

HIGH COURT JUDGEMENT

(English Translation of the Judgment)

RICBL VIS Ugyen Wangchuk, Druk Tsentop Construction

(pertaining to loan recovery)

5. Issues

- 5.1. Whether proper documentations have been completed or not while sanctioning and availing of loan by the plaintiff Royal Insurance Corporation of Bhutan Limited to the defendant Ugyen Wangchuk?
- 5.2. Whether the plaintiff Royal Insurance Corporation of Bhutan Limited had managed or not while advancing the loans?
- 5.3. Whether few of the employees of the Royal Insurance Corporation of Bhutan Limited have involved in the issues in the case intentionally?
- 5.4. Whether the Mortgaged properties need to be seized or not?

6. Summary Findings of the Bench's Review

This court has, in pursuit of fairness and justice, and in accordance with Section 110 of the Civil and Criminal Procedure Code of Bhutan, 2001 reviewed the matter based on the above-mentioned issues with reference to the Thimphu Court's Judgment No. (Thimphu2019-2071) dated 31.12.2019 and submissions and evidence of the parties. Following are the summary findings:

A. Upon thorough review of the above issues from serial number 5.1 to 5.4:

Upon review of Ugyen Wangchuk Construction's owner, Ugyen Wangchuk's loan account to whom the Royal Insurance Corporation of Bhutan Limited has financed 12 loans since 2010, **first, regarding the loan account number CRCS/2010/84**, on dated 04/06/2010 land measuring 6,531.85 sq. ft. on Thram No. 28, Plot No. 191/xiii M18/3 located at Changshingpek, Mongar in the name of the defendant and in the name of Yuden located in Trashigang, Melphel on Thram No. 312, Plot No. 55 with land measuring 26 decimals and then Land Cruiser vehicle bearing registration No. BP-I-B5306 (A/c. No. 21430) were pledged to avail Contractor's loan with loan sanction amount of Nu. 3,000,000/- (Three Million) at 13% interest rate for one (1) year and together with the Bank Guarantee amount issued against the same account. The Royal Insurance Corporation of Bhutan Limited has submitted to collect the entire remaining outstanding loan through court and if not grant approval to seize the pledged properties and sell the properties through auction. In

response to RICBL's submission, the defendant Ugyen Wangchuk has accepted to have availed the loan, however, he requested the court to examine thoroughly if the loan was given as per norms or not and the Bank Guarantee was invoked with his approval as per norms of the bank.

The court, in order to dispense justice, while examining each issue, it was established that although the loan agreement dated 04/06/2010 in respect of the loan account No. CRCS/2010/84 for Nu. 3,000,000.00 (Three million) was executed between RICBL and Ugyen Wangchuk, the signature in the agreement was that of his sister, Tshering Pem. Further, the defendant's CIB was not checked appropriately. Of the afore-mentioned three mortgaged properties, only the 26 decimals land which is in the name of Mrs. Yuden under Thram No. 312, Plot No. 55 at Trashigang Melphey has been registered appropriately. However, since Mr. Ugyen Wangchuk has sold all three mortgaged properties, and since the land measuring 6,531.85 sq.ft. on Thram No. 28, Plot No. 191/xiii M18/3 located at Changshingpek, Mongar registered in the name of the defendant and the Land Cruiser vehicle bearing Registration No. BP-1-B5306 (A/c. No. 21430) have not been legally registered, the mortgaged properties cannot be repossessed and given to the Royal Insurance Corporation of Bhutan Limited. For this breach of the contract, although Mr. Ugyen Wangchuk should be held liable for criminal offence, this court, by way of full reversal of the judgment, is not sentencing Ugyen Wangchuk to imprisonment in accordance with the serial number 3 of the circular No. Supreme (41)2015/3101 dated 17/6/2015 of the Supreme Court, which states that a person cannot be charged and sentenced to imprisonment in a civil case when a criminal element is found in the course of proceeding. Further, the civil and criminal proceedings have different procedures for civil and criminal matters.

Further, an employee of the Royal Insurance Corporation of Bhutan Limited, Jurme Chetsho has, without obtaining consent from Ugyen Wangchuk, withdrawn Nu. 2,000,000/- (Two Million) from Ugyen Wangchuk's loan account number PLCONSUMOD/2012/217 and deposited it in the loan account number CRCS/2010/84. Similarly, Tashi Penjor has without the Ugyen Wangchuk's consent withdrawn Nu. 1,000,000/- (One Million) from his other loan account and deposited it in the loan account number CRCS/2010/84. Without Ugyen Wangchuk's consent, the Royal Insurance Corporation of Bhutan Limited has withdrawn Nu. 1,000,000/- (One Million) twice from Ugyen Wangchuk's loan account number CRCS/2010/84 on dated 20.02.2012 and deposited in Jurme Chetsho's loan account number PLCOSUMOD/2011/166 and PLCOSUMOD/2011/193. And again, the Royal Insurance Corporation of Bhutan Limited's employee Ugyen Lhamo has, without the consent of Tshering Pem withdrawn Nu. 1,662,835/- from loan account number PLCONSUMOD/

