CHAITANYA ASHOK JADHAV
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IN THE HIGH COURT OF JUDICATURE AT BOMBAY

ORDINARY ORIGINAL CIVIL JURISDICTION

COMPANY APPLICATION (L) NO. 244 OF 2019
IN
COMPANY PETITION NO. 593 OF 2015

Tanager Investments Private Limited and 2 Ors. ...Applicants

Versus

Orbit Corporation Ltd. and Anr. ...Respondents

Ms. Mangal Kadam *for the Applicants.*

Mr. Mayank Chhangani *a/w Mr. Vinod Kothari i/b Apex Law Partners, for the Respondent No. 2.*

Mr. Harsh Moorjani, *for the Official Liquidator a/w Mr. Satyajit roul, Official Liquidator, Mr. Akash Agale, Dy. Official Liquidator.*

CORAM: SOMASEKHAR SUNDARESAN, J.

DATE: OCTOBER 1, 2026

ORAL JUDGEMENT :

1. Company Application (L) No. 244 of 2019 has been filed seeking the following primary prayers: -

> *A] That the Hon'ble Court be pleased to order and* ***direct the Official Liquidator*** *of the Respondent No. 1 to do all such acts and deeds as may be required to be undertaken under applicable laws in order* ***to complete the transfer and convey all the rights, title and interest in the Lalbaug Properties (as defined in the Affidavit in Support of the Company Application) in favour of the Applicants****;*

B] In the alternative, this Hon'ble Court be pleased to ***order that the amount of Rs. 12,13,65,000/- (Rupees Twelve Crores Thirteen Lakhs Sixty-Five Thousand) along with interest @ 12% p.a. from the date of sale of the property till the date of final realization of Rs. 12,13,65,000/- (Rupees Twelve Crores Thirteen Lakhs Sixty-Five Thousand) paid by the Applicant towards the satisfaction of the OTS of the Respondent No. 2 is a charge on the Lalbaug Properties and that the Applicant has priority over all other creditors in respect of the said Lalbaug properties*** *and that the Official Liquidator of Respondent No. 1 is ordered to pay an amount of Rs. 12,13,65,000/- (Rupees Twelve Crores Thirteen Lakhs Sixty-Five Thousand) along with aforesaid interest to the Applicants pari-passu before satisfying any other secured creditors of the Respondent No. 1;*

C] That the Hon'ble Court be pleased ***to direct the Respondent No. 2 to deliver and handover to the Official Liquidator, all the title documents and any other document(s) related to Lalbaug Properties*** *that are in possession of the Respondent No. 2 and further direct the Official Liquidator to handover all the title documents and any other document(s) related to Lalbaug Properties along with the execution of the Deed of Conveyance / Deed of Assignment in respect of the Lalbaug properties in favour of the Applicants;*

2. The factual matrix in which the Application has been filed, essentially revolves around a Deed of Assignment dated May 7, 2013 ("***Assignment Agreement***"), purported to have been executed between Orbit Corporation Ltd. ("***Orbit***"), which is the Company under liquidation, and Tanager Investments Private Limited and two others ("***Applicants***"). Under the Assignment Agreement, Orbit is purported to have unconditionally and irrevocably assigned, transferred, and released in favour of the Applicants four

properties which are tenanted properties namely 'Batatawala Mansion, Ram Bhuvan, Tejoo Kaya and Jetha Krupa' ("***Lalbaug Properties***").

3. In terms of the Assignment Agreement, the Applicants were purportedly given full and absolute legal ownership as the only persons entitled to the Lalbaug Properties. The consideration for the assignment is stated to be the Applicants having executed a Mortgage Deed to create a mortgage over a flat owned by them at South Mumbai ("***Mortgaged Flat***") over two and half years earlier in favour of IFCI Limited ("***IFCI***") to secure the debt owed by Orbit to IFCI.

4. Indeed, the Mortgage Deed between the Applicants and IFCI is registered and it essentially represents third party security provided by the Applicants for the benefit of Orbit in favour of IFCI.

