IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

WRIT PETITION NO. 4373 OF 2026

Raheja District – III Private Limited,
Through Ashish S. Raheja and Anr. .. Petitioners

Versus

State of Maharashtra and Anr. .. Respondents

WITH
INTERIM APPLICATION NO. 3544 OF 2026
IN
WRIT PETITION NO. 4373 OF 2026

New Era Advisor Pvt Ltd. Applicant / .. Orig. Respondent No.2

Versus

Raheja District – III Private Limited,
Through Ashish S. Raheja and Anr. .. Respondents

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- Mr. Aabad Ponda, Senior Advocate a/w. Zulfiquar Memon, Mr. Parvez Memon, Mr. Abhishek Gupta, Mr. Mahesh Ahire, Mr. Kush Agarwal, Mr. Chinmay Bambarkar and Mr. Bharat Zaveri, Advocates i/by MZM Legal LLP for Petitioners.
- Ms. Shilpa G. Talhar, APP for Respondent – State.
- Mr. Manoj Mohite, Senior Advocate a/w. Mr. Gaurav Parkar, Advocate for Respondent No.2.
- PI – Juberahmed Mujawar, Housing – I EOW, PI – Kiran Aher, EOW, Mumbai and API – Sandip Pise, EOW, Mumbai.

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CORAM : MILIND N. JADHAV, J.

DATE : NOVEMBER 18, 2026.

JUDGEMENT:

1. Heard Mr. Ponda, learned Senior Advocate for Petitioner; Ms. Talhar, learned APP for Respondent – State and Mr. Mohite, learned Senior Advocate for Respondent No.2.

2. The Petition is filed under Article 226 of the Constitution of India read with Section 528 of Bharatiya Nagarik Suraksha Sanhita, 2023 (for short "**BNSS**") for quashing and setting aside of CR No.78 of 2026 dated 11.08.2026 currently under investigation by the Economic Offences Wing (for short "**EOW**") under Sections 318(1), 318(4) and 3(5) of Bharatiya Nyaya Samhita, 2023 (for short "**BNS**")arising out of FIR No.1180 of 2026 registered with Oshiwara Police Station wherein Petitioners are arraigned as Accused Nos.5 and 6 respectively. Accused No.1 is Unimers India Ltd., Accused No.2 is J.P. Goenka, Accused No.3 is Vardhan Goenka and Accused No.4 is Satya Prakash Gupta. Accused Nos.2, 3, 4 are associated with Accused No.1 – Company.

3. The brief facts necessary of adjudication of the present Petition are as under:-

3.1. Petitioner No.1 is a Private Limited Company incorporated under the Companies Act, 1956 carrying on business of real estate development. Petitioner No.2 is its director. Respondent No.2 is a private limited company and through its director Mr. Brijmohan P. Rathi has filed the FIR leading to registration of present CR on 11.08.2026.

3.2. According to prosecution case, Accused No.1 – Unimers India Ltd. took a loan from IFCI to set up a chemical plant and defaulted on repayment as a result of which IFCI was in the process of selling off the

loan to another entity. According to First Informant it is alleged that its Director went to IFCI's office at Nariman Point, Mumbai to obtain details and learned that as on 01.07.2008 its outstanding dues aggregating to Rs.86.55 crores were secured by mortgage of the company's movable and immovable assets including 1,52,419 square meters of land in District Thane along with plant, building and machinery thereon. It is stated in the FIR that Unimers India Ltd. had also taken loans from other institutions namely ICICI Bank, IDBI Bank, LIC and SBI Bank but since no third party rights were created over its mortgaged property, Respondent No.2 – First Informant agreed to purchase IFCI's loan for Rs.95,49,50,000 which was formalized through a Deed of Assignment dated 01.10.2009 by virtue of which all rights over Unimers's outstanding dues of Rs.86.55 crores as on 01.07.2008 were transferred to Respondent No.2. This was followed by a registered Supplementary Deed of Assignment dated 29.12.2012 reaffirming the outstanding amount of Rs.86.55 crores as stated in the Deed of Assignment.

3.3. It is stated in the FIR that Unimers filed Civil Suit No.1656 of 2009 in the Delhi High Court challenging Respondent No.2's purchase of the loan followed by another Suit No.942 of 2013 in the Bombay High Court. Both these Suits are presently pending, the former before Saket District Court (Suit No.209825 of 2015) and City Civil Court Mumbai (Suit No.0102727 of 2024).

3.4. It is then stated in the FIR that in a previous Suit proceeding namely Notice of Motion No.791 of 2002 in Suit No.771 of 2002 filed by ICICI Bank in this Court order dated 29.03.2004 was passed wherein it was held that any charge on Unimers's property would remain subject to ICICI Bank's rights. In the FIR it is charged and alleged that despite prevalence of this order and without obtaining consent of IFCI or other lenders, Unimers executed Agreement For Assignment (for short "**AFA**") dated 14.05.2008 (registered on 14.08.2008) agreeing to assign the mortgaged land to Petitioner No.1 for Rs.184.29 crores in lieu of which on execution of the AFA, Unimerse received an upfront amount of Rs.29,62,50,000 from Petitioner No.1 which was used by its promoters towards their unsecured liabilities and to return promoter share capital. I need to note here that Petitioner No.1 on instructions has shown its willingness to pay the balance amount as per the AFA to fructify the Assignment.

