IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION

IN ITS COMMERCIAL DIVISION

COMPANY APPLICATION NO. 9 OF 2025
IN
COMPANY APPLICATION NO. 615 OF 2016

Rhutu S. Mantri ...Applicant

In the matter between:

Anil Bajranglal Agarwal ...Petitioner

Versus

Mantri Realty Limited ...Respondent

And

Smt. Shanta wife of Sri D. Lakkanna ...Original Applicant

WITH
COMPANY APPLICATION NO. 10 OF 2025
IN
COMPANY APPLICATION NO. 615 OF 2016
IN
COMPANY PETITION NO. 949 OF 2014

Siddhant S. Mantri ...Applicant

Mr. Bhavin Gada, *Counsel, a/w Ms. Bhavana Dubepatil, Mr. Mihir Boghani i/b Pravin Mehta & Mithi & Co., for Original Applicant.*

Mr. Mandar Soman *a/w Mr. Savio D'Cruz, for the Applicant.*

Mr. Rushabh Sheth *for Official Liquidator.*

CORAM: SOMASEKHAR SUNDARESAN, J.

DATE: NOVEMBER 5, 2026

Aarti Palkar

AARTI GAJANAN PALKAR

Digitally signed by AARTI GAJANAN PALKAR
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JUDGEMENT :

Context and Factual Background:

1. These are two applications connected with the winding up of Mantri Realty Limited ("***Company***"). Company Application No. 9 of 2025 ("***CA 9***") is by Ms. Rhutu S. Mantri ("***Rhutu***") while Company Application No. 10 of 2025 ("***CA 10***") is by Mr. Siddhant S. Mantri ("***Siddhant***"). Both Company Applications were filed in 2018. Both are by offspring of Mr. Sunil Mantri ("***Sunil***") and Ms. Sarita Mantri ("***Sarita***"), promoters and ex-directors of the Company.

2. Sunil was the Managing Director of the Company while Sarita was a Director. Rhutu claims Flat No. C-1503 while Siddhant claims Flat No. C-1603 in Mantri Premero, a project of the Company in Bangalore ("***Bangalore Project***").

3. The Bangalore Project entailed development of a residential project on land situated at Doddakannelli Village, Varthur Hobli, Bangalore South Taluka, belonging to the family of Smt. Shanta wife of Sri D. Lakkanna ("***Landowner***"). Both the captioned Company Applications are filed in Company Application No. 615 of 2016 ("***CA 615***"), which was filed by the

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Landowner for leave to complete the project in Company Petition No. 949 of 2014.

4. Each relies on a purported unregistered Agreement for Sale coupled with a purported unregistered Agreement to Build. Each seeks confirmation of those agreements under Section 536 of the Companies Act, 1956 ("***Companies Act***"), with a direction to the Official Liquidator ("***OL***") to execute and register them. It is common ground that a decision in CA 9 will be dispositive of CA 10 as well, since both applications are on the same lines with minor variation on facts that would not change the analysis. By consent of the parties, CA 9 was taken up as the lead Company Application for all purposes of references to the record.

5. Admittedly, the first petition for winding up of the Company was presented on January 22, 2014. By an order of December 12, 2014, the Company was restrained from disposing of its assets without leave of the Court. By an order of December 23, 2014, the Company and its directors were restrained from disposing of fixed assets without leave of the Court. By an order of February 4, 2015, the OL stood appointed as provisional liquidator. The Company was eventually ordered to be wound up.

6. In the course of the proceedings, it was found by a Learned Single Judge (*K.R. Shriram, J.*) in an order dated November 24, 2015, that the injunction

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against creating third party rights had been flouted, with registration of transactions having been done in the teeth of an injunction, without leave of the Court. On January 8, 2016, the Learned Single Judge recorded that the conduct of Sunil Mantri "smacks of utter dishonesty". The OL was directed to take possession of all assets, with a restraint on creation of third party rights. Sunil and one Mr. Ranjit Rane were directed to file all agreements, including flat and unit sale agreements for the Bangalore Project.

7. In CA 615 of 2016 for leave to complete the project, it was seen that the flat purchasers had formed an association. On September 22, 2016, another Learned Single Judge (*G.S. Patel, J.*) approved a scheme scheduling registration of sale deeds of purchasers between October 17, 2016 and October 19, 2016, with a representative of the OL being present. A compilation of statements of 166 flat purchasers was recorded. On April 2, 2019, the Learned Single Judge recorded that the Mantri Realty quota of flats now vests in the provisional liquidator.

