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

COMMERCIAL APPEAL (L) NO. 21982 OF 2026
IN
INTERIM APPLICATION NO. 2505 OF 2020

ROHIT RAMDAS GHUGE
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Date: 2026.10.26 16:10:49 +0530

WITH

INTERIM APPLICATION NO. 3893 OF 2026
IN
COMMERCIAL APPEAL (L) NO. 21982 OF 2026

1. **Ocean Deity Investment Holdings Limited, PCC** in respect of Mack Star Holdings (Mauritius) Limited
A Company incorporated under the laws of Mauritius, having its registered office at Ebene House, Hotel Avenue, 33 Cybercity, Ebene, 72201, Mauritius.

2. **Mack Star Marketing Private Limited**
A company incorporated under the Companies Act, 1956 having its previous registered office at 1102, 11th Floor, Peninsula Business Park, Lower Parel, Mumbai-400013.
And its new registered office at Units No. 404, Kaledonia, Sahar Road, Andheri (East), Mumbai, 400069.

…Appellants/
Original Plaintiffs

Versus

1. **Sarang Wadhawan**
   A resident of India addressed at Wadhawan House, Union Park Road, Bandra (W), Mumbai – 400050.

2. **Rakesh Wadhawan**
   A resident of India addressed at Wadhawan House, Union Park Road, Bandra (W), Mumbai – 400050.

3. **Waryam Singh**
   A resident of India addressed at 1401-2, Stellar Tower, 2nd Cross Lane, Lokhandwala, SV Patel Nagar, Andheri (West), Mumbai-400053.

4. **Amanpreet Singh**
   A resident of India addressed at 1401-2, Stellar Tower, 2nd Cross Lane, Lokhandwala, SV Patel Nagar, Andheri (West), Mumbai-400053.

5. **Vikram Homes**
   A company incorporated under the Companies Act 1956, having its registered office at, 215, Aashirwad Complex, 2nd Floor, D-1, Green Park, New Delhi, 110016.

…Respondents / Original Defendants

Mr. Sharan Jagtiani, Senior Advocate a/w Mr. Karl Tamboly, Mr. Siddharth Ranade, Mr. Prakashal Jain, Ms. Arunima Athavale, Ms. Neeraja Barve, Ms. Mahima Tahiliani and Ms. Apurva Manwani i/b Trilegal for the Appellants.

Mr. Zubin Behramkamdin a/w Mr. Mutahhar Khan, Mr. Gaurav Shukla and Mr. Jainam Jain for Respondent No. 1

Mr. Nikhil Sakhardande, Senior Advocate a/w Mr. Mayur Khandeparkar, Ms. Shubhra Swami, Mr. Pratik Pawar, Ms. Shanaya Cyrus Irani and Ms. Ayushi Yelimineti i/b J. Sagar Associates for Respondent No.5.

CORAM: BHARATI DANGRE &
ASHISH S CHAVAN, JJ.

DATE : 08th OCTOBER 2026.

JUDGMENT [Per Ashish S. Chavan J.]:

1. The Appellants, Mack Star Marketing Private Limited ("**Mack Star**") and Ocean Deity Investment Holdings Limited, PCC ("**ODIL**"), being aggrieved by the order dated 04th May 2026 ("**impugned order**") passed by the Learned Single Judge of this Court *inter alia* dismissing Interim Application No. 2505 of 2020 ("**Application**") filed in Commercial Suit No. 128 of 2021 ("**Suit**") have approached this Court by way of the present Commercial Appeal.

2. The Suit was filed *inter alia,* seeking cancellation of an agreement for sale dated 25th November 2009 ("**impugned sale agreement**") pursuant to which Respondent No.5 (Vikram Homes)

purchased Unit Nos 701, 702, 703 and 704 ("**Units**") in a building named "Kaledonia" situated in Andheri East owned by Mack Star.

3. The factual matrix germane to the issue that falls for consideration before this Court is as under:

3.1. ODIL is an investment company formed and existing in accordance with laws of Mauritius. It is the majority shareholder of Mack Star.

3.2. Mack Star is a company incorporated under the Companies Act, 1956. It has developed, owns and leases units in a commercial office building named Kaledonia situated at Andheri East, Mumbai.