3.5. After the aforesaid actual charge it is stated in the FIR that Respondent No.2 – Complainant upon learning about this transaction of 2008 personally visited the Company's site in February 2026 and saw that there was no trace of the company called Unimers India Ltd. thereupon and no plant or machinery existed thereon and the security personnel could not tell him about the whereabouts of the machinery. Hence on 02.04.2026, Respondent No.2 lodged a criminal complaint before the EOW. Preliminary Inquiry No.115 of 2026 was registered

and conducted over a period of 4 months. Petitioners cooperated with the inquiry and duly submitted all relevant documents rather many more documents pertaining to the intervening period during which substantial pleadings and proceedings that were filed by Respondent No.2 – Complainant itself before the Civil Courts in the pending Suit proceedings and before the NCLT where Insolvency proceedings filed against Unimers were pending due to initiation of CIRP against the company and contended that the entire dispute alleged and raised by Respondent No.2 – Complainant was purely civil in nature and most importantly the AFA was to the knowledge of the Respondent No.2 - Complainant despite which on a false premise that it gained knowledge only in February 2026, the Complaint was filed on 06.04.2024 and CR was registered on 11.08.2026.

4. Hence the Petition for quashing.

5. Mr. Ponda, learned Senior Advocate for Petitioners at the outset would submit that Respondent No.2 – Complainant is guilty of *suppressio veri* and *suggestio falsi*. He would submit that Respondent No.2 filed the FIR with a selective and partial disclosure of facts deliberately suppressing material particulars having a direct bearing on the registration and continuation of the CR. He would submit that Respondent No.2 suppressed material facts and evidence about pending proceedings before the Civil Courts in Mumbai and Delhi

NCLT, and NCLAT which it was infact actively pursuing during the interregnum. He would draw my attention to order dated 18.11.2022 passed by NCLT, Mumbai admitting Company Petition No.604 of 2018 copy of which is appended at page No. 439 to the Petition and contend that this Company Petition filed by Gill International Limited was admitted and NCLT initiated Corporate Insolvency Resolution Process (for short "CIRP") against Unimers India Ltd. (Accused No.1) declaring a moratorium. He would submit that Petitioner No.1 was thereafter duly admitted by the Interim Resolution Professional (for short "IRP") as a financial creditor with admitted claim of Rs.1,257 crores and the claim of Respondent No.2 – Complainant was classified as "Other Creditor" for Rs.218 crores. He would submit that Respondent No.2 complainant being aggrieved by this classification filed Interim Application No.1667 of 2026 and Interim Application No.1669 of 2026 before NCLT Mumbai for setting aside Petitioner No.1's admitted claim and removal of the IRP. He would submit that these material facts are suppressed by Respondent No.2 in the CR.

5.1. He would submit that Respondent No.2 pursued its remedy before the NCLT and thereafter filed the present CR upon finding itself dissatisfied in response to an adverse commercial classification which cannot be attributed to the discovery of any offence committed by Petitioner No.1 despite its statutory appeals pending before the NCLT. He would submit that grievance of Complainant was already sub –

judice before the NCLT at its own instance and suppression of such facts *prima facie* show the malafides of Respondent No.2 in setting criminal law into motion for extraneous reasons. He would submit that classification of Respondent No.2 – Complainant's claim as "other creditor" is on account of pendency of Suit No.0102727 of 2024 before the City Civil Court, Mumbai which is suppressed in the CR altogether. On this ground he would submit that suppression of material facts particularly pendency of parallel civil or statutory proceedings concerning the same subject matter of the CR vitiates the invocation of the criminal process altogether.

5.2. Next he would submit that when the aforesaid material was placed before the Investigating Officer during preliminary inquiry, the inquiry was conducted over a period of 4 moths for ascertaining whether the dispute disclosed any criminality on the part of Petitioners. He would submit that Petitioners furnished voluminous documentary material to the Investigating Officer under their covering letter dated 05.05.2026 including material bearing directly on the question of Respondent No.2's knowledge of the AFA executed in 2008, pendency of NCLT proceedings and pendency of Civil Suit proceedings between the parties at Mumbai and New Delhi. He would submit that the CR is filed simpliciter on the basis of the original complaint dated 06.04.2024 without independent verification, scrutiny or investigation of the aforesaid documentary evidence, neither the CR

indicates that Investigating Officer has examined the same before arriving at a conclusion that a cognizable offence is even made out. He would therefore vehemently submit that there is complete non-application of mind since the CR does not deal with the aforesaid documentary evidence but most importantly it does not answer the inordinate and unexplained delay of 18 years in registration of the complaint before setting the criminal law into motion. He would submit that the CR has been registered without any independent fact finding inquiry and on the ground of material suppression by Respondent No.2 – First Informant and therefore deserves to be quashed as against the Petitioners.