Rhutu's Contentions:

8. Rhutu's application is dated June 6, 2018. She pleads having executed an Agreement for Sale and an Agreement to Build, both purportedly dated November 19, 2011 for an undivided share of 428 sq. ft., at Rs. 6,41,835 and for Flat No. C-1503, 15th Floor, Tower C, admeasuring 1,663 sq. ft., at a value of

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Rs. 39,36,570. She pleads a total consideration of Rs. 44,17,659. Rhutu claims to have paid Rs. 43,07,170 between August 20, 2011 and April 7, 2015. She relies on a receipt of the Company dated April 8, 2015 and on a certificate of Axis Bank dated October 18, 2016.

9. Rhutu says that she joined the association of flat purchasers in 2016, relying on emails of the association of September 28, 2016 and January 5, 2017, and on its demand dated January 1, 2017 for Rs. 3,82,600. On January 10, 2017, she wrote to the association stating that registration was not complete, and on April 8, 2017, she wrote to the OL seeking registration.

10. Rhutu seeks a direction to the OL to register the Sale Deed for the undivided share corresponding to the flat claimed by her. In her additional affidavit of September 26, 2025, she states that the agreements are dated November 19, 2012 and that the total consideration is Rs. 44,24,889, including service tax and VAT, which is paid in full. She asks that she be recognised as the legitimate allottee and that the OL be directed to execute and register the agreement.

OL's Contentions:

11. The OL opposes the application on a range of grounds including the agreements being dubious, *ex facie* undated, and there being no clear

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empirical trail and rational linkage between the amounts purported to have been paid and the purported consideration for the flat as claimed. The OL has filed an affidavit in reply dated October 19, 2023 and a limited affidavit in April 2024. Rhutu filed a rejoinder in December 2023 and the additional affidavit of September 26, 2025.

Analysis and Findings:

12. I have heard at length, Mr. Mandar Soman, Learned Advocate for Rhutu and Siddhant, and Mr. Rushabh Sheth, Learned Advocate for the OL. With their assistance I have gone through the material on record. Both sides filed lists of dates and notes. The contentions are dealt with below.

13. At the threshold, certain provisions of the law must be noticed.

14. Section 441 of the Companies Act reads thus:

> *441. Commencement of winding up by Court.—*
>
> *(1) Where, before the presentation of a petition for the winding up of a company by the Court, a resolution has been passed by the company for voluntary winding up, the winding up of the company shall be deemed to have commenced at the time of the passing of the resolution, and unless the Court, on proof of fraud or mistake, thinks fit to direct otherwise, all proceedings taken in the voluntary winding up shall be deemed to have been validly taken.*
>
> *(2) In any other case, the winding up of a company by the Court shall be deemed to commence at the time of the presentation of the petition for the winding up.*

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[Emphasis Supplied]

15. Section 536 of the Companies Act reads thus:

> ***536. Avoidance of transfers, etc., after commencement of winding up.***
>
> *(1) In the case of a voluntary winding up, any transfer of shares in the company, not being a transfer made to or with the sanction of the liquidator, and any alteration in the status of the members of the company, made after the commencement of the winding up, shall be void.*
>
> *(2)* ***In the case of a winding up by or subject to the supervision of the Court, any disposition of the property*** *(including actionable claims) of the company, and any transfer of shares in the company or alteration in the status of its members,* ***made after the commencement of the winding up, shall, unless the Court otherwise orders, be void.***
>
> ***[Emphasis Supplied]***

16. Thus, the winding up of the Company is deemed to have commenced on January 22, 2014, the date of presentation of the first petition. Any disposition of the Company's property after that date is statutorily void, unless the Court otherwise orders. The captioned Company Applications invoke the jurisdiction of the Company Court to otherwise order that the transactions are not void.

17. The tripartite Agreement for Sale between Rhutu, the Landowner and the Company should also be examined. It is noteworthy that the Company is the constituted attorney of the Vendor. Clauses 8, 9 and 11 of the Agreement for Sale provide thus:

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8. The Sale Deed shall be executed in favor of Purchaser/s only upon receipt of entire payment due and receivable from the Purchaser/s under the Agreement for Sale and Agreement to build this Agreement.

