<sup>44</sup> Circular No. 01, available at- <http://www.eepcindia.org/download/IB13052015182625-20.pdf> Reserve Bank of India (last visited 3 Jun., 2022).

<sup>45</sup> Notification No. FEMA 21 /2000-RB, available at- [https://www.rbi.org.in/scripts/BS\\_FemaNotifications.aspx?Id=175](https://www.rbi.org.in/scripts/BS_FemaNotifications.aspx?Id=175) (last visited 3 Jun., 2022).

<sup>46</sup> Notification No. FEMA 20 /2000-RB, available at- [https://rbi.org.in/Scripts/BS\\_FemaNotifications.aspx?Id=174](https://rbi.org.in/Scripts/BS_FemaNotifications.aspx?Id=174) (last visited 3 Jun., 2022).

<sup>47</sup> Foreign Exchange Management Act (FEMA), 1999.

<sup>48</sup> *Id.*

## COMMENTS

With respect to the above discussed case, SAT ordered in the favour of HDFC Bank (The pledgee) for the following reasons-

- a. That until the pledgee acts diligently in finding out with whom the actual ownership lies, he is protected and reserves the right to sell the securities of its clients to recover its money. In the present case, the pledgee contended that since the beneficial ownership was in the name of the pawner, the pledgee had sufficient reason to believe that the ownership was with the broker.
- b. Secondly, that SEBI does not have the jurisdiction to interfere in banking matters and it is in general practice of the banks that they may sell of the property of the pawner to recover its money and any order for attachment by SEBI or NSE would be a *right in personam* and would not be binding upon the banks.
- c. Thirdly, the SAT reiterated the judgement of the Supreme Court in *JRY Industries* that the provisions of 'ICA, 1972'<sup>49</sup> would not apply to pledge of shares in dematerialized form.<sup>50</sup>

However, this finding of the Supreme court is of grave concern to us. All of the above-mentioned jurisprudence discussed by SEBI and SAT with respect to this case is in accordance with the 'ICA 1872' which is the General Law governing 'Pledge'. In my view, it is inappropriate to neglect the General law altogether. It is understandable that, advancements in technology or manner of execution require new 'Specific laws. However, reliance should always be placed on the ground law, from which the specific laws emanate.

The basic principles of Contract Law which shall be adhered to while creation of pledge of dematerialized shares are-

- I. No pledge can arise over the goods which have been by means of trick or fraud.
- II. That pledge is a mere lien on the property and does not transfer ownership rights, which secures the right to sell off the pledged commodities in case of non-recovery, only with due notice to the owner.
- III. Lastly, a pledgee who with due notice of default in title of the pawner, still pledges the goods with himself, is not protected.

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<sup>49</sup> *Supra* note 37.

<sup>50</sup> *Stci Finance Ltd v. Cedar Infonet Pvt Ltd*, (2019) S.C.C. OnLine Del 8900.

It shall be remembered that the role of SEBI is to act as guardian and protect the rights and interests of the investors.

In the similar scam of Axis Bank - Karvy Stock Brokers Ltd. wherein NSE file an appeal against the order of SAT -

*“If the SAT’s order is followed, miscreant trading members would take undue advantage and would devise ingenious ways of removing the innocent investors’ securities and any monies received from misutilization of such securities out of the hands and reach of the defaulter committee and other trading members”<sup>51</sup>, senior counsel Mukul Rohatgi, appearing for NSE, argued.*

Hence, the Supreme court seems to have corrected it’s previous ruling in *JRY investment with PTC India* after taking into consideration the legislative intent behind the provisions of pledge as incorporated in the ‘Indian Contract Act 1872.’ We hope that this ruling helps in opening the gates of justice for clients, to whom the title of the pledged shares actually belongs to.

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<sup>51</sup> FE Bureau, *Axis-Karvy: Supreme Court upholds Securities Appellate Tribunal order quashing NSE directive* FINANCIAL EXPRESS (15 Feb., 2022) available at- <https://www.financialexpress.com/market/axis-karvy-supreme-court-upholds-securities-appellate-tribunal-order-quashing-nse-directive/2433854/> (last visited 11 Jun., 2022).