5.3. On the applicability of the provisions of Section 318(1) read with 318(4) of BNS to Petitioners pertaining to the offence of cheating, he would submit that in the CR there is no allegation let alone any particulars of facts that Petitioners have made any promise, representation, assurance or inducement to Respondent No.2 – First Informant at any point in time, neither there is any allegation about communication or correspondence, oral and / or written between the parties. He would submit that when deception is neither alleged nor discernible from the complaint, the inquiry does not even reach the question of inducement and the offence has to fail at the threshold. While drawing my attention to the provisions of Section 318(1) and 318(4) of BNS he would submit that, offence of cheating requires the

essential ingredient of deception practiced upon the person alleged to have been cheated coupled with a dishonest or fraudulent intention existing at the very inception of the transaction by reason thereof that the person was induced to deliver property or to do or omit to do something which he would not otherwise have done. In support of this submission he would refer to and rely upon the decision of the Supreme Court in the case of ***Delhi Race Club (1940) Ltd. Vs. State of UP***[1] and contend that it is authoritatively settled that deception whether by false representation, by other action or omission is the foundation and an indispensable ingredient without which the offence of cheating cannot be said to exist followed by a fraudulent inducement flowing from that deception. He would submit that it is Respondent No.2's case is that it had carried out legal due diligence with regard to assignment of the property belonging to Unimers and had made its own independent assessment before purchasing the debt from IFCI. Once it is Respondent No.2's own case that it had acted upon its own due diligence without any nexus or representation by Petitioners who were not concerned with the said transaction altogether on their own showing, there is no inducement much less any offence of cheating. Another point argued by Mr. Ponda is that provisions of Section 318(4) of BNS can never apply to transactions that took place prior to coming into force of BNS but considering the

1 2024 10 SCC 690

substance of the provisions and the then subsisting provision of Section 420 IPC, he would argue that essential ingredients thereof namely dishonestly, inducing delivery of property, making false representation or any other such overt act even on the Respondent No.2's own complaint is not attributable to the Petitioners.

5.4. Next he would submit that there is complete absence of privity of contract or nexus between Petitioners and Respondent No.2 – First Informant and most importantly it is an admitted the fact that Respondent No.2 came into the picture only after the AFA was executed and registered by Petitioner No.1 with Unimers. He would submit that in complete absence of any transaction, direct or indirect, between Petitioners and Respondent No.2, the offence of cheating cannot in law be predicated of the Petitioners at the instance of Respondent No.2 especially if it is founded on deception and inducement as alleged in the CR.

5.5. Finally on merits of the transactions namely the AFA, he would submit that it is not equivalent to an assignment or transfer of property so as to breach the injunction granted by this Court in Suit No.771 of 2002. He would submit that a mere glance through the AFA would show that it contains reciprocal obligations to be carried out and fulfilled as stipulated therein and its completion is expressly based upon Unimers settling the public debenture holder's dues and

procuring vacation of injunction order and withdrawing Suit No.771 of 2002. He would submit that the Deed of Assignment is not executed or registered till date and assignment or leasehold interest in the subject land is not made made in favour of Petitioner No.1 neither registered nor consented to by MIDC since it is a leased property. He would vehemently submit that Petitioner No.1 at this juncture has no title through the AFA in the subject land. He would submit that the AFA as it stands is an agreement to assign which when unperformed transfers no right, title or interest in the immovable property.

5.6. He would submit that status of Petitioner No.1 is that of a creditor of Unimers for the monies it has paid and the sums claimed under the AFA whereas Respondent No.2 has purchased the right from IFCI and both parties have been treated in the CIRP accordingly as "Secured Financial Creditor and "Other Creditor". He would submit that the real grievance for invoking criminal proceedings infact stems from the fact that the List of Creditors dated 25.11.2025 classifies Respondent No.2 as "Other Creditor" which is not palatable to Respondent No.2 whereas Petitioner No.1 is classified as a “Secured Financial Creditor” and it is this classification and resulting loss of control over Committee of Creditors (for short “CoC”) which has precipitated filing of the present criminal complaint.

5.7. Petitioners have also argued that Respondent No.2's right rests upon the Deed of Assignment executed in 2009, Supplementary Deed of Assignment executed in 2012 and Deed of Confirmation executed in 2013. The sequitur of this submission is that the document effecting transfer of undivided share in right, title and interest in immovable property is compulsory registrable under Registration Act, 1908. Petitioner No.1's AFA is a registered document is prior in point of time that any of the documents claimed by the Petitioner. It is seen that the 2009 Deed of Assignment executed by Respondent No.2 was registered in 2012 only.