3.3. The Respondent Nos. 1 and 2 are promoters of Housing Development and Infrastructure Limited ("**HDIL**"). Respondent Nos. 3 and 4 are individuals who according to the Appellant were a part of Mack Star's Board of Directors as nominees of Respondent Nos. 1 and 2. Respondent No. 5-Vikram Homes is the purchaser of the units.

3.4. The Appellant states that Vikram Homes is owned and controlled by Mr. Dharampal Talwar and his family. His brother Late Mr. Satyapal Talwar was a director of HDIL.

3.5. On 14th December 2007, a Memorandum Of Understanding was entered into between Vikram Homes and RT Construction (a proprietary concern of HDIL) for the purchase of entire 7th floor of Kaledonia.

3.6. On 17th January 2008, RT constructions transferred the right to construct a free sale commercial building in Andheri to Mack Star for a consideration of INR 900 Crores. On 20th February 2008, HDIL Group companies and ODIL entered into a Joint Venture Agreement to develop Kaledonia.

3.7. ODIL invested approximately INR 1000 Crores in Mack Star and subscribed to common and preference shares issued by Mack Star. Presently, ODIL holds 78.09% shares in Mack Star.

3.8. In February 2008, the Articles of Association of Mack

Star were amended. It is the case of the Appellants that the amendments sought to build certain safeguards in favour of ODIL.

3.9. It is the pleaded case of ODIL that from 2008-2017, it played a passive role in the affairs of Mack Star which was managed predominantly by Respondent Nos. 3 and 4.

3.10. On 25th November 2009, the impugned sale agreement was executed between Vikram Homes and Mack Star. On behalf of Mack Star, the impugned sale agreement was signed by Respondent No. 3 who was a nominee of Respondent Nos. 1 and 2. Admittedly, HDIL received the consideration.

3.11. The Appellant has pleaded that on 23rd August 2017, a title search revealed for the first time the existence of the impugned sale agreement. The Appellant has further pleaded that in view of the irregularities found in the management of Mack Star, on 1st September 2017, ODIL convened an Extra-ordinary General Meeting of Mack Star and removed the Respondent Nos. 3 and 4 and took control of the affairs of

Mack Star.

3.12. Based on the inquiries conducted by the Appellants, they approached the Ld. Single Judge by way of a Commercial Suit seeking cancellation of the impugned sale agreement on the basis of fraud, collusion and conspiracy between Vikram Homes, acting through the Talwars and wrongful loss occasioned to Mack Star and corresponding wrongful gain occasioned to the Respondent Nos. 1-4 in collusion and connivance with each other. Interim Application No. 2505 of 2020 was filed *inter alia* seeking appointment of Court Receiver and other ancillary reliefs.

3.13. By way of the impugned order dated 4th May 2026, the Ld. Single Judge has rejected the Interim Application of the Appellants *inter-alia* holding that the dispute in the Suit would pertain to the jurisdiction of the Company Law Tribunal as contemplated u/s 241 and 242 of the Companies Act, 2013 ("**2013 Act**") and therefore the jurisdiction of the Ld. Single Judge would be barred in view of the Section 430 of the 2013 Act.

4. Heard Learned Senior Advocate Mr. Jagtiani and Mr. Tamboly for the Appellants and Learned Senior Advocates Mr. Behramkamdin and Mr. Sakhardande for Respondent Nos. 1 and 5 respectively.

5. Ld. Senior Advocate Mr. Jagtiani and Mr. Tamboly on behalf of the Appellants have assailed the impugned order on several counts. They contended that it is a settled position of law that the validity of an agreement for sale and the question of whether or not it is void, unauthorized, vitiated by fraud squarely falls within the jurisdiction of the civil court. The suit is premised on the fraudulent act of Vikram Homes in entering into the impugned sale agreement in collusion with Respondent Nos. 1 and 2, therefore, the suit is maintainable and the bar u/s 430 of the 2013 Act does not apply to the present suit. It was submitted that, the pleadings in the plaint relating to the internal affairs of Mack Star forms part of the factual background of the narration of events leading up to the fraud. It does not constitute the basis or the cause of action in the suit. To buttress this proposition, they have relied upon the judgments in the case of *Darshan Anilkumar Patel vs. Pravinkumar Jinabhai Patel &*

Ors[1], *M/s Crystal Dwellings Pvt Ltd. vs. Surat Singh Malhotra & Ors.*[2], *Anuragha Poultries & Breeders & Anr. vs. Padmavathi & Ors.*[3].