2012/217 of Mrs. Tshering Pem and deposited the amount in the loan account number CRCS/2010/84. And the Royal Insurance Corporation of Bhutan Limited has without obtaining any documents from Ugyen Wangchuk and without obtaining his consent, released two (2) Bank Guarantee encashments against the said loan account. Similarly, it became clear that without the consent of Ugyen Wangchuk, the corporation's employee Jigme Namgyal has withdrawn Nu. 440,000/- (Four Hundred Forty Thousand) from the loan account number CRCS/2010/84. Considering the above-mentioned issues with respect to this loan account, all repayments made were not deposited by Mr. Ugyen Wangchuk instead the Royal Insurance Corporation of Bhutan Limited, without adhering to the norms, continued to sanction one loan after another to the defendant Ugyen Wangchuk for adjustments which is not in compliance with the financial norms and the loans were given to be used for back-and-forth adjustments of the accounts.

Thus, the loan sanctioned amount of Nu. 2,000,000/- (Two Million) was not used for the defendant himself but with his consent it was deposited in the loan account number PLCONSUMOD/2011/165 of Norbu Tashi and at the time of getting loan amount of Nu. 2,000,000/- (Two Million) against the loan account number PLCONSUMOD/2012/217 on dated 20.02.2012, the loan agreement between the two parties revealed that although the defendant Ugyen Wangchuk has mortgaged the land measuring 15 decimals on Thram No. 812 at Chang Debsi, Thimphu registered in the name of Tshering Dema but the mortgage record documents maintained with Thimphu Dzongkhag Land Record Office reflected that Thram No. 812 with land measuring 9,147.6 sq. ft. and 3 storied building is in the name of Ugyen Wangchuk thereby making the two documents inconsistent and the Letter of Guarantee obtained at the time of mortgaging the land has no signature of the land owner Tshering Dema. Also, the Corporation without the consent of Tshering Pem has withdrawn Nu. 263,500/- (Two Hundred Sixty-Three Thousand Five Hundred) from her loan account number PLCONSUME1/2012/51 and renewed the said account. Moreover, without the consent of the defendant Ugyen Wangchuk on dated 31.12.2014, the Corporation has withdrawn Nu. 520,610/- (Five Hundred Twenty Thousand Six Hundred Ten) from his loan account number PLCONSUMOD/2012/217 and deposited to his sister Tshering Pem's loan account number PLCONSUME1/2012/51. The Royal Insurance Corporation of Bhutan Limited has, without Ugyen Wangchuk's consent, not just withdrawn Nu. 5,000/- (Five thousand) and Nu. 2,000/- (Two thousand) from Ugyen Wangchuk's loan account number PLCONSUMOD1/2012/31 on 31/12/2013 and made loan adjustments against the said

account but also has withdrawn Nu. 1,500,000/- (One million five hundred thousand) on 19/12/2015 from Ugyen Wangchuk's loan account number BLTERM1/2015/302 to adjust the said loan account. From the same loan account of Ugyen Wangchuk, Nu. 2,113.78 was withdrawn on 28/04/2016 and was deposited in the loan account number PFSLIMPORT/2009/160. Further, although the CIB report of the defendant showed the outstanding loan balance of Nu. 27,327,007/- (Twenty-seven million three hundred twenty-seven thousand and seven) in the name of the defendant, yet new loan was sanctioned, which was the fault of both parties.

Moreover, in case, Mr. Ugyen Wangchuk fails to pay the loan as per the duration awarded by the court, it is decreed that although the land measuring 15 decimals on Thram No. 812 located at Chang Debsi registered in the name of Tshering Dema is mentioned as mortgaged, as per the mortgage registration record maintained with Dzongkhag Land Record Office, Thimphu, since the Thram No. 812 with land measuring 9,147.6 sq. ft. together with 3 storied building is registered in the name of Ugyen Wangchuk, and since despite above two documents being inconsistent, the Thimphu Dzongkhag Land Record Office, without proper verification, registered the said property as mortgage with two financial institutions, the Royal Insurance Corporation of Bhutan Limited and the Bhutan Insurance Limited can seize the mortgaged property.

Although the defendant, Ugyen Wangchuk has availed a loan of Nu. 2,000,000/- (Two million) against the loan account number PLCONSUMOD/2012/217 by mortgaging the land measuring 15 decimals on Thram No. 812 located at Chang Debsi registered in the name of Tshering Dema which has been registered and recorded by the Thimphu Dzongkhag Land Record Office, the ownership of the said land measuring 15 decimals on Thram No. 812 of Tshering Dema has been transferred in the name of Ugyen Wangchuk, and based on the new Lag Thram issued, Mr. Ugyen Wangchuk has fraudulently mortgaged the said land with the Bhutan Insurance Limited. Hence, Mr. Ugyen Wangchuk must be penalized for mortgaging one property to avail two (2) loans, and further, the Dzongkhag Land Record Office must be held accountable for failing to exercise due diligence and wrongfully mortgaging the same property twice.