5.8. In support of his aforesaid submissions, he has referred to and relied upon the following decisions of the Supreme Court in the cases of:-(i) ***Anita Maurya Vs. State of UP***[2](ii) ***Kishan Singh Vs. Gurpal***[3](iii) ***Nazibul Rahim Khan and Ors. Vs. State of UP***[4](iv) ***Mohd. Wajid Vs. State of UP***[5](v) ***Bhikhubhai Govindbhai Patel & Anr. Vs. State of Gujrat and Anr.***[6](vi) ***Suraj Lamp & Industries (P) Ltd. Vs. State of Haryana***[7](vii) ***Ghanshayam Vs. Yogendra Rathi***[8](viii) ***Rekha Jain Vs. Karnataka***[9](ix) ***Paramjeet Batra Vs. State of Uttarakhand***[10](x) ***Mohd. Azad Khan Vs. State of Jammu and Kashmir*** [11](xi) ***Mohd. Ibrahim Vs.***

2 2026 SCC OnLine 1519
3 (2010) 8 SCC 775
4 2026 SCC OnLine 1557
5 (2023) 20 SCC 219
6 2026 SCC OnLine SC 915
7 (2012) 1 SCC 656
8 Civil Appeal No.7527 – 7528 of 2021 decided on 02.06.2023
9 (2022) 18 SCC 174
10 (2013) 11 SCC 673
11 2020 SCC OnLine J&K 663

State of Bihar[12](xii) *Vesa Holding (P) Ltd. Vs. State of Kerala*[13](xiii) *Anukul Singh Vs. State of UP*[14]

6. *PER CONTRA* Mr. Mohite learned Advocate for Respondent No.2 – First Informant vehemently opposed the present Petition and at the outset drawn my attention to the Affidavit-in-Reply dated 22.10.2026 copy of which is appended at page no. 265 of the Petition and contended that by order dated 29.03.2004 this Court had granted injunction restraining Unimers India Ltd. (Accused No.1) from disposing, alienating or creating third party rights over the mortgaged property and movable assets despite which the AFA dated 14.05.2008 was executed by Unimers in favour of Petitioner No.1 and Unimerse accepted/received an amount of Rs.29,62,50,000 from Petitioner No.1. He would submit that the AFA was executed contrary to the injunction order without obtaining leave of this Court in the first instance.

6.1. Next he would submit that against the stated consideration therein of approximately Rs.184.29 crores and without fulfillment of any of the conditions precedent under the AFA, the injunction was not vacated, the secured creditors were never settled, Suit No.771 of 2002 was never withdrawn and the charges on the property belonging to Unimers were never released from attachment, neither final Deed of Assignment was executed in favour of Petitioner No.1 nor assignment

12 (2009) 8 SCC 751
13 (2015) 8 SCC 293
14 2025 SCC OnLine SC 2060

of leasehold rights was fructified. He would vehemently argue that the upfront amount of Rs.29.62 crores received by Unimers was never utilized to repay the banks and financial institutions and Unimers diverted / siphoned off the same to repay its unsecured loans and to refund the advance against the share capital of the promoters of Unimers. He would submit that the AFA was executed between parties not only in willful breach of the injunction order of 2004 but without sanction of the secured creditors. He would vehemently argue that the said transaction was not a bonafide commercial transaction but as stated in the FIR designed to siphon of valuable secured assets of Unimers.

6.2. He would persuade me to consider that the AFA was designed as a camouflage to discharge Unimers's unsecured loans rather than apply it towards repayment of its secured creditors and therefore was a suspicious transaction. He would fairly concede that Unimers was admitted into CIRP by NCLT on 18.11.2026 and pursuant to the public announcement, Respondent No.2 lodged a Financial Secured Creditor claim of approximately Rs.3,466 crores. While drawing my attention to the averments made in the affidavit-in-reply, he would submit that the IRP wrongfully rejected Respondent No.2's Financial Secured Creditor claim of Rs.3466 crores and admitted only Rs.218.62 crores claim under the caption of "Other Creditor" thereby excluding Respondent No.2 from the CoC. He would argue that this

rejection and reclassification of Respondent No.2's claim was not merely an adjudication error but a result of collusion between the IRP and the other accused persons in relegating the Respondent No.2's claim as "Other Creditor" and this constituted the very core of the criminal conspiracy alleged.

7. Before I proceed further it would be apt to deal with this ground argued by Respondent No.2 and as reflected as paragraph No.1(xii) of its Reply Affidavit. It is seen that Respondent No.2 is aggrieved with the IRP admitting Petitioner No.1's claim of Rs.1256.41 crores as a secured financial debt based on the AFA under which only Rs.29.62 crores was paid and no title ever passed onto Petitioner No.1. Respondent No.2 is peeved with the fact that by virtue of this Petitioner No.1, is conferred a dominant 86.41% voting share in the CoC which enabled Petitioner No.1 to exercise effective control over all decisions in the CIRP including the decision concerning the fate of the assets claimed as security by Respondent No.2. It is seen that in paragraph No.1(xii) to (xiv), Respondent No.2 has raised the above grievance however the said grievance is not raised or pleaded or charged in the Complaint / CR dated 11.08.2026, thus the objection of the Respondent No.2 – Complainant comes to the fore and it is *prima facie* seen that in view of the proceedings before the NCLT and the orders passed therein, Respondent No.2 is aggrieved with the same. On a pointed question been asked to Mr. Mohite about absence of the