Dealing with the observations in the impugned order which has premised its finding on the observation that ODIL has relied on indoor management, they contended that since the reliefs sought in the suit in respect of cancellation of impugned sale agreement are on the basis of the allegations regarding actions of Vikram Homes in collusion with Respondent Nos. 1 and 2, there is no question of any reliance on the doctrine of indoor management. They argued that the doctrine of indoor management does not apply where the contract itself is fraudulent and the third party is also a perpetrator of fraud. To bring home this point, they relied on the judgment of *MRF vs Manohar Parrikar & Ors.*[4]. On behalf of the Appellants it was also contended that the Plaint contained specific detailed allegations against Vikram Homes and the Ld. Single Judge failed to consider that the impugned sale agreement was vitiated by fraud inasmuch as Respondent No. 3 had no authority to enter into the impugned sale agreement, no consideration was admittedly paid by

1 SLP (C)D.9209 of 2020
2 2022:TSHC:41702-DB
3 (2022) 230 Comp Cas 207
4 (2010) 11 SCC 374

Vikram Homes to Mack Star but it was paid to unjustly enrich HDIL. Moreover, the agreement is deliberately undervalued and its execution is in direct contravention of the safeguards incorporated in the Articles of Association of ODIL. It was argued that Vikram Homes is not a bonafide third party since the Talwars are closely associated with Respondent Nos. 1 and 2. Inviting our attention to the prosecution by the Enforcement Directorate ("**ED**") under provisions of Prevention of Money Laundering Act, 2002 and the provisional attachment order attaching the same units forming part of the impugned sale agreement, it was sought to be contended that the ED has independently also observed that Mack Star had suffered wrongful loss to the tune of Rs. 40 Crores and that there was conspiracy between Vikram Homes (the Talwars) and Respondent Nos. 1 and 2.

6. Countering these submissions, learned Senior Advocate Mr. Sakhardande appearing on behalf of Respondent No. 5 submitted that the Appellant No. 1 is the majority shareholder and investor in Appellant No. 2 and that Appellant No. 2 is the company which is a signatory to the impugned sale deed. He submitted that the pleading in the plaint indicates that the Appellant no. 1 as a majority

shareholder left the day to day operations of Appellant no. 2 to be handled by domestic partners i.e. Respondent No. 1 and 2. Appellant no. 1 has raised grievances regarding the internal affairs of Appellant no. 2 in its capacity as a shareholder in Appellant No. 2. To drive home this point, he argued that the contention of the Appellant No. 1 as seen from his pleaded case, was that the foundation of the suit was the significant diminution in the value of the investment of ODIL in Mack Star. He urged that in pith and substance, Appellant No. 1 has raised grievances of oppression and mismanagement which fall squarely within Sections 241/242 of the 2013 Act. He submitted that the relief claimed by the Appellants clearly concerned internal disputes between Appellant No. 1 and the Respondent Nos. 1 and 2 which relate to the shareholders dispute and the internal management of Appellant No. 2 and have nothing to do with Respondent No. 5, a third party bonafide purchaser. Defending the impugned order, he submitted that the observation of the learned Single Judge in so far as it observes that the disputes in the suit would pertain to the jurisdiction of National Company Law Tribunal (NCLT), is correct and that the doctrine of indoor management squarely applies to the facts of the present case. In support of these submissions he has relied upon the judgment of

the Hon'ble Apex Court in the matter of ***Shailaja Krishna vs. Satori Global Limited & Ors.***[5] and ***MRF Limited*** **(*supra*)**. He has also submitted that a holistic reading of the plaint shows that the Commercial Suit is nothing but a dressed up and cleverly drafted attempt to overcome the legal bar u/s 430 of the 2013 Act.