Regarding loan account no. PLCONSUMODI/2012/31, Mr. Ugyen Wangchuk has availed Nu. 2,200,000/- (Two million two hundred thousand) at 16% interest against the loan account number PLCONSUMODI/2012/31 for a term of one (1) year against the security of the mortgaged land measuring 21 decimals on Thram No. 812 at Chang Debsi registered in the name of Tshering Dema. Against the said loan account, the BG encashment of Nu. 14,000,000/- (Fourteen million) was paid to Pemagatshel Dzongkhag.

Upon examination of each issue it was established that while the defendant, Ugyen Wangchuk has submitted the loan application form on 18/06/2012 and received the loan upon executing the loan agreement on 19/09/2012, the CIB report was verified later, on 19/11/2012 which reflected the list of irregular repayment of loans and some cases were about to be accepted by the court, it was the fault of the Corporation to have sanctioned the new loan. Further, though the above mortgage was based on the sale deed executed between Ugyen Wangchuk and Tshering Dema, the mortgage was not appropriately registered and moreover, from the loan account number PLCONSUMODI/2012/31, a sum of Nu. 2,035,536/- was withdrawn on 20/09/2012 without Ugyen Wangchuk's consent and was deposited in his loan account number PLCONSUMOD/2012/230. Similarly, an employee of the Royal Insurance Corporation of Bhutan Limited, Mr. Tashi Peljor has, without the defendant's consent, not only withdrawn Nu. 186,000/- (One hundred eighty-six thousand) on 20/09/2012 but also deposited Nu. 60,000/- (sixty thousand) in the loan account of the defendant on 29/10/2012. Likewise, it was wrong on the part of the Corporation for making several back-and-forth transactions by withdrawing from and depositing into the loan account of the defendant without his consent. Further, no proper documents were obtained in respect of the Bank Guarantee encashment and without mortgaging any additional security, the Bank Guarantee of Nu. 14,000,000/- (Fourteen million) was encashed against his loan account number PLCONSUMODI/2012/31 on 02/07/2015 in favour of Pemagatshel Dzongkhag, which was found to be the fault of both the parties.

Moreover, Although the land measuring 21 decimals on Thram No. 812 located at Chang Depsi, Thimphu registered in the name of Mrs. Tshering Dema has been mortgaged, since the mortgage has not been registered in accordance with the Moveable and Immovable Property Act of Kingdom of Bhutan, the ownership of the 15 decimals land under the Thram No. 812 which was earlier in Mrs. Tshering Dema's name had been transferred to Ugyen Wangchuk and thereafter Ugyen Wangchuk has deceitfully mortgaged it with the Bhutan Insurance Limited with proper documentation and registration. Hence, it was proven that two loans have been availed against the same land. In case Ugyen Wangchuk fails to pay the loan amount within the duration awarded by the Court, it is decreed that the Royal

Insurance Corporation of Bhutan Limited and the Bhutan Insurance Limited can jointly obtain the Seizure Order from the Court and sell the above said mortgaged property.

Regarding loan account no. PLCONSUME1/2012/51, the defendant Mrs. Tshering Pem has availed a personal loan amounting to Nu. 2,000,000/- (Two million) vide loan account No. PLCONSUME1/2012/51 at 13% interest rate for six (6) years with a monthly installment of Nu. 43,384/- (Forty-three thousand three hundred eighty-four) by hypothecating a Prado bearing Registration No. BP-I-C2080 registered in the name of Mr. Namgay Penjor. The court, in order to dispense justice, while examining each issue, it was established that firstly, the Corporation has approved the loan although Mrs. Tshering Pema has not filled in the loan application form appropriately. Further, without obtaining consent and Power of Attorney from the vehicle owner Mr. Namgay Penjor, the vehicle has been accepted as a collateral by mentioning the same in the loan agreement and registering it accordingly. The CIB report of Mrs. Tshering Pem was not checked and verified before sanctioning the loan. In addition, without the consent of the defendant Tshering Pem, Nu.1,926,135/- (One million nine hundred twenty-six thousand one hundred thirty-five) was withdrawn from her account number PLCONSUME1/2012/51 on 22/12/2012 and deposited Nu.1,662,835/- (One million six hundred sixty-two thousand eight hundred thirty-five) in her brother Ugyen Wangchuk's loan account No. CRCS/2010/84 and Nu. 263,300/- (Two hundred sixty-three thousand three hundred) in the loan account number PLCONSUMOD/2012/217 on 22/12/2012. Further, since the Corporation has deducted the vehicle insurance from Tshering Pem's loan account No. PLCONSUME1/2012/51 without her consent, it is wrong on the part of the Corporation to have debited and credited the defendant's account without her consent. Therefore, in accordance with the Moveable and Immovable Property Act of the Kingdom of Bhutan and the Principle of International Law, which states that "*when both parties are at fault the loss has to be shared equally*", the loss in respect the interest and late fee accumulated as of 31/07/2021 must be borne equally by both the parties. The remaining loan outstanding balance after deducting the interest and late fee must be paid by Tshering Pem as per the bank's norms.