9. That the Developers do hereby covenant that, after the final Sale Deed has been executed and registered in favor of the Purchaser/s, the Purchaser/s shall peacefully and quietly enter into possession and enjoy the "SCHEDULE- III" property without any let or hindrance, from the Developers or any person claiming through them.

11. That the Vendor do hereby covenant with the Purchaser/s that the through their Attorney M/s.Sunil Mantri Realty Ltd, the Developers herein shall execute and register the final Sale Deed pursuant to this Agreement at the expense of the Purchaser/s, after the fulfillment of all the terms and conditions contained in this Agreement as well Agreement to Build executed by and between the Developers and Purchaser/s

[Emphasis Supplied]

18. The provisions of the Transfer of Property Act, 1882 ("***TOP Act***") on registration and part performance are also relevant. Section 53-A of the TOP Act provides thus:

53-A. Part performance.—

Where any person contracts to transfer for consideration any immovable property by writing signed by him or on his behalf from which the terms necessary to constitute the transfer can be ascertained with reasonable certainty, and the transferee has, in part performance of the contract, taken possession of the property or any part thereof, or the transferee, being already in possession, continues in possession in part performance of the contract and has done some act in furtherance of the contract, and the transferee has performed or is willing to perform his part of the contract, then,

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> ***notwithstanding that, where there is an instrument of transfer, that the transfer has not been completed in the manner prescribed therefor by the law for the time being in force, the transferor or any person claiming under him shall be debarred from enforcing against the transferee*** *and persons claiming under him any right* ***in respect of the property of which the transferee has taken or continued in possession****, other than a right expressly provided by the terms of the contract:*
>
> ***Provided that nothing in this section shall affect the rights of a transferee for consideration who has no notice of the contract or of the part performance thereof****.*
>
> ***[Emphasis Supplied]***

19. Under Section 53-A of the TOP Act one of the essential ingredients is the parting of possession of the immovable property to the transferee in part performance of the contract of transfer. It protects such a transferee against enforcement on the ground that the transfer has not been completed in the manner prescribed by law, subject of course, to the terms of the contract.

20. Relevant provisions of Section 17 of the Registration Act, 1908 ("***Registration Act***") are extracted below:

> ***17. Documents of which registration is compulsory.—***
>
> *(1)* ***The following documents shall be registered****, if the property to which they relate is situate in a district in which, and if they have been executed on or after the date on which, Act XVI of 1864, or the Indian Registration Act, 1866 (20 of 1866), or the Indian Registration Act, 1871 (8 of 1871), or the Indian Registration Act, 1877 (3 of 1877), or this Act came or comes into force, namely—*
>
> * * *

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(b) other non-testamentary instruments which purport or operate to create, declare, assign, limit or extinguish, whether in present or in future, any right, title or interest, whether vested or contingent, of the value of one hundred rupees and upwards, to or in immovable property;

* * *

(1-A) The documents containing contracts to transfer for consideration, any immovable property for the purpose of Section 53-A of the Transfer of Property Act, 1882 (4 of 1882) shall be registered if they have been executed on or after the commencement of the Registration and Other Related Laws (Amendment) Act, 2001 and, if such documents are not registered on or after such commencement, then, they shall have no effect for the purposes of the said Section 53-A.

[Emphasis Supplied]

21. Section 49 of the Registration Act provides thus:

49. Effect of non-registration of documents required to be registered.—

No document required by section 17 or by any provision of the Transfer of Property Act, 1882, to be registered shall—

(a) affect any immovable property comprised therein, or

(b) confer any power to adopt, or

(c) be received as evidence of any transaction affecting such property or conferring such power,

unless it has been registered:

Provided that an unregistered document affecting immovable property and required by this Act or the Transfer of Property Act, 1882, to be registered may be received as evidence of a contract in a suit for specific performance under Chapter II of the Specific Relief Act, 1877, or as evidence of any collateral transaction not required to

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be effected by registered instrument.

[Emphasis Supplied]

Points for Determination:

22. Against this backdrop, the core issue that falls for determination is whether the jurisdiction to permit transactions that are statutorily void is worthy of being exercised to allow the captioned Company Applications. Towards this end, whether the purported agreements had indeed been executed and validly so, and whether they were backed by due authority in a manner that would bind the Company and thereby its liquidation estate has to be considered.