main charge in the CR, he would accept the same and contend that in the first complaint dated 02.04.2026 filed before the EOW, the above charge was duly stated. Though Respondent No.2 has argued in the same breath that pendency of the civil proceedings before NCLT does not bar criminal investigation pertaining to alleged dishonesty, diversion, fabrication of record and conspiracy, but these are mere bald allegations printed on paper without satisfying and justifying any role attributed to Petitioner No.1 *qua* the aforesaid 4 charges. There is a clear dichotomy in the contents of the CR and the grounds stated therein and the defence taken by the Complainant in its affidavit in reply which is alluded to hereinabove. Therefore I am not inclined to accept the submissions made qua dishonesty, diversion, fabrication of record and conspiracy without there being any factual basis or material showing involvement of Petitioner No.1. Rather, save and except alleging conspiracy on the part of Petitioners as a bald assertion, all submissions made by Mr. Mohite are directed towards Unimers and its conduct.

8. It is argued by Mr. Mohite that in February 2026, Respondent No.2 discovered that the security guards manning the subject property in Thane were deployed and engaged by the Petitioners because the adjoining properties also belonged to the Petitioners, however there is no explanation offered with regard to the inordinate delay if 18 years in alleging that conduct of Petitioners in

2026 seriously jeopardized the security and interests of the secured creditors including that of Respondent No.2. Respondent No.2's further argument and submission on the issue of knowledge of the AFA is that it is a matter of mere inference that Mr. Prakash Selot then a minority shareholder of Unimers had pleaded and annexed the AFA in Company Petition 133/397 – 398 / MB / 2008 and he subsequently became Director of Respondent No.2. It is seen that Respondent No.2 has acknowledged the existence of the registered AFA with Petitioner No.1 in its Written Statement dated 12.02.2016 filed in Suit No.942 of 2013.

9. It has also further acknowledged that IFCI and Respondent No.2 referred to the AFA in proceedings before the Civil Court in New Delhi filed on 07.12.2018 however in the same breath Respondent No.2 contends that even though Respondent No.2 may have had knowledge of the existence of AFA, the adverse classification of Respondent No.2's claim by RP was done in November 2025 and disappearance of hypothecated movable assets of Unimers was discovered in February 2026 and therefore the criminal complaint and CR is maintainable against not only Unimers but also against Petitioners. What is argued is that delay and laches will not hit the claim Respondent No.2 because the moment the aforesaid two issues occurred complaint was filed and therefore knowledge of the AFA with Petitioner No.1 since 2008 is immaterial and irrelevant.

10. It is stated in the Affidavit in Reply by Respondent No.2 that its real grievance is against Unimers and its promoters. If that be the case then there is no reason for implicating and indicting the Petitioners. The main thrust of the Affidavit in Reply filed by Respondent No.2 is its grievance regarding admission of Petitioner No.1's claim as Financial Secured Creditor as against Respondent No.2's claim categorized as "Other Creditor" leaving it entirely outside the CoC as a Secured Financial Creditor. The CR copy is appended at page No.55 and Respondent No.2 - Complainant's statement begins at page No.62 and ends on page No.76 of the Petition. In the entire statement of complainant, there is not a whisper of the grievance raised by Respondent No.2 regarding classification of its claim as "Other Creditor" by the IRP though in the Affidavit in Reply it is alleged that IRP has connived with Petitioners. Thus a clear dichotomy exists in the pleadings on the face of record.

11. Respondent No.1 – State has filed Affidavit of Juberahmed Chansaheb Mujawar, Police Inspector of EOW, Police Commissionerate, Mumbai dated 07.10.2026 to oppose the Petition. In the said Affidavit in Reply, the entire factual history is narrated. In this Affidavit in Reply in paragraph Nos.30, 31 and 32 the prosecution has raised a question and has also answered the same with regard to disposal of movable property of M/s. Unimers India Ltd. Which had came to the notice of Respondent No.2 – Complainant in the month of

February 2026. In paragraph No.30 under reference, it is stated by the prosecution that "*... since M/s. Unimers had also disposed of its movable property, this came to the notice of complainant in the month of February 2026, and they filed a complaint regarding the same...*" . In paragraph No.31 it is stated that "...*Accused No.1 (Unimers) transferred / disposed of its movable property, when, how, and with whose permission*..." In paragraph No.32 it is stated that *".. M/s. Unimers India Ltd. company who had disposed of its movable property which came to the notice of the complainant only in the month of February 2026.."* . Thus there is no role attributed to the Petitioners regarding disposal of the (movable properties) at all. What is significant to note here is that the entire Affidavit in Reply of the prosecution is stoically silent on the entire material placed before the prosecution during Preliminary Enquiry and that speaks volumes of the nature of investigation carried out by the prosecution. It is seen that First Informant has referred to AFA (executed in 2008), alleged disposal of movables by Unimers and classification of its claim by the IRP as "Other Creditor" and filed the Complaint in 2026 alleging fraud in executing the AFA only in the CR.