The defendant Tshering Pem has availed the loan amounting to Nu.2,000,000/- (Two million) against loan account No. PLCONSUME1/2012/51 by hypothecating the Prado car bearing Registration No.BP-I-C2080 registered in the name of Mr. Namgay Penjor. After the hypothecation against the vehicle has been registered in accordance with the Moveable and Immovable Property Act of the Kingdom of Bhutan, the defendant Tshering Pem's brother, Mr. Ugyen Wangchuk sold the said vehicle to him Mr. Tshering Dorji, the Chairperson of the Local Government at Paro Dzongkhag. This was confirmed as per the statement submitted by Mr. Tshering Dorji before the court stating that it has been three (3) years since he purchased the vehicle from Ugyen Wangchuk in the year 2016 as Ugyen Wangchuk informed him that there was no loan against the said vehicle. Since the vehicle being a moveable property, it cannot be given back to the Royal Insurance Corporation of Bhutan Limited, but the loan outstanding balance against the said vehicle must be paid by the defendant Tshering Pem. As Mr. Tshering Dorji could not prove before the court that he has paid the insurance for the said vehicle, he is liable to pay the insurance payment of the said vehicle for three (3) years amounting to Nu.95,294/- (Ninety-five thousand) to Tshering Pem, which the Royal Insurance Corporation of Bhutan Limited has deducted from her loan account.

Although the defendant Tshering Pem has availed a loan of Nu. 2,000,000/- (Two million) vide loan account No. PLCONSUME1/2012/51 against the security of a Prado car bearing Registration No. BP-I-C2080 registered in the name of Mr. Namgay Penjor, the charge of which was hypothecated in accordance with the Moveable and Immovable Property Act of the Kingdom of Bhutan, since the said hypothecated car was sold to Mr. Tshering Dorji, the Chairperson of the Paro Dzongkhag Local Government in 2016 by Mrs. Tshering Pem's brother, Ugyen Wangchuk. For this breach of the contract, although Mr. Ugyen Wangchuk should be held liable for criminal offence, this court, by way of full reversal of the judgment, is not sentencing Ugyen Wangchuk to imprisonment in accordance with the serial number 3 of the circular No. Supreme (41)2015/3101 dated 17/6/2015 of the Supreme Court, which states that a person cannot be charged and sentenced to imprisonment in a civil case when a

criminal element is found in the course of proceeding. Further, the civil and criminal proceedings have different procedures for civil and criminal matters.

Regarding the loan account No.PLCONSUMODI/2014/244, the defendant Tshering Pem has availed a loan with the principal amount of Nu. 2,000,000/- (Two million) vide loan account no PLCONSUMODI/2014/244 at the interest rate of 16% for a year for a term of one (1) year by mortgaging the land measuring 1.44 acres on Thram No.783, Plot No.TSE-1076 registered in the name of Namgay Wangmo located at Tshento, Paro, and the land measuring 23.5 decimals on Thram No.51, Plot No. MEW-5368 located at Mewang, Thimphu. The court, in order to dispense justice, while examining each issue, it was established that the land measuring 1.44 acres on Thram No.783, Plot No.TSE-1076 registered in the name of Namgyel Wangmo located at Tshento, Paro has been already mortgaged with Bhutan Development Bank Limited, and from the total land measuring 0.43 acres on Thram No.51, Plot No.MEW-5368 located at Mewang Gewog, Thimphu registered in the name of Kencho Wangmo, 23.4 decimals land has been mortgaged, since the mortgage has not been legally registered. Secondly, the CIB report of the defendant Tshering Pem has not been checked before sanctioning the loan. Thirdly, the Principal loan amount of Nu.2,000,000/- from loan account no. PLCONSUMODI/2014/244 of the defendant Tshering Pem has not been sanctioned as a new loan but Nu.44,000/- (Forty-four thousand) has been deposited in loan account No. PFSLIMPORT/2009/160, Nu.695,000/- (Six hundred ninety-five thousand) has been deposited in the loan account No. TLHVTRUCK/2010/417, Nu.415,000/- has been deposited in the loan account No.PLCONSUODI/2012/31, Nu.435,000/- (Four hundred thirty-five thousand) has been deposited in the loan account No. PLCONSUMOD/2012/51 and Nu.411,000/- (Four hundred eleven thousand) has been deposited in the loan account No. PLCONSUMOD/2012/217 on 31/12/2013 as per cheque No.948994. Since it is proved that the Corporation has wrongfully withdrawn the loan amount from one loan account and deposited into another loan account without consent of the defendant, the loss in respect the interest and late fee accumulated as of 32/07/2021 must be borne equally by the parties in accordance with the Moveable and Immovable Property Act of the Kingdom of Bhutan and the Principle of International Law, which states that “*when both parties are at fault the loss*