23. Rhutu's Company Application and Additional Affidavit variously place the date of execution as November 19, 2011 and November 19, 2012. This can potentially be put down to a typographical error in either document, but on the face of the record, the Agreement for Sale annexed to the Company Application bears no date. The Agreement to Build bears the year 2011 and the date of "19th Nov" is handwritten. Rhutu claims that she had relied on brochures of July 2011 and paid the booking amount on August 20, 2011.

24. The OL's submission that there is no date stated on the instrument claimed to have been executed in 2011/2012 appears to be correct. On the face of the record, there is indeed no date stated and it is Rhutu's contention that it

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was executed on the date(s) claimed by her. Evidently, the agreements are undated and unregistered – it is not as if they were registered on a given date with an inadvertent blank in the field set out for the date of execution.

25. There is also no contemporaneous correspondence or email or any other activity to suggest that Rhutu had engaged with the Company to book the flat as claimed to execute the agreements as any third party purchaser would have done. Indeed, Rhutu, being the daughter of Sunil and Sarita, is a related party to the Company and there is no contemporaneous record of compliance with legal requirements governing related party contracts. Indeed, the agreements are undated and unregistered. Nothing independent of the agreements fixes when they were executed.

26. The date of execution canvassed on Rhutu's behalf appears to have been picked to precede the date of presentation of the winding up petition i.e. January 22, 2014. A careful review of the record would indicate that even on the execution page, the name of the signatory on behalf of the Company, the date of the Board Resolution purporting to authorise the execution, and the placeholders for witness signatures, are all blank. The Agreement for Sale describes her as being aged about 20 years while the Agreement to Build describes her as being aged about 22 years.

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27. Both these agreements purport to record that Rhutu paid a sum *on execution* by cheque no. 906906 but the certificate provided by Axis Bank records this cheque as having been cleared on August 22, 2011, which is well before even November 19, 2011 (the earlier of the two conflicting dates of purported execution). The more plausible manner of connecting the dots appears to be that one of the dates on which funds were moved from Rhutu's account to the Company's account has been picked to correspond to the date of purporting to have made the upfront payment for the flat.

28. Rhutu contends that Sarita had been authorised by a Board Resolution dated August 21, 2010. However, as contended by the OL, there is nothing on the record to indicate that such a resolution was passed. That apart, in another transaction in relation to a *registered* agreement that was validated by a Learned Single Judge (*Bharati Dangre, J.*), it is recorded based on Sarita's affidavit, that she ceased to be a director from August 1, 2011. The OL contends that Sarita ceased to be a director from January 1, 2011, and here again, even if one were to accept Sarita's account of date of cessation of directorship, evidently, the Agreement of Sale and the Agreement to Build are purported to have been signed by Sarita after she ceased to be director (even if the date of execution were November 19, 2011).

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29. I am not satisfied that with any reasonable certainty, one can rationally draw a conclusion that the agreements were validly authorised. In rejoinder, Rhutu has sought to rely on a Letter of Authority dated February 1, 2011, signed by Mr. Ranjit Rane as Director, authorising Sarita Mantri "to sign the Agreements, issue confirmations and other necessary papers as may be required as an Authorised Signatory on behalf of the Company". This purported Letter of Authority is also not backed by any Board Resolution. It is simply an assertion by Mr. Ranjit Rane that Sarita was authorised to sign such agreements as an authorised signatory of the Company.

30. Taking a holistic view of such facts and circumstances, the contention that the agreements had been validly authorised does not inspire confidence. This brings me to the payment history as pleaded.

31. From the record, in particular, the receipt dated April 8, 2015 issued by the Company and the Axis Bank certificate of October 18, 2016 (for account no. 233010100278874), the following payments are discernible:

No.	*Receipt: date*	*Cheque / mode*	*Amount (Rs.)*	*Certificate: date*	*Cheque / mode*	*Amount (Rs.)*
1	*20.08.2011*	*906906*	*50,000*	*22-08-2011*	*906906*	*50,000*
2	*26.07.2012*	*906913*	*5,00,000*	*26-07-2012*	*906913*	*5,00,000*
3	*02.05.2014*	*470252*	*15,00,000*	*06-05-2014*	*470252*	*15,00,000*
4	*02.05.2014*	*470253*	*20,00,000*	*09-05-2014*	*470253*	*20,00,000*
5	*02.05.2014*	*470250*	*1,100*	*02-05-2014*	*470250*	*6,50,000*
6	*30.07.2014*	*RTGS*	*2,41,262*	*30-07-2014*	*509962 (RTGS)*	*4,00,000*

