

An Administrator is at liberty to dispose of company's properties under the Insolvency Act notwithstanding the fact that the property is subject to a Legal Charge

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*"Based on the above law, and in the absence of evidence to the contrary, I am of the view that the actions carried out by the administrator fell within his mandate. Further, **I am not aware of any bar in law that prevents the Bank from pursuing the provisions of the Insolvency Act over the Land Act.** Sections 580 to 587 quoted above expressly provides such power, and the power to deal with property which is the subject of a charge as if it were not subject to a charge."*

Justice A. Visram in *Pinecare Limited & 2 Others Vs I & M Bank Limited & 2 Others*

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Introduction

Justice A. Visram has held that **there are no barricades in law that prevents banks from pursuing the provisions of the Insolvency Act during realization process.** In the well-reasoned ruling, the judge succinctly stated that Sections 580 to 587 of the Insolvency Act grants an Administrator the power to sell property of a company as if it were not subject to a charge.

It is now trite law that financiers are at liberty to exercise any of the optional self-help processes of recovery under the law which, *inter alia*, includes:

- i. The appointment of an Administrator to sell the charged property under **Sections 534, 580 and 587 of the Insolvency Act**
- ii. The sale of the charged property in exercise of its statutory power of sale under **Sections 90 and 96 of the Land Act**

The summarized factual background of the case

- a. Pine Care Limited ["the Company"] was placed under administration in June 2021 by I&M Bank Limited [hereinafter referred to as "**the Bank**"] pursuant to Section 534 of the Insolvency Act after defaulting in payment of the loan facilities. The Bank held an All-Asset debenture and a Charge over the company's property.
- b. During the pendency of administration, the Administrator sold the property in exercise of his powers under **Section 580, 584 and 587 of the Insolvency Act.**
- c. Upon the successful sale and transfer of the said property, the Administrator terminated the administration proceedings by filing a Notice of Termination of Administration together with the Administrator's Final Report in June 2022. The court file in the insolvency proceedings was then closed.
- d. Soon thereafter, the Company and its Directors filed a suit *inter alia* challenging the Administrator's process and the sale of the charged property during the Administration process. They premised their suit on the provisions of **Sections 90, 96 and 97 of the Land Act** and on grounds that the existence of a Fixed Charge bars an Administrator from disposing of the property under the Insolvency Act.

Findings & Key legal principles set out by the Court

In its ruling, the court struck out the suit on two grounds. **First**, that the suit should have been instituted before the insolvency court during the pendency of administration and not a year after the termination of the administration. **In essence, the court upheld the provision of Section 620 of the Insolvency Act that the acts of the Administrator cannot be challenged after the termination of administration proceedings.**

Secondly, the court held that the sale of the company's properties by the Administrator under the Insolvency Act was lawful and his actions and conduct fell within his mandate.

The court held that there is no legal provision barring the Bank from realizing its security under the law either by exercising its statutory power of sale or selling the said property through administration so long as it is accountable to the Insolvency Court and other creditors. As such, the Bank was at liberty to exercise any of the self-help processes of recovery under the law which include:

- a. Appointing an Administrator to sell the charged property under **Sections 534, 580, 584 and 587 of the Insolvency Act.**
- b. Selling the charged property in exercise of its statutory power of sale under **Sections 90 and 96 of the Land Act.**
- c. Moving the court for leave to appoint a Receiver to collect rental income from the charged property under **Section 90 [3] [b] of the Land Act.**
- d. Granting leases in respect of the Charged Property or any part thereof under **Section 93 of the Land Act.**
- e. Taking possession of the Charged Property under **Section 94 of the Land Act.**
- f. Purchase of the Charged Property by the Bank in exercise of its statutory power of sale with the leave of the court under **Section 100 of the Land Act.**

It was the court's finding that Sections 580 to 587 of the Insolvency Act gives the Administrator general powers to take any action that contributes to, or is likely to contribute to the effective and efficient management of the affairs and property of the company.

Section 587 in particular empowers the Administrator to dispose of, or take any action relating to property that is subject to a floating charge as if it were not subject to the charge to ensure effective and efficient management of the property of the company.

To that end, an Administrator is at liberty in law to dispose of a company's properties under the Insolvency Act notwithstanding the fact that the property is subject to a legal charge.

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