has to be shared equally". The remaining loan outstanding balance after deducting the interest and late fee must be paid by Tshering Pem as per norms of the bank.

In case the defendant Tshering Pem fails to repay the loan on the time, the Royal Insurance Corporation of Bhutan Limited has the right to seize the mortgaged land measuring 23.5 decimals on Thram No.51, Plot No.MEW-5368 known as Daminang located at Mewang Gewog, Thimphu Dzongkhag registered in the name of Kencho Wangmo. However, since the land measuring one (1) acre 44 decimals on Thram No.783, Plot No.TSE-1076 registered in the name of Namgyel Wangmo located at Tshento, Paro Dzongkhag has been already mortgaged with the Bhutan Development Bank Limited, no Seizure Order can be issued.

Regarding the loan account No. HCLN2/2015/123, Ugyen Wangchuk had availed a loan with a Principal amount of Nu. 10,000,000/- (Ten million) on 30/09/2015 vide loan account no HCLN2/2015/123 at the interest rate of 13.5% for 20 years against the mortgaged the land measuring 7710 sq. ft on Thram No.TT-849, Plot No.148 and 6 storied building on the said land registered in his name located at Changzamtok, Thimphu Dzongkhag. The court, in order to dispense justice, while examining each issue, it was established that firstly, although the mortgaged property has been registered appropriately, the CIB report of Ugyen Wangchuk was not checked prior to sanctioning the loan. Secondly, as per the loan agreement, the loan is sanctioned on 30/09/2016 but according to the loan statement, the loan was sanctioned on 14/09/2015. Thirdly, on 14/09/2015 the Royal Insurance Corporation of Bhutan Limited has, without following norms of the housing loan, deposited Nu.4,741,580/- (Four million seven hundred forty-one thousand five hundred eighty) in Ugyen Wangchuk's BOB account No.40100220597141216. On 26/10/2015 Nu.2,984,934 has been withdrawn and although Nu.450,000/- was paid to Phuntsho Rabten there is no receipt for the said payment. Further, since the remaining amount was deposited in Ugyen Wangchuk's loan accounts No. PLCONSUMODI/2014/244, PLCONSUMEI/2012/51, TLHVTRUCK/2010/417 and PLCONSUMODI/2012/31 without following the due process by the Corporation, it was an intended act by the corporation

Regarding the loan account No. BLTERM1/2015/302, the defendant Ugyen Wangchuk has availed a loan with Principal amount of Nu. 3,300,000/- (Three million three hundred thousand) against the loan account No. BLTERM1/2015/302 at the interest rate of 14% for 15 years against the mortgaged land measuring 9,147.6 sq. ft on Thram No.812 registered in his name located at Chang Debsi, Thimphu; the land measuring 7,710 sq. ft on Thram No.849, Plot No.148 registered in his name located at Changzamtok, Thimphu; 23.4 decimals land from 0.43 acres on Thram No.51, Plot No.MEW-5368 located at Namseling, Mewang Gewog, Thimphu Dzongkhag, registered in the name of Kencho Wangmo; and the land measuring 1.44 acres on Thram No.783, Plot No.TSE-1076 located in Tsentog, Paro Dzongkhag. After mortgaging the above-mentioned land, accordingly above-mentioned loan account number BLTERM1/2015/302 was approved and loan amounting to Nu.3,300,000.00 (Three Million Three Hundred Thousand) was sanctioned with interest rate of 14% annually for 15 years.

The court, while examining each issue, it was established that although Ugyen Wangchuk had submitted the loan application on 04/12/2015 and the loan was sanctioned by executing the loan agreement on 19/12/2015, the loan amount from this account had been deposited in Ugyen Wangchuk's loan account No. TLHVTRUCK/2010/417, PLCONSUMOD1/2012/31, CRCS/2010/84, PLCONSUMOD/2010/217, and other loan accounts. Moreover, CIB report of Ugyen Wangchuk was checked later on 08/01/2016 and although Ugyen Wangchuk's loans in other banks, which are in default and are about to be accepted by courts, the Corporation was at fault for sanctioning the loan. The Corporation had accepted the mortgaged properties based on the internal agreement executed between the private individuals and although the three mortgaged properties had been registered as per the procedure, the land measuring 1.44 acres on Thram No.783, Plot No.TSE-1076 registered in the name of Namgyel Wangmo located at Tsentog, Paro Dzongkhag has not been registered as mortgage as per the procedure, and moreover, the mortgage against the said land has been already registered by the Bhutan Development Bank Limited which is the mistake of the Corporation.