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No.	*Receipt: date*	*Cheque / mode*	*Amount (Rs.)*	*Certificate: date*	*Cheque / mode*	*Amount (Rs.)*
7	*07.04.2015*	*108162*	*1,32,527*	*07-04-2015*	*108182*	*15,00,000*
	Total		***44,24,889***	***Total***		***66,00,000***

32. Rhutu contends that she paid Rs. 44,24,889, including service tax and VAT, between August 20, 2011 and April 7, 2015. The considerations in the two agreements add up to Rs. 45,78,405 while Rhutu pleads a total of Rs. 44,17,659. She contends that she has paid Rs. 43,07,170 while the receipt records Rs. 44,24,889, and her additional affidavit claims that sum as the consideration. The demand letters tendered by the OL record a total cost of Rs. 50,27,679 and a payment made of Rs. 44,10,429.

33. The payments received from Rhutu's account under the bank certificate totals Rs. 66,00,000. The dates, the amounts and, in the last entry, the cheque number (108162 against 108182) differ from the receipt. Cheque no. 906906 is recited in each agreement as a cheque for Rs. 25,000 but the bank certificate and the receipt place the amount as Rs. 50,000. Moreover, the additional affidavit lists the first cheque as drawn on "HDFC-4065" but the agreements, the receipt and the bank certificate produced point to an Axis Bank account.

34. The jurisdiction under Section 536 of the Companies Act is an equitable jurisdiction. The record must inspire confidence for equities to be perceived. Rhutu is said to have executed the agreements with Sarita, her mother, acting

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on behalf of the Company (the Developer) and also the Landowner (the Company was the constituted attorney of the Landowner). No witness having signed, no registration having been made, the dates too being left blank, and there being a history of related party transfers among the accounts of Rhutu and the Company, I am not persuaded to hold that individual transfers can be ascribed to specific payments towards specific flats, and that too in the absence of any other contemporaneous collateral evidence in support of such an inference.

35. There is also significant mismatch in the references to the flat numbers on the record. The demand letters signed "For the Landowner L. Yashica" produced by the OL are headed "Dues raised from April 2017 to September 2026". One names "Siddharth Mantri" towards Flat C 1503, G Block. The other names Rhutu Mantri for Flat D 1302, D Block. Both carry identical figures. However, Rhutu claims Flat C-1503 in Tower C while Siddhant claims Flat C-1603. By an order dated September 22, 2016, a Learned Single Judge (*Patel J.*) directed the provisional liquidator to take possession of Flat No. D-1302. The OL indeed points to the same figures of Rs. 41,59,832 and Rs. 36,09,832 as appearing in the balance sheets produced by both applicants against the flat each claims.

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36. Therefore, there are discrepancies not just in the payment history but also in the particulars of the very flats being claimed. Indeed, Mr. Soman contends that there were lumpsum payments made for bookings across multiple flats. Out of the RTGS remittance of Rs. 6,50,000 made on May 2, 2014, Rs. 1,100 is attributed to this flat while the rest is purported to be for three sets of flats in Mantri Serene (1607/08, 1707/08 and 1807/08), at Rs. 2,16,300 each. Of the RTGS of Rs. 4,00,000 on July 30, 2014, Rs. 2,41,262 is attributed to this flat and Rs. 1,58,738 was for Imperial Flat No. 801. Of the Rs. 15,00,000 of April 7, 2015, Rs. 1,32,527 is attributed to this flat. The balance is claimed as being by "transfer from personal ledger account".

37. I am more persuaded by Mr. Sheth's submission that while the receipt issued by the Company and the bank certificate do not match, there is no basis to attribute only certain payments of peculiar amounts to the flat covered by the Company Application. Rhutu's own balance sheet as at March 31, 2014 shows Rs. 41,59,832 against "Mantri Premero C-1503". However, the receipt issued by the Company indicates only Rs. 5,50,000 as having been paid by then. That balance sheet also lists many other Mantri flats, which essentially undermines a coherent and logical explanation of what was booked and paid for the Company Application to be credible.

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38. Indeed, the bank statements need not state the purpose of a payment but it is equally true that this cannot be a license for a retro-fitting of payment transactions in a manner that purports to make out a case of Rhutu having legitimately and validly booked the flat covered by the Company Application.