5. The Recitals to the Assignment Agreement, set out in paragraphs (e) to (i), are reproduced as under:-

> *"(e) The Assignees in the meantime have had various discussions with the Assignor and informed the Assignor that the value of the said property is around Rs.15 Crores as at 31st March, 2013 due and payable by the said Assignor to the Assignees in case the Property is adjusted against the dues of IFCI Limited and for recovery thereof the Assignees has been having various discussions with Assignor for a long time to release the property or part with the value in lieu of the Flat mortgaged with IFCI Limited.*

(f) It is expressly agreed and understood between the parties that ***if the said sum of Rs. 15 Crores is not fully and completely paid or before 31st March, 2016, interest/compensation will be paid by the Assignor at the rate of 12% per annum from 1st April, 2013 till realization.*** *The interest would be applicable subject to provisions of relevant Statutory Acts.*

(g) ***If however the said sum of Rs. 15 Crores of any part thereof remaining outstanding due or payable a son 31st March, 2016, the Assignees are free to pursue all their legal rights and remedies and proceedings that may be filed hereafter****. These remedies and proceedings include but are not limited to the various Section of 138 proceedings to be filed under the Negotiable Instruments Act and the Civil cases (Please note that Assignor will provide 3 post dated cheques of Rs. 5 crores each totalling to Rs. 15 Crores and Security Cheques). None of the proceedings to be filed would be diluted or adversely impacted via this assignment till payments of entire dues are paid before 31st March, 2016 or thereafter.*

(h) Without prejudice to the liability of the said Assignor to make payment of the entire dues of aforesaid to the Assignees, the Assignor have intimated to the Assignees that in any case ***if the mortgage property given by the Assignees are sold by IFCI Limited for whatsoever reasons and/ or beyond any control of Assignor, Assignor doth hereby ensure the Assignees vide this Deed of Assignment the 4 properties situated at Lalbaug namely Batatawala Mansion, Ram Bhuvan, Tejoo Kaya and Jetha Krupa (more particularly described in Second Schedule) mortgaged to IFCI Limited through Memorandum of Agreement dated 4th July, 2011 is assigned in their favour post payment of entire dues of IFCI Limited and release of 4 Lalbaug properties thereon I favour of the Assignees.***

(i) The Assignor have represented and assured the Assignees that the ***Assignor have agreed to assign and transfer their rights and claim in the 4 Lalbaug properties as mentioned above in favour of the Assignees herein towards satisfaction of the dues payable by the Assignor to the Assignees as aforesaid****. However, in case of any shortfall in payment of Rs. 15 Crores plus interest vide Sale of these 4 Lalbaug*

properties, ***Assignor will pay the balance to the Assignees either by way of Liquid Payment or by giving a Flat of the balance amount in any one of the ongoing project of the Assignor where Commencement Certificate (CC) has been issued****. However,* ***if the value of the Flat exceeds the balance amount payable then the Assignees will have to pay the differential amounts to the Assignor.****"*

[Emphasis Supplied]

6. According to the Applicants, the sale of the Mortgaged Flat to certain third parties led to value realisation of ~Rs. 12.35 crores which was, among others, used for wiping out the amounts owed by Orbit to IFCI. Therefore, they claim, the Lalbaug Properties must now come to the Applicants.

7. Effectively the prayer in this Application is for specific performance and confirmation of the Assignment Agreement, which according to the Applicants is valid and enforceable.

8. I have heard at length the Learned Advocate for the parties and with their assistance, examined the material on record.

9. The Assignment Agreement is not registered despite purporting to be an agreement for assignment of interest in immovable property. The Assignment Agreement is said to be linked to the Applicants having provided third party security over the Mortgaged Flat but what is noteworthy is that the Assignment Agreement is purported to have been executed on May 7, 2013

while the mortgage over the Mortgaged Flat was executed on December 31, 2010 – two and half years earlier. There is nothing to explain the gap between the two events, making the effect of non-registration of the Assignment Agreement even more stark. The sale of the Mortgaged Flat has been effected by a sale to third parties although this was after a notice to enforce under the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 ("***SARFAESI Act***") had been initiated by IFCI.

10. It is apparent that Orbit availed of a term loan in February 2010, and this was secured, among others, by the third-party security provided by the Applicants by way of the Mortgage Deed dated December 31, 2010, executed by the Applicants in favour of IFCI over the Mortgaged Flat. There is no contemporaneous documentation between the Applicants and Orbit, with or without IFCI to contract a subrogation should the Mortgage Deed have to be enforced by IFCI.