Regarding the loan account number CDL/2016/409, the defendant Ugyen Wangchuk availed the in the principal amount of Nu.3,000,000/- (Three million) at the rate of 14.5% for one (1) year renewable thereafter vide the loan account no. CDL/2016/409 by mortgaging the land measuring 4.30 acres on Thram No.722, Plot No.59/B,69/I and 225/D registered in

the name of Dechen Pelden located at Dekiling, Sarpang. However, since no appeal has been preferred on this issue, the court did not review the issue.

Regarding the loan account number CRCSI/2016/168, the defendant Ugyen Wangchuk had availed the loan in the principal amount of Nu.5,000,000/- (Five million) at the rate of 13% for one (1) year vide loan account No.CRCSI/2016/168 against his existing collateral securities and the work order letter No. CDA/DES-12/2015-2016/128 dated 03/09/2015 worth of Nu.15,469,289/- (Fifteen million four hundred sixty-nine thousand two hundred eighty-nine). The court, while examining each issue, it was established that although the loan to the defendant Ugyen Wangchuk was based on the contract work order and the linked mortgaged properties being the same properties mortgaged against his earlier loans, no proper identification of the properties was there as well as no CIB report was verified.

While sanctioning the said loan, since the Royal Insurance Corporation of Bhutan Limited has not identified the linked mortgaged properties and since the loan sanctioned was based on the contract work order, the Court is not able to issue the Order for seizure of the mortgaged properties as per the Moveable and Immovable Property Act of the Kingdom of Bhutan.

Regarding the loan account number BLODI/2017/512, the defendant Ugyen Wangchuk had availed a loan in the principal amount of Nu.7,500,000/- at the interest rate of 12.5% for a term of one (1) month vide loan account No.BLODI/2017/512 against the existing securities mortgaged with loan account No.BLTERM1/2015/302, HCLN2/2015/123 and PLCONSUMOD1/2012/31. The court, while examining each issue, it was established that the defendant Ugyen Wangchuk has not properly filled the loan application form at the time of sanctioning the loan. Further, the original copy of the loan agreement executed between the parties is missing and the CIB report was not verified as per norms of the credit business. Despite knowing that there were no repayments for loans sanctioned earlier, the Royal Insurance Corporation of Bhutan Limited continued to sanction one loan after another to the defendant Ugyen Wangchuk thereby failing to exercise due diligence.

If the defendant Ugyen Wangchuk fails to pay the loan outstanding balance within the stipulated period prescribed by the Court, the properties mortgaged against various loan

account No. BLTERMI/2015/302, HCLN2/2015/123 and PLCONSUMODI/2012/31 can be seized and sold by the Royal Insurance Corporation of Bhutan Limited after obtaining seizure order from the court in accordance with the provisions of the Moveable and Immovable Property Act of the Kingdom of Bhutan.

Regarding the loan account number CRCSI/2018/371, all properties mortgaged against all loan accounts of the defendant Ugyen Wangchuk have also been collateralized against the loan account No.CRCSI/2018/371 from which Bank Guarantee has been encashed and paid. The court, while examining each issue, it was established that the principal amount of Nu.5,638,069/- sanctioned against this loan account was not availed for his own use but it was the invocation of Bank Guarantees as per his two application forms, and as per Sipso Dungkhag Drungpa Dasho Tshewang Tobgay's letter No.DAT/ENGG-03/2017-2018/3387 dated 01/03/2018 for Nu.3,238,069/-(Three million two hundred thirty-eight thousand sixty-nine) and Nu.2,400,000/- (Two million four hundred thousand) as per letter No. RELOFRENTN/2017/2272 dated 20.06.2017. The date and month were mentioned in the petition submitted by the plaintiff although two bank guarantees have been issued. Further, although no loan agreement was executed between the Corporation and the defendant, since the Corporation has sanctioned the new loan, no proper diligence was exercised, and therefore, the plaintiff, the defendant and all employees must be held accountable for the fault.

6. Judgment

The above issues have been classified into three issues and accordingly reviewed to achieve an objective of dispensing justice with fairness in accordance with the due process of law as follows.

Firstly, from amongst other wrongful and unacceptable conduct by the defendant Ugyen Wangchuk:

1. Although 12 different loan accounts have been availed since 2010, there was no regular repayment against a single loan account.
2. The mortgaged properties were firstly not properly mortgaged and some of the mortgaged properties were sold to other parties.
3. Two loans were availed knowingly against one mortgaged property.