39. What weighs with me is that going by the record of payments, only the sum of Rs. 50,000 (on August 20, 2011) and a sum of Rs. 5,00,000 (on July 26, 2012) were paid before January 22, 2014 – the date when the deemed commencement of the period in which transfers are statutorily void unless otherwise permitted by the Company Court. All other payments (Rs. 38,74,889) were evidently made after that date. Funds transfers made from Rhutu's account to the Company's account are being claimed as payments made by her towards the flats booked with the Company.

40. The receipt issued by the Company is dated April 8, 2015 and was issued even after the appointment of the provisional liquidator (that took place on February 4, 2015). Evidently, despite the petition being pending and the provisional liquidator having been appointed, Sunil has been found to be transacting and that has come in for adverse observations by the Company Court and has been alluded to earlier in this judgement.

41. The OL's submission is that the Company Application as originally pleaded did not even disclose the fact of Rhutu being the daughter of Sunil and

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Sarita and thereby being a related party. It was in the rejoinder that responding to the OL's allegation of being a related party, such relationship was acknowledged. While the upshot of this submission is that Rhutu has not come to Court with clean hands, what is clear to me is that the burden was on Rhutu to have pleaded and proved that the transactions were at arm's length and consistent with the prices at which third parties had transacted with the Company. To my mind, the very absence of specificity of the flats and of the payment amounts, undermines this requirement. The transactions having been executed by mother and daughter, purporting to bind the Company, with substantial payments being made after the presentation of the winding up petition, the absence of a date on the agreements as purportedly executed, does raise a serious doubt about their vintage. It is quite plausible that a date can be picked on the basis of a money movement between Rhutu's account and the Company's account, to claim that as the upfront payment, with even the agreement being purported to have been executed much later and that too without being registered.

42. The clauses in the Agreement for Sale extracted above indicate that a Sale Deed was to be executed after all payments were made, which indicates that without an actual Sale Deed, title was not meant to be conveyed. Apart from a sum of Rs. 5,50,000 being attributed to the period prior to January 22, 2014, all other payments, even under the receipt issued by the Company (after

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having been placed under provisional liquidator), admittedly were made later. In that peculiar factual matrix, it is not just a conjecture or a surmise, but a reasonable prospect that to claim the flats, the parties are attributing an older date to undated and unregistered instruments. The absence of confidence generated by the record, does not persuade me to positively exercise the discretion under Section 536(2) of the Companies Act, to declare that the transactions indeed took place before the winding up petition was presented.

43. By all accounts, Rhutu was aged either 20 or 22 at the time and it is most plausible for her parents to have managed her account in the absence of any positive proof of her having had some independent source of income. Funds movements from the Company to the promoters and from the promoters to Rhutu would further cloud the clear integrity of the transactions sought to be positively blessed under Section 536(2) of the Companies Act. The parties have also made submissions about the precise scale of related party transactions between Rhutu and the Company. The Company's balance sheet as of March 31, 2013 points to an outstanding of Rs. ~2.47 crores while Rhutu claims to have paid Rs. ~3.60 crores, largely in 2014 and 2015. In my opinion, that need not detain the Court's attention significantly since truly for exercise of jurisdiction under Section 536(2) of the Companies Act, Rhutu ought to have made a positive case with cogent evidence to make out a strong

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case to dispel the statutorily-imposed void nature for any transaction effected after presentation of the winding up petition.

44. Since the most significant component of the consideration claimed to have been paid are after the presentation of the winding up petition, the absence of registration and actual dating of the agreements become critical. If the agreements had been actually dated and registered, the case would have stood on a different footing. Admittedly, the agreements are not registered. The legal implication of this calls for comment.

45. I have already extracted the provisions of Section 53-A of the TOP Act and Sections 17 and 49 of the Registration Act. Indeed, Section 17(1-A) denudes the protection granted by Section 53-A of the TOP Act if the instrument is unregistered. Even under Section 53-A of the TOP Act, the vital element of the protection given to the transferee is that of possession having been given to the transferee. In the instant case, even by the very terms of the unregistered agreement, possession was meant to be passed on to Rhutu after registration of the final Sale Deed.

46. Therefore, going by Rhutu's own showing, if the agreements are held to be pre-existing agreements before winding up started, only Rs. 5,50,000 having been paid before that, it would follow that Rhutu was an unsecured creditor at the time the prohibited period started, and it is not for the

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Company Court to direct completion of incomplete transactions as they existed when insolvency triggered the winding up provisions of the Companies Act. The more plausible view appears to be that significant movement of funds having been after the presentation of the winding up petition, there was every incentive to move assets out of the liquidation estate with Sarita who was not even a director when the agreement was purportedly signed having been authorised through a non-evident Board Resolution and then movements of funds among related parties being picked and chosen to attribute to individual flats without any other collateral and contemporaneous evidence to support the thesis.