11. There is nothing on record to explain the provocation for executing the Assignment Agreement two and half years later, except that not only had Orbit fallen into financial difficulties around the time of execution of the purported Assignment Agreement but also the Applicants appears to be closely connected to Orbit, giving them a basis to claim in competition with other

creditors of Orbit, by purporting to have reduced to writing the terms on which third party security was provided two and half years earlier.

12. In the absence of registration and the evident inter-connection between Orbit and the Applicants, there is no credibility to the timing of the Assignment Agreement either. It could well have been executed much later on the basis of the oldest stamp paper available with Orbit. A notice under the SARFAESI Act was received from IFCI by Orbit on March 25, 2014. They had a one-time settlement on November 20, 2017.

13. A little after the settlement between IFCI and Orbit, Company Petition No. 593 of 2015, filed on March 16, 2015, in which the winding-up proceedings were initiated, was eventually admitted on January 19, 2018, and the Official Liquidator was appointed pursuant to an order dated April 12, 2018.

14. It is apparent from the record that the registered office address of Orbit as set out in the Assignment Agreement is the very address set out in the Notices Clause in the Deed of Mortgage executed between the Applicants and IFCI over the Mortgaged Flat, for issuance of notices to the Applicants. In other words, the Applicants were in-house entities for Orbit. Even the email addresses to which notices were to be sent to the Applicants are email addresses based on Orbit's server. This makes the deep inter-connection between Orbit and those in control of it, and the Applicants quite apparent,

resulting in the claim under the unregistered Assignment Agreement a clear attempt to recover in competition with other creditors of Orbit.

15. In these circumstances, the very substance of the Assignment Agreement and indeed its precise vintage in the absence of its registration, are entirely under cloud. There is a strong pointer to the Deed of Assignment having been executed by those in control of Orbit in favour of those under their control, with notices clauses being designed such that any action by IFCI would necessarily remain within the knowledge and control of Orbit. In any case, even assuming the consideration underlying the Assignment Agreememt were to be made out, the Applicants would need to stand in queue as unsecured creditors for having been providers of third-party security that led to their loss of the Mortgaged Flat.

16. The absence of equity in conduct is writ large and on the face of it, there is a very strong pointer towards the Assignment Agreement being a contrivance or a device that may have well been put in place after financial difficulties started, with a view to create some sort of an interest over the Lalbaug Properties to enable related parties to compete with genuine third party creditors of Orbit.

17. In these circumstances, the absence of registration of the Assignment Agreement makes it ineligible for even consideration in an application seeking

specific performance. That apart, the Learned Advocate for the Official Liquidator rightly points to various features of the Assignment Agreement, including its incomplete nature, by indicating that it required further agreements for confirmation of specific bargains set out therein to be executed and that these were never executed. There is no board resolution of any of the entities that is evident from the record nor are there any witnesses to the Assignment Agreement.

18. The upshot of the submission is that the Assignment Agreement is bogus and nothing but a device aimed at creating an illusion of a right over the Lalbaug Properties that form part of the liquidation estate.

19. In these circumstances, in my opinion, no case has been made out for exercise of jurisdiction of the Company Court to bless the inchoate and incomplete Assignment Agreement. It is an agreement purporting to be an assignment of immovable properties, is not even registered.

20. The reliance by Learned Advocate for the Applicants on the judgment of the Supreme Court in ***Pankaj Mehra***[1] which in para 18 endorses an observation made by Division Bench of the Gujarat High Court in ***Navjivan Mills Ltd***[2], to indicate that the Company Court must have a pragmatic attitude when asked to approve certain dispositions which the Company may

1 *Pankaj Mehra and Anr. v. State of Maharashtra and Ors.* – *(2000) 2 SCC 756.*
2 *Navjivan Mills Ltd., In re* – *(1986) 59 Comp Cas 201 (Guj).*

have made after presentation of a petition for winding-up, is of no avail. The submission that the disposition under the Assignment Agreement was well prior to the presentation of the winding-up petition too does not turn the needle in favour of the Applicants. The view expressed in ***Pankaj Mehra*** was in the context of criminal proceedings entailing a standard of proof beyond reasonable doubt, and in fact a pragmatic view would show that the Assignment Agreement appears to be a sham.

21. For the reasons set out above, the Application is devoid of merit and is ***dismissed***.

22. 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.]