Supplementing these arguments, learned Senior Advocate Mr. Behramkamdin appearing for Respondent No. 1 has strenuously urged that the NCLT is empowered to determine the dispute arising from the Suit. For determining whether a statutory bar applies, the court must identify the real and substantive controversy. To buttress his submission, he has relied on several judgments, while particularly laying emphasis on the pronouncements of the Hon'ble Apex Court in the case of ***Saurav Jain & Anr. vs. A.B.P. Design & Anr.***[6] and of the Delhi High Court in the cases of **Dinesh Kumar vs. Sinecure Technocity Pvt. Ltd. & Ors.**[7]**, M/s Karyan Global LLP vs. Vivel Kumar Mishra & Ors**[8].

7. Appreciating the rival submissions, at the outset, we must observe that both sides have adverted to several disputed questions

5 (2026) 2 SCC 706
6 (2022) 18 SCC 633
7 CS (Comm) No. 242 of 2019
8 2025 SCC OnLine Del 8740

of fact during oral arguments. On behalf of the Appellants, submissions were made on facts pertaining to the manner in which the fraud has vitiated the impugned sale agreement and why their interim application ought to have been allowed and a court receiver appointed. The Respondents on the other hand have rebutted these submissions and attempted to emphasize on how the impugned sale agreement does not constitute a fraud. Both parties have taken us through various documents which form part of the proceedings before the Ld. Single Judge.

However, being mindful of the fact that these are triable issues and disputed questions of fact, which can be best adjudged by the Ld. Single Judge, we restrict our observations to the finding of the Ld. Single Judge that the dispute in the Suit pertains to the jurisdiction of NCLT and consequently the Civil Court's jurisdiction is barred. In this narrow conspectus of inquiry, it would be apposite to reproduce the relevant findings of the Ld. Single Judge.

> "***24.*** *The plaint contains allegations regarding the affairs of the management of plaintiff no. 2, the shareholdings of plaintiff no. 1 in plaintiff no. 2, and the removal of defendants nos. 1 and 2 from the board of directors of plaintiff no. 2. which have been elaborately pleaded. The cause of action for filing the suit is also based on the internal enquiry into the company's affairs and its financial status. Thus, prima facie, the dispute in the suit appears to concern the affairs of the plaintiff no. 2 company, in which plaintiff*

no. 1 claims to have a stake. Hence, there is substance in the submissions made on behalf of defendant no. 5 that the disputes raised in the suit would pertain to the jurisdiction of the company law tribunal as contemplated under Sections 241 and 242 of the Companies Act. Therefore, in view of Section 430 of the Companies Act, the civil court's jurisdiction would be barred from dealing with the allegations regarding the affairs of the company, which are required to be dealt with under Sections 241 and 242 of the Companies Act. Hence, at this preliminary stage, the plaintiff would not be entitled to seek any interim relief on the ground of mismanagement of the affairs of plaintiff no. 2 company by making allegations against its erstwhile board of directors and shareholders.

25. *Except for the allegations against defendant nos. 1 and 2 that the Wadhwans executed the fraudulent transaction to favour HDIL, no other allegations are made directly against defendant no. 5. Defendant no. 5 is in occupation and possession of the said units based on a registered document. The documents on record prima facie show that the transaction in favour of defendant no. 5 is executed for the payment of full consideration, and the document is registered after payment of stamp duty based on the market value. Therefore, in such circumstances, an injunction as prayed for in the suit cannot be granted against a true owner at this stage, in the absence of any prima facie case, a balance of convenience, or irreparable loss shown by the plaintiffs.*

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28. *In Kotta Venkataswami, the controversy before the Madras High Court concerned the company's liability under a mortgage bond purportedly executed on its behalf. By referring to the Articles of Association of the company, it was held that since an illegality appeared on the face of the bond, the plaintiff was not entitled to enforce it. In Shashank Bhagat, the controversy before the Delhi High Court arose from a dispute pertaining to a development agreement signed by the respondent in her individual capacity and on behalf of the company. It is held that the persons dealing with a company that has taken all reasonable steps to satisfy that the transaction is an authorised one are entitled to assume that all*

> *internal proceedings of the company would have been duly complied with. It is further held that a doctrine of indoor management has limited application, and a person who has either a constructive or actual notice of any irregularity cannot seek protection under the doctrine of indoor management and that such a doctrine would also have little application in cases of fraud and forgery. In the present case, the plaintiff has alleged indoor mismanagement of its own company; hence, in a suit seeking relief against the third party based on the allegations regarding internal affairs of the company, neither of the decisions would be of any assistance to the plaintiffs to seek interim relief as prayed in the present application.*
>
> ***29.*** *Therefore, for the reasons recorded above, the interim application is dismissed.*"