47. Therefore, I am not satisfied to exercise the jurisdiction invoked to allow the reliefs sought. To my mind, the Company Applications have been structured to fit the ingredients seen in the case of other third party flat purchasers and include related parties such as Rhutu and Siddhant among such third party flat purchasers to claim elements of the free sale component, which now belongs to the liquidation estate and must work to the benefit of the stakeholders in the course of the winding up.

48. Mr. Soman primarily relies on the contention that there are other flat purchasers who are also part of the association who are similarly placed and towards this end, an agreement with one Mr. Vikram M. Rao is relied upon.

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Another agreement with one Ms. Anju Sharma is cited as a transaction backed by a non-proven Board Resolution. However, on the face of the record, that agreement indeed has a recorded date, which is missing in Rhutu's case. Indeed, Rhutu's contention is that the OL has allowed registration of other agreements signed by Sarita with other flat purchasers, and the only cause for discriminating against Rhutu and Siddhant is that they are offspring of Sunil and Sarita.

49. While this argument may sound appealing at first blush, one cannot state as a matter of principle and right that every infirmity excused in the case of any other party would convert itself into an entitlement for the son and daughter of Sunil to be treated as if they were third parties. In insolvency and bankruptcy proceedings, during the course of winding up, the stakeholders who are protected are statutory protectees such as creditors, workmen and contract counterparties. In that light, transactions among related parties that are not explained with surgical precision cannot be lightly approved on no ground other than infirmities in the case of third-party home buyers having been equitably excused, representing a right on related parties to claim parity.

50. Finally, I must deal with the significant reliance placed on a decision of a Learned Single Judge dated August 28, 2023 in Interim Application (L) No. 9434 of 2021, where overruling the OL's objections, transactions for Flat Nos.

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1607 and 1608 in Mantri Serene, Mumbai ("***Mantri Serene Order***") were approved. To my mind, the Mantri Serene Order is distinguishable on the most foundational element of the underlying agreement in that case having been dated May 12, 2014 and registered on May 30, 2014. It clearly involved a registered agreement. Moreover, that registered agreement was indeed admittedly executed after the presentation of the winding up petition, squarely bringing it within the jurisdiction of Section 536(2) of the Companies Act. The Mantri Serene flats were jointly acquired by Rhutu and Sarita, and were approved, in reliance upon Sarita's independent resources and gifts by Sarita to Rhutu.

51. In sharp contrast, the agreements in the matter in hand are unregistered. The very date of their purported execution is in grave doubt. If they were executed prior to the presentation of the winding up petition, then by the agreement's own provisions, possession would not pass until the conditions set out in Clause 9 (extracted above) are met, namely, registration of the Sale Deed, and it is only after possession would pass, that the protection under Section 53-A of the TOP Act would be attracted. For that protection to be attracted, the obligation to have the agreement registered is sorely missing in this case while it was clearly available in the case of the Mantri Serene Order, enabling the Company Court to consider and bless the registered agreement.

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52. It would involve not one but at least two leaps of faith across yawning gaps to bring the matter in hand on par with the Mantri Serene Order. One would have to first discern a post-petition date for jurisdictional fact to be established, failing which the transaction is a prior incomplete transaction with a mere Rs. 5,50,000 having been paid before the presentation of the winding up petition. By Rhutu's own claim, the date of agreement is pitched as having been prior to January 22, 2014 since the contentions are sought to be anchored on the funds transfers of Rs. 50,000 and Rs. 5,00,000 that took place prior. One would then have to reconcile the reliance on resources provided by Sarita to Rhutu as being part of the joint purchase of the Mantri Serene flats by them, with the claim of Rhutu on her own having had the wherewithal to pay for the flat now claimed.

53. Such uncertainties are what registration of transactions in immovable property, is meant to address. Since there was a clear registered instrument in the case of the Mantri Serene Order, the Company Court was persuaded to bless that instrument for reasons recorded. That would not automatically become a precedent to approve of unregistered purported instruments with gaping holes on various fronts – from gaps in dates of contract, to gaps in payment history, gaps in amounts stated in the agreements as having been paid and amounts shown in the bank records, gaps in identity of flats, gaps in authority to execute and so on.