12. I have heard the submissions of the learned advocates at the bar and considered the entire entire material placed before me with their able assistance. Submissions made the learned advocates have received due consideration of the Court.

13. The present case can be decided on the basis of the following 4 propositions which are argued before the Court:-

(i) On the aspect of delay and laches for registering the FIR *qua* the AFA executed in 2008 after 18 years;

(ii) Purpose of the AFA dated 14.05.2008;

(iii) Applicability of the provisions of 318(1) and 318(4) of BNS, 2023 to the facts of the present case; and

(iv) nature of the dispute between the various parties.

14. Before I address the aforesaid 4 issues to adjudicate the present Writ Petition, it needs to be noted that admittedly the main offence pertained to disposal of movable assets of Unimers and classification of Respondent No.2's Claim by IRP as "Other Creditor" in CIRP proceedings in the NCLT alleging conspiracy and fraud by Petitioners is not disclosed in the FIR which becomes the starting point of criminal prosecution. This is an admitted fact and Mr Mohite in his usual fair mindedness would however attempt to make up the lost ground by arguing that the principal offence is disclosed in the EOW Complaint dated 02.04.2026; Secondly, record shows that there is absolutely no nexus / privity of contract between Petitioners and Respondent No.2; Thirdly the AFA is a registered document as against the Deed of Assignment of 2009 which was registered in 2012

subsequently; Fourthly and admittedly Respondent No.2 accepts and acknowledges having knowledge about the AFA as averred in its Affidavit in Reply notwithstanding which it is really aggrieved with classification of its claim in the category of "Other Creditor" in and hence CIRP proceedings the present complaint is filed. What is significant is that Respondent No.2 has filed two Interim Applications before the NCLT seeking to set aside Petitioner No.1's admitted claim and removal of the IRP which are pending hearing despite which on the same cause of action, the present criminal complaint is filed invoking only the AFA as a fraudulent document.

15. In the above background, it is seen that Unimers entered into the AFA with Petitioners subject to specific terms and conditions stated therein to assign its leasehold interest in the said land for consideration of Rs.184.29 crores payable in 4 stages. Copy of AFA dated 14.08.2008 which is a registered document is appended Annexure "D" page 85 of the Petition. Clause Nos.4, 5, 6 and 7 of the said AFA are directly relevant with regard to the agreement to assign obligations of the parties. Clause No.4 of the AFA stipulates that the AFA is subject to the assignor first fulfilling the obligations stated under Clause Nos. 6 and 7 and the assignor must get the injunction in the 2002 Suit vacated and have that Suit withdrawn. The AFA states that only after those steps are completed the Assignee must purchase the property free from all encumbrances for a total consideration of Rs.184.29 crores. Next, as

per Clause No.5 consideration is not paid at one time directly to the Assignor instead an escrow account is opened with HDFC Bank and the consideration is deposited by the Assignee in the escrow account on the conditions set out on compliance of Stage 1 and Stage 2 compliances and only when documentary proof of compliances is shown to the Assignee, the payment made upfront of Rs. Rs.29,62,50,000/- would be referred by HDFC Bank in stages. Further Clause No.6 stipulates payments and vacation of the injunction order of 2002 as conditions precedent before the AFA could transcend into an actual Deed of Assignment. It is seen that Clause 6(a)(i) of the AFA required Unimers, within four months, to settle the dues of the Public Debenture Holders, to have the injunction vacated and to withdraw 2002 Suit; and Clause 6(a)(ix) provided that if Unimers failed to do so, the Petitioner No.1 was at liberty to pay the Debenture Holders or the Trustee directly, or to deposit the amount in Court, so as to secure the withdrawal of the suit and the vacation of the injunction.

16. It is therefore clearly deduced that the AFA thus expressly contemplated the subsisting injunction and structured completion around its removal. Completion of the transaction was based on fulfillment and compliance of reciprocal obligations recorded in the Agreement which was a registered instrument, disclosed in the public record on 14.08.2008.

17. It is seen that Stage 1 installment of INR.18,50,00,000/- and stage 2 installment of Rs.9,12,50,000/ was paid by the Petitioner No.1 into an Escrow Account maintained with HDFC Bank, thus payment was made through a scheduled bank under an escrow mechanism, and not by any direct or informal transfer. It is further seen that application of the funds after their receipt by Unimers was a matter entirely within the control of Unimers and its directors and is the subject of the allegations made in the said CR against accused Nos. 1 to 4, hence indictment of the Petitioners is not understood at all.

18. Further it is seen that the conditions stipulated in Clause 6(a) of the AFA were never fulfilled. No Deed of Assignment has ever been executed in favour of the Petitioner No.1. No assignment has been made or registered with, or consented to by, MIDC, the lessor. The Petitioner No.1 holds, and has at all material times held, no title to the Said Land.