8. The Ld. Single Judge has recorded a finding that the dispute, *prima facie* appears to concern the affairs of Mack Star in which ODIL claims to have a stake and hence, the dispute raised in the Suit would pertain to the jurisdiction of NCLT as contemplated u/s 241 and 242 of the 2013 Act, therefore, the civil court's jurisdiction would be barred in view of Section 430 of the 2013 Act, consequently, the Appellant would not be entitled to seek any interim relief. Although the Ld. Single Judge has rendered this finding in the interim application, rejecting the reliefs of the Appellant, to our mind, the findings have a cascading effect. By observing that the dispute in the Suit concerns the internal affairs of Mack Star, which is amenable to the jurisdiction of the NCLT and

requires to be dealt with u/s 241 and 242 of the 2013 Act, the Ld. Single Judge has virtually closed the doors of the Appellants and relegated them to another course of action.

At this juncture, it would be apposite, to reproduce Sections 241 and 242 of the 2013 Act which are as under:

> *"241. Application to Tribunal for relief in cases of oppression, etc.—*
> *(1) Any member of a company who complains that—*
> *(a) the affairs of the company have been or are being conducted in a manner prejudicial to public interest or in a manner prejudicial or oppressive to him or any other member or members or in a manner prejudicial to the interests of the company; or*
> *(b) the material change, not being a change brought about by, or in the interests of, any creditors, including debenture holders or any class of shareholders of the company, has taken place in the management or control of the company, whether by an alteration in the Board of Directors, or manager, or in the ownership of the company's shares, or if it has no share capital, in its membership, or in any other manner whatsoever, and that by reason of such change, it is likely that the affairs of the company will be conducted in a manner prejudicial to its interests or its members or any class of members,*
> *may apply to the Tribunal, provided such member has a right to apply under section 244, for an order under this Chapter.*
>
> *(2) The Central Government, if it is of the opinion that the affairs of the company are being conducted in a manner prejudicial to public interest, it may itself apply to the Tribunal for an order under this Chapter.*
> *(Provided that the applications under this sub-section, in respect of such company or class of companies, as may be prescribed, shall be made before the Principal Bench of the Tribunal which shall be dealt with by such Bench)*
>
> *(3) Where in the opinion of the Central Government there exist circumstances suggesting that-*

(a) any person concerned in the conduct and management of the affairs of a company is or has been in connection therewith guilty of fraud, misfeasance, persistent negligence or default in carrying out his obligations and functions under the law or of breach of trust;

(b) the business of a company is not or has not been conducted and managed by such person in accordance with sound business principles or prudent commercial practices;

(c) a company is or has been conducted and managed by such person in a manner which is likely to cause, or has caused, serious injury of damage to the interest of the trade, industry or business to which such company pertains; or

(d) the business of a company is or has been conducted and managed by such person with intent to defraud its creditors, members or any other person or otherwise for a fraudulent or unlawful purpose or in a manner prejudicial to public interest,

the Central Government may initiate a case against such person and refer the same to the Tribunal with a request that the Tribunal may inquire into the case and record a decision as to whether or not such person is a fit and proper person to hold the office of director or any other office connected with the conduct and management of any company.

(4) The person against whom a case is referred to the Tribunal under sub-section (3), shall be joined as a respondent to the application.

(5) Every application under sub-section (3) -

(a) shall contain a concise statement of such circumstances and materials as the Central Government may consider necessary for the purposes of the inquiry; and

(b) shall be signed and verified in the manner laid down in the Code of Civil Procedure, 1908 (5 of 1908), for the signature and verification of a plaint in a suit by the Central Government.]

242. Powers of Tribunal.— *(1) If, on any application made under section 241, the Tribunal is of the opinion—*

(a) that the company's affairs have been or are being conducted in a manner prejudicial or oppressive to any member or members or prejudicial to public interest or in a manner prejudicial to the interests of the company; and

(b) that to wind up the company would unfairly prejudice such member or members, but that otherwise the facts would

justify the making of a winding-up order on the ground that it was just and equitable that the company should be wound up, the Tribunal may, with a view to bringing to an end the matters complained of, make such order as it thinks fit.