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54. In my view, Mr. Sheth is right in his contention that each Company Application would need to be considered on its own merits and the difference between what was approved in Mantri Serene Order and what is sought in the matter in hand cannot be reconciled. I have already alluded to the Company Court having taken a dim view of Sunil's conduct in alienating and creating third party rights in the teeth of the Company Court's injunctions. I am not persuaded to exercise the equitable jurisdiction to positively grant the reliefs sought.

55. It is well settled including in ***Arambhan Hospitality***[1], that it is for the applicant under Section 536(2) to plead and prove that the transaction was in the ordinary course of business and for the benefit of the company in liquidation. The OL was not required to prove fraud. Likewise, in ***Hindustan Transmission***[2], the Court held that if a transfer is not completed before the winding up order, no application can lie for a direction to the OL to complete it. After the winding up, no new rights can be created and no uncompleted rights can be completed. Bhairav Industries[3], relying on the decision of a

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1 Arambhan Hospitality Services Ltd. v. Official Liquidator of GOL Offshore Ltd., ***Official Liquidator's Report No. 139 of 2018, Order dated January 14, 2020***

2 Board of Industrial and Financial Reconstruction v. M/s Hindustan Transmission Products Ltd., ***2012 SCC OnLine Bom 1294****, (2012) 5 Bom CR 631 : (2013) 176 Comp Cas 53 (Bom) (S.J. Kathawalla J., Official Liquidator's Report No. 145 of 2011, decided September 5, 2012), paragraphs 18 to 23. Affirmed in appeal in* ***Sunita Vasudeo Warke***

3 M/s Bhairav Industries v. Official Liquidator of Shri Ghanshyam Parts Pvt. Ltd., ***2015 SCC OnLine Bom 7630***

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Learned Division Bench in ***Sunita Vasudeo Warke***[4] has endorsed the view that agreement to assign, completed after the winding up, could not be validated.

56. As held by the Supreme Court in ***Suraj Lamp***[5], immovable property can be transferred only by a registered deed of conveyance and agreements of sale, general powers of attorney and wills do not convey title. They continue as instruments as executed and may be used for specific performance, or to defend possession under Section 53-A of the TOP Act. In the absence of possession, as held in ***Hindustan Transmission***, Section 53-A of the TOP Act is of no assistance to the applicants in the matter in hand.

Summary of Conclusions:

57. To summarise my findings:

A] The agreements are unregistered, and the accurate date of their purported execution is not reliably established;

B] Authority of Sarita to bind the Company is not proven. No Board Resolution is produced, and the Letter of Authority is no substitute. That agreements executed by her with third parties have been blessed, would not automatically grant a license to approve of agreements purportedly executed with her own daughter as a matter of right;

4 Sunita Vasudeo Warke v. Official Liquidator, ***2013 (2) Mah. L.J. 777***
5 Suraj Lamp and Industries Pvt. Ltd. v. State of Haryana, ***(2012) 1 SCC 656***

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C] The payment record does not reconcile across the agreements, the pleadings, the receipt, the bank certificate, the affidavit and the demand letters. The flats claimed are also inconsistently identified. Payments cannot be accurately and demonstrably ascribed to the flats claimed;

D] Only Rs. 5,50,000 was paid before January 22, 2014. Rs. 38,74,889 was paid after commencement of the winding up, including after appointment of the provisional liquidator;

E] Rhutu is a related party. She has not pleaded or proved an arm's length transaction, her source of funds, or benefit to the Company, and this is important bearing in mind the funds flows among related parties and between the Company and related parties;

F] Unregistered agreements where possession has not passed, cannot attract Section 53-A of the TOP Act. Incomplete transactions cannot be completed after commencement of the winding up;

G] The Mantri Serene Order concerned a registered agreement and is distinguishable. Parity with other independent third-party purchasers confers no automatic legitimate entitlement to have purported transactions with related parties to be validated; and

H] Therefore, the jurisdiction under Section 536(2) of the Companies Act is not exercised.

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58. Therefore, both CA 9 as well as CA 10 (in terms of the agreed position of their being identically placed for all practical purposes) are ***dismissed*** in terms of this judgement.

59. All actions required to be taken pursuant to this order shall be taken upon receipt of a downloaded copy as available on this Court's website.

[SOMASEKHAR SUNDARESAN, J.]

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