4. Loan was availed by making other person to sign the loan agreement knowingly.
5. Continued to avail new loans despite knowing well that the other loan accounts have irregular repayments.
6. Owing to above reasons and behavior, 12 loan accounts have been availed by the defendant Ugyen Wangchuk of which 10 accounts are in his name and 2 loan accounts are in the name of his sister Tshering Pem. The total loan outstanding being the accumulation of interest, late fee and principal amount as on date 31/07/2021 amounts to **Nu.102,393,280.11 (One Hundred Two Million and Thirty-Nine Hundred Thousand Three Hundred Ninety-Three Two Hundred Eighty and Chetrum Eleven)** which is under NPL.

Secondly, amongst failures on the part of employees of the Royal Insurance Corporation of Bhutan Limited to carry out their responsibilities lawfully and with due diligence:

1. No credit norms were followed while sanctioning 12 different loans.
2. Not checked and verified the documents thoroughly while sanctioning the loans as per the process and procedures of the Royal Insurance Corporation of Bhutan Limited.
3. Not checked and verified thoroughly as per the process and procedures of the Royal Insurance Corporation of Bhutan Limited while taking the properties as collaterals against loans.
4. Huge loan sanctioned against a mortgaged property which did not exist (six storied building at Changzamtog) by tampering the mortgage document and making it as if the mortgaged property existed.
5. Not carried out proper assessment and analysis of eligibility of the loans.
6. Signatures in the loan related agreements and documents were not obtained lawfully by the responsible and relevant officials of the credit business.
7. Some of the employees have, without consent from the defendant Ugyen Wangchuk, debited and credited the loan accounts.
8. Some of the employees have, without consent from the defendant Ugyen Wangchuk, withdrawn loan from the defendant's loan account and deposited in their personal loan accounts.

Thirdly, despite the Royal Insurance Corporation of Bhutan Limited being a legal person, amongst the roles and responsibilities the management has failed to exercise:

1. The Royal Insurance Corporation of Bhutan Limited has failed to exercise the management's monitoring role mentioned/stated in the Credit Manual 2011.
2. Owing to above reasons, although there is a defined limit of loan that can be sanctioned by the board of directors or the credit committees or the officials, such procedure has not been followed in this instant case.
3. The loans sanctioned in this present case were not properly managed and monitored.
4. Although the repayments against 12 loan accounts sanctioned to the defendant Ugyen Wangchuk in this present case were irregular, in this instant case there was no proper monitoring of loans sanctioned without following the credit norms.
5. The management has failed to take any action against those who instead of shouldering the responsibility of recovering the huge public fund amounting to Nu.102,393,280.11/- (One Hundred Two Million Three Hundred Ninety-Three Thousand and Two Hundred Eighty and Cheltrum One One) continued to provide additional loan to the defendant.
6. No action has been taken against those employees who were involved in this instant case.

In view of the above reasons;

(A) Although the loan agreement in respect of the loan amount of Nu. 3,000,000/- (Three million) availed by the defendant Ugyen Wangchuk from the Royal Insurance Corporation of Bhutan Limited on 04/06/2010 vide loan account No. CRCS/2010/84 was made to be executed between the defendant Ugyen Wangchuk and the Royal Insurance Corporation of Bhutan Limited as per Section 16 of the Contract Act of Bhutan and Section 35 of the Evidence Act of Bhutan, the signature in the agreement was signed by Ugyen Wangchuk's sister Tshering Pem as per Section 3 and 4 of the Evidence Act of Bhutan. Further, CIB report of the defendant has not been verified while sanctioning the loan, and without the consent of Ugyen Wangchuk, some of the employees of the Royal Insurance Corporation of Bhutan Limited have withdrawn and deposited the money against Ugyen Wangchuk's loan account No. CRCS/2010/84 without his consent and without adhering to the banking norms. Further, as per Section 3 and 4 of the Evidence Act of Bhutan, it has been proven that a total seven (7) Bank Guarantee encashment amount has been merged in this loan account without any proper documentation. While examining the repayments made against this loan account, it has been established that Ugyen Wangchuk has not made any repayment in this loan account but rather the Royal Insurance Corporation of Bhutan Limited has sanctioned new loans and closed old loan accounts without following the norms. Therefore, since both the parties are at fault, as per section 22 of the Movable and

Immovable Properties Act of Bhutan and as per the Principle of Interenational Law which states that “*When both the parties are at fault the loss has to be shared equally*” the total outstanding principal amount, interest and late fee of Nu. 102,393,280.11/- (One Hundred Two Million Three Hundred Ninety-Three Thousand and Two Hundred Eighty and Cheltrum Eleven) has to be shared equally between the parties thereby each party being liable for Nu.34,131,093.37/- (Thirty-Four Million One Hundred Thirty-One and Ninety-Three and Cheltrum Three Seven). The parties who are responsible for the lapses being firstly, Ugyen Wangchuk, secondly, the relevant employees of the bank, and thirdly, the Royal Insurance Corporation of Bhutan Limited are each liable for one-third of the total liability, which must be paid to the Royal Insurance Corporation of Bhutan Limited within six (6) months from the date of this judgment as per section 56 of the Movable and Immovable Property Act of Kingdom of Bhutan.