(2) Without prejudice to the generality of the powers under sub-section (1), an order under that subsection may provide for—

(a) the regulation of conduct of affairs of the company in future;

(b) the purchase of shares or interests of any members of the company by other members thereof or by the company;

(c) in the case of a purchase of its shares by the company as aforesaid, the consequent reduction of its share capital;

(d) restrictions on the transfer or allotment of the shares of the company;

(e) the termination, setting aside or modification, of any agreement, howsoever arrived at, between the company and the managing director, any other director or manager, upon such terms and conditions as may, in the opinion of the Tribunal, be just and equitable in the circumstances of the case;

(f) the termination, setting aside or modification of any agreement between the company and any person other than those referred to in clause (e):

Provided that no such agreement shall be terminated, set aside or modified except after due notice and after obtaining the consent of the party concerned;

(g) the setting aside of any transfer, delivery of goods, payment, execution or other act relating to property made or done by or against the company within three months before the date of the application under this section, which would, if made or done by or against an individual, be deemed in his insolvency to be a fraudulent preference;

(h) removal of the managing director, manager or any of the directors of the company;

(i) recovery of undue gains made by any managing director, manager or director during the period of his appointment as such and the manner of utilisation of the recovery including transfer to Investor Education and Protection Fund or repayment to identifiable victims;

(j) the manner in which the managing director or manager of the company may be appointed subsequent to an order removing the existing managing director or manager of the

company made under clause (h);

(k) appointment of such number of persons as directors, who may be required by the Tribunal to report to the Tribunal on such matters as the Tribunal may direct;

(l) imposition of costs as may be deemed fit by the Tribunal;

(m) any other matter for which, in the opinion of the Tribunal, it is just and equitable that provision should be made.

(3) *A certified copy of the order of the Tribunal under sub-section (1) shall be filed by the company with the Registrar within thirty days of the order of the Tribunal.*

(4) *The Tribunal may, on the application of any party to the proceeding, make any interim order which it thinks fit for regulating the conduct of the company's affairs upon such terms and conditions as appear to it to be just and equitable.*
(4-A) At the conclusion of the hearing of the case in respect of sub-section (3) of section 241, the Tribunal shall record its decision stating therein specifically as to whether or not the respondent is a fit and proper person to hold the office of director or any other office connected with the conduct and management of any company.)

(5) *Where an order of the Tribunal under sub-section (1) makes any alteration in the memorandum or articles of a company, then, notwithstanding any other provision of this Act, the company shall not have power, except to the extent, if any, permitted in the order, to make, without the leave of the Tribunal, any alteration whatsoever which is inconsistent with the order, either in the memorandum or in the articles.*

(6) *Subject to the provisions of sub-section (1), the alterations made by the order in the memorandum or articles of a company shall, in all respects, have the same effect as if they had been duly made by the company in accordance with the provisions of this Act and the said provisions shall apply accordingly to the memorandum or articles so altered.*

(7) *A certified copy of every order altering, or giving leave to alter, a company's memorandum or articles, shall within thirty days after the making thereof, be filed by the company with the Registrar who shall register the same.*

> ***(8)*** *If a company contravenes the provisions of sub-section (5), the company shall be punishable with fine which shall not be less than one lakh rupees but which may extend to twenty-five lakh rupees and every officer of the company who is in default shall be punishable with imprisonment for a term which may extend to six months or with fine which shall not be less than twenty-five thousand rupees but which may extend to one lakh rupees, or with both."*

An analysis of the provisions of Section 241 r/w clauses (a) and (b) of subsection 1 of Section 242 of the 2013 Act shows that the relief under these provisions can be granted only if the Tribunal is of the opinion: (1) that the company's affairs have been or are being conducted in a manner- (a) prejudicial to any member or members or (b) prejudicial to public interest or (c) prejudicial to the interests of the company or (d) oppressive to any member or members and (2) that though the facts would justify the making of a winding up order on the basis of just and equitable clause, such a winding up would unfairly prejudice such member or members.