19. From the above it is *prima facie* seen that only Stage 1 and Stage 2 installments of Rs. 18.50 crores and Rs.9,12,50,000 as paid by Petitioner No.1 into the escrow account maintained with HDFC Bank whereas the Stage 3 installment pertaining to the Stage 3 obligations which involved dismantling and removal of the factory, its equipment, inventory and structures is not yet paid. The AFA is not the same as the Deed of Assignment and it does not amount to transfer and creation of

any right in the immovable property, much less the movable properties. The record shows that the very same AFA was infact challenged before the Company Law Board by Mr. Prakash Selot in Company Petition alleging oppression and mismanagement of Unimers India Ltd. Copy of this Company Petition is appended at page No.141 of this Writ Petition. This was in the year 2008 itself. What is crucial is that in 2009, Respondent No. 2 stepped into the shoes of IFCI by executing the Deed of Assignment which was registered subsequently in 2012 and Clause No.6 of the said Deed of Assignment is extremely crucial and goes to the root of the matter to dislodge the entire argument of Respondent No.2. Clause 6 is reproduced below for immediate reference so that there is no ambiguity in interpreting it. It reads thus:-

> *"6) That the Purchaser hereby confirms that it hly acquired all the Sellers rights, title and interest in the Security on as "AS IS WHERE IS' and 'AS IS WHAT IS basis pursuant to its own due diligence, legal, financial or otherwise, in respect of the abovementioned Financial Documents, Debts and Security and has taken steps to know and assess all facts and circumstances in relation to the Financial Documents, Debt and Security. The Purchaser has satisfied itself about its decision of carrying out transactions under this Agreement and the Seller shall not ix: held liable by the Purchaser recoverability of Debt, The Purchaser is also aware that it may not get the rights, benefits, privileges and powers of the Seller Statutory or otherwise, which are available to the Seiler exclusively by virtue of being 'Financial Institutions. The Purchaser hereby further agrees and confirms that it shall not have any recourse against the Seller in respect of the Transactions contemplated herein, on account of any reason whatsoever including but not limited to:-"*

20. Perusal of the above clause leaves no doubt in the mind that Respondent No.2 took over IFCI's debt and all right, title and interest on "AS IS WHERE IS" and "AS IS WHAT IS" basis (*emphasis supplied*)

and more specifically after carrying out its own due diligence regarding all financial documents, debt and security. What is crucial to note is the next sentence where Respondent No.2 states that it has satisfied itself about its decisions to carry out transaction under this agreement and "*..the seller shall not be held liable by the purchaser..*". This is the critical point of time i.e. in 2009 when Respondent No.2 not only became aware but ought to have been reasonably become aware of the AFA which was executed on 14.05.2008 and which was infact to the knowledge of Mr. Prakash Selot who became a Director of Respondent No.2 on 15.09.2011 subsequently. It is also seen that Respondent No.2 through the same Mr. Prakash Selot filed Written Statement dated 12.02.2016 in the Suit filed in this Court copy of which is appended at Annexure "G" on page No.160 of the Petition wherein in paragraph No.16 of the said Written Statement, there is a clear acknowledgment of the AFA dated 14.05.2008 as stated therein. This Written Statement is verified by Mr. Prakash Selot as Director of Defendant No.2.

21. Next it is seen that in the order dated 07.12.2018 passed by the Additional District Judge – 04 South East Saket Court, New Delhi in Civil Suit No.208 of 2016 in paragraph No.3 on internal page No.15 of 33 between Unimers India Ltd. Vs. IFCI Ltd., there is a categoric reference to the AFA as disclosed and pleaded by Respondent No.2 in its written statement thereby showing that it had knowledge of the same. From the aforesaid timeline it is thus *prima facie* seen that there

is a delay of 18 years on the face of record in registering the FIR. Therefore the real reason for registering the criminal case is not on account of the AFA but the subsequent classification of Respondent No.2's claim in the category of other creditors. Respondent No.2 cannot approbate and reprobate at the same time by merely alleging dishonesty and fabrication, fraud, cheating and conspiracy without substantiating it.

22. It is plainly seen that the present criminal complaint indicting the Petitioners is nothing but a counterblast to the creditor classification order of 25.11.2025 passed by NCLT. When the First Information Report contents are seen the main offence is not even disclosed therein, thus it is seen that present criminal case is filed only upon Respondent No.2 being dissatisfied with the creditor classification order and not due to discovery of any offence qua the Petitioners before me. On the face of record and the above timeline which is discussed, the delay is completely fatal to the case of Respondent No.2. It is settled law that unexplained delay in filing FIR is fatal and equally it is settled law that an agreement to sale does not create interest in immovable property. The allegations in the CR that it is founded qua the Petitioners on the basis of facts which arose between October 2025 and February 2026 have no nexus whatsoever to the Petitioners or for that matter the AFA and most importantly neither is an offence alleged in the CR. Hence merely to contend that

in the EOW complaint all details are given cannot suffice. If this stance is accepted then it would amount to prosecution having accepted the Petitioner's case since it has conducted a detailed enquiry for 4 months.

23. The aforesaid observations and findings do not entitle the Respondent No.2 to maintain the CR for any criminality as against the Petitioners. The action on part of Respondent No.2 in filing the CR without the main offence being disclosed in the FIR / CR amounts to a vexatious and malicious attempt made with an ulterior motive for pressurizing and intimidating not only Petitioners but directors of Petitioner No.1 and the Resolution Professionals.