(B) With regard to the properties mortgaged against 12 loan accounts of Ugyen Wangchuk Construction’s owner Ugyen Wangchuk, the Royal Insurance Corporation of Bhutan Limited can, without violating provisions under sections 24 (A) (2); 55(1) and 77 (1) of the Movable and Immovable Property Act of the Kingdom of Bhutan, obtain seizure order from the court and sell it as per section 64 (1) of the Movable and Immovable Property Act of Kingdom of Bhutan.

ORDER

(A) Although the loan agreement in respect of the loan amount of Nu. 3,000,000/- (Three million) availed by the defendant Ugyen Wangchuk from the Royal Insurance Corporation of Bhutan Limited on 04/06/2010 vide loan account No. CRCS/2010/84 was made to be executed between the defendant Ugyen Wangchuk and the Royal Insurance Corporation of Bhutan Limited as per Section 16 of the Contract Act of Bhutan and Section 35 of the Evidence Act of Bhutan, the signature in the agreement was signed by Ugyen Wangchuk’s sister Tshering Pem as per Section 3 and 4 of the Evidence Act of Bhutan. Further, CIB report of the defendant has not been verified while sanctioning the loan, and without the consent of Ugyen Wangchuk, some of the employees of the Royal Insurance Corporation

of Bhutan Limited have withdrawn and deposited the money against Ugyen Wangchuk's loan account No. CRCS/2010/84 without his consent and without adhering to the banking norms. Further, as per Section 3 and 4 of the Evidence Act of Bhutan, it has been proven that a total seven (7) Bank Guarantee encashment amount has been merged in this loan account without any proper documentation. While examining the repayments made against this loan account, it has been established that Ugyen Wangchuk has not made any repayment in this loan account but rather the Royal Insurance Corporation of Bhutan Limited has sanctioned new loans and closed old loan accounts without following the norms. Therefore, since both the parties are at fault, as per section 22 of the Movable and Immovable Properties Act of Bhutan and as per the Principle of International Law which states that "When both the parties are at fault the loss has to be shared equally" and as per the judgment rendered by the Supreme Court vide (Hung-Om 18-10) 4/7/2018, the total principal amount, interest and late fee as of 31/07/2021 amounting to Nu. 102,393,280.11/- (One Hundred Two Million Three Hundred Ninety-Three Thousand and Two Hundred Eighty and Chetrum Eleven) has to be shared equally between the parties thereby each party responsible for the aforementioned lapses firstly, Ugyen Wangchuk, secondly, the relevant employees of the bank, and thirdly, the Royal Insurance Corporation of Bhutan Limited liable for Nu.34,131,093.37/- (Thirty-Four Million One Hundred Thirty-One and Ninety Three and Chetrum Three Seven) being one-third of total liability must pay their share of liability to the Royal Insurance Corporation of Bhutan Limited within six (6) months from the date of this judgment as per section 56 of the Movable and Immovable Property Act of Kingdom of Bhutan.

- (B) The properties mortgaged against 12 loan accounts of Ugyen Wangchuk the charge of which have been appropriately registered and which are identified to be seized in the above judgment can be sold by the Royal Insurance Corporation of Bhutan Limited and adjusted against the loans.
- (C) On the breach of contract and regarding other loans the judgment of the Dzongkhag Court should be complied with.

(D) As mentioned in the above judgment, with regard to Ugyen Wangchuk's sentence to one (1) year and six (6) months imprisonment for an offense of selling the mortgaged properties and tempering the documents by fraudulently obtaining new Lag Thram, this court, by way of partial reversal of the judgment in accordance with section 111 (B) of the Civil and Criminal Procedure Code of Bhutan 2001, decrees that the defendant cannot be sentenced to imprisonment accordance as per the serial number 3 of the circular No. Supreme (41)2015/3101 dated 17/6/2015 of the Supreme Court, which states that a person cannot be charged and sentenced to imprisonment in a civil case when a criminal element is found in the course of proceeding, and further, the civil and criminal proceedings have different procedures for civil and criminal matters. Therefore, since this court hereby decrees pursuant to exhaustive deliberations as per section 96 of the Civil and Criminal Procedure of Bhutan, 2001, any party who is not complying with this judicial order will be held in contempt of the court as per section 104/107 of the Civil and Criminal Procedure Code of Bhutan, 2001.

Order of the Royal Court of Justice.

Pema Wangchuk

Justice

Bench II of the High Court

Court

Passang Wangmo

Justice

Bench II of the High