24. On the applicability of Sections 318(1) and 318(4) of BNS, it is unfathomable to believe how Respondent No.2 has been cheated by any false representation made to it. When the AFA was executed and registered Respondent No.2 was never in the picture. There is no nexus between Petitioner and Respondent No.2 when Respondent No.2 executed its Deed of Assignment with IFCI in 2009 (which was registered in 2013) and it categorically averred that it was on "AS IS WHERE IS" and "AS IS WHAT IS BASIS" after carrying out due diligence. Therefore there is no dishonest intention seen to exist at the inception. In paragraph No.20(xiv) and (xvi) Respondent No.2 itself concedes the fact that there is absence of direct representation and

inducement while alleging that deception is of secured creditors and CIRP process including the AFA. Thus it is seen that case of Respondent No.2 seems to have improved at every successive stage namely at the stage of EOW complaint dated 02.04.2026, the preliminary inquiry for four months thereafter, the FIR / CR dated 11.08.2026 and the Affidavit-in-Reply.

25. From the above discussion, it is unequivocally clear that Respondent No.2 – Complainant withheld the pending NCLT proceeding and the conditional nature of its own claim. Record shows that there is no effective consideration of the AFA dated 14.05.2008, pendency of Insolvency proceedings and two pending Suits in the Civil Court in Mumbai and New Delhi and the preliminary enquiry being nothing but an eyewash. In such a situation when Section 35(3) inquiry was required to be made, Section 179 BNSS witness summons is issued by the prosecution. It is an admitted position that there is no allegation of promise, representation or correspondence between Petitioner and Respondent No.2 – Complainant, there is no individualised role attributed to Petitioner, Respondent No.2 – Complainant with its eyes wide open entered into Deed of Assignment with Unimers upon its own due diligence on “AS IS WHERE IS BAIS” and “AS IS WHAT IS BASIS”. Thus there is complete absence of inducement of any nature by Petitioners. Further the fact that AFA was executed and registered in the year 2008, it is admittedly prior in

point of time, registration of which is a notice to the world at large and Respondent No.2 – Complainant's, Deed of Assignment is executed in the year 2009 and registered in the year 2013. Respondent No.2 – Complainant was not even on the horizon when the AFA was executed and registered. Hence its charge rather alleged charge of cheating against the Petitioners when it had entered into the picture later cannot be countenanced or sustained. Simply put a party entering subsequently cannot claim to have been induced into a transaction which preceded its very entry. Most importantly the AFA dated 14.05.2008 was conditional, it never fructified, its conditions never fulfilled after Stage 2 compliances, no Deed of Assignment is executed in favour of Petitioners by Unimers, MIDC never granted its consent to transfer the subject land in favour of Petitioners, Petitioner No.1 therefore stands to be a Creditor for Rs.29.62 Crores and not a title holder and as such the dispute is fundamentally an inter-creditor / civil-commercial dispute and by no stretch of imagination can qualify as a criminal offence. Knowledge of the AFA is admittedly accepted by Respondent No.2 during the past 18 years therefore filing of criminal Complaint is followed immediately after the "Other Creditor" classification by IRP on 25.11.2025. In such aforesaid strong circumstances filing of the present Complaint / CR is nothing but a sheer abuse of the criminal process by Respondent No.2 against the Petitioners before the Court. In so far as Respondent No.2 –

Complainant's grievance against Unimers and Accused Nos.1 to 4 in the present CR is concerned, the same is not before the Court.

26. On overall consideration of the aforesaid material which is examined by the Court, the characterization of the AFA dated 14.05.2008 as an act of cheating being the only allegation levied against the Petitioners, the Complaint against the Petitioners cannot be allowed to be sustained through the present CR in question which is founded upon an alleged breach of the order dated 29.03.2004 but which stands squarely answered as alluded to hereinabove and therefore the complaint is without any jurisdictional foundation and is liable to be quashed and set aside as against the Petitioners in the present Petition.

27. In view of the above observations and findings, the Petition stands allowed in terms of pray clause (A) of the Petition which reads thus:-

> *"A. issue a Writ of Certiorari or a writ, order or direction in the nature of Certiorari, or any other appropriate writ, order or direction, under Article 226 of the Constitution of India and u/s. Section 528 of the BNSS and/or direction and/or order to quash and set aside EOW CR No. 78 of 2026 dated 11.08.2026 registered by Economic Offence Wing, Housing Unit, Unit-1 arising out of Oshiwara Police Station bearing FIR No. 1180 of 2026, Mumbai u/s 318(4) r/w. 3(5) of the Bharatiya Nyaya Sanhita, 2023 and all consequent proceedings emanating therefrom, qua the Petitioners."*

28. Writ Petition is allowed and disposed. In view of disposal of Writ Petition, pending Interim Application is also disposed.

[MILIND N. JADHAV, J.]

Ajay

HARSHADA HANUMANT SAWANT
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Date: 2026.11.18 14:14:42 +0530