It is settled law that the validity of an agreement for sale and the question of whether it is valid or vitiated by fraud squarely falls within the ambit of the jurisdiction of the civil court. In the case of ***Darshan Anilkumar Patel (supra)***, the Hon'ble Supreme Court has, dealing with the aforesaid aspect observed thus:

> ***"2.*** *There is no error in the finding that the suit which was filed for*

a declaration in regard to the invalidity of the sale deeds was properly instituted before the civil court and there was no occasion to transfer the appeal to the National Company Law Tribunal. Section 430 of the Companies Act 2013 bars the jurisdiction of a civil court to entertain a suit or proceeding in respect of any matter which the tribunal or the appellate tribunal is empowered to determine under the Act or any other law for the time being in force. The jurisdiction to decide the validity of a sale deed would fall within the ambit of the civil court. Hence, we are in agreement with the impugned order of the High Court dated 5 February 2020.

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4. *We clarify that while we are in agreement with the impugned judgment of the High Court, if there are any independent grievances falling within the purview of the Companies Act 2013, the petitioner will be at liberty to follow the appropriate remedy in accordance with law. The District Judge is requested to ensure the expeditious disposal of the First Appeals, RCA Nos 153 and 154 of 2015, on or before 31 August 2021."*

A similar view has been echoed by a Single Judge of the High Court of Madras in the matter of ***Anuragha Poultries (supra)*** and the Division Bench of the High Court of Telangana in ***M/s Crystal Dwellings (supra).***

9. Revisiting the facts of the present case, the Ld. Single Judge has premised the finding that the pleadings in the plaint would amount to oppression and mismanagement contemplated u/s 241/242 of the 2013 Act on the observations that the plaint contains allegations regarding the affairs of Appellant No. 2, the

share holding of Appellant No. 2 and removal of Respondent Nos. 3 and 4 from the board of directors of Appellant No. 2

A careful perusal of the pleadings in the Plaint would reveal that the Appellant No. 2 has described its internal affairs vis-a-vis Appellant No. 1, the shareholding of Appellant No. 1 in Appellant No. 2 in order to set out the chronology of events which forms the substratum of the fraud. The shareholding of Appellant No. 1 in Appellant No. 2 and the reference to Articles of Association of Appellant No. 2 Mack Star in the plaint is to demonstrate how the Respondent Nos. 3 and 4 have in collusion with Vikram Homes (Respondent No. 5) defrauded the Appellants by execution of the impugned sale agreement. We find the averments in the Plaint regarding the removal of Respondent No. 3 and 4 in September 2017 was after the Title Search Report obtained by the Appellant No. 1 which unearthed the role of the Respondent Nos. 3 and 4 in perpetrating the fraud. Thus, the reference to the Extra-ordinary General Meeting (EGM) of the Appellant No. 2's shareholders dated 01.09.2017 was only to show the fallout of the discovery of fraud by Appellant No. 1 and has nothing to with oppression and mismanagement. Further, the reference to the internal inquiry made by the Appellants is also not connected with the internal affairs of

Appellant No.2 and does not refer to oppression and mismanagement in any manner, quite simply, since it is the pleaded case of the Appellants that the internal inquiry was commissioned by them only with a view to ascertain whether the impugned sale agreement was as per market value, which in fact confirmed the apprehensions of the Appellants that the property was substantially undervalued.

10. Thus, stray references in the Plaint regarding the internal affairs of the Appellant No. 2 do not amount to allegations of oppression and mismanagement, albeit they are incidental to unfolding the allegations of fraud which form the cause of action of case of the Appellant for setting aside the impugned sale agreement. In the wake of the aforesaid discussion, we cannot persuade ourselves to agree with the observations of the Ld. Single Judge that the pleadings in the plaint would amount to oppression and mismanagement as contemplated u/s 241/242 of the 2013 Act.

11. A perusal of the pleadings in the Plaint, on the touchstone of the aforesaid conspectus yields that ODIL is not only the majority shareholder of Mack Star but also an investor who by

way of the amendment in February 2008 had engrafted certain additional safeguards in Articles of Association of Mack Star to protect its interests. The pleadings in the plaint indicate that Respondent Nos. 1 and 2 were promoters of HDIL and the Respondent Nos. 3 and 4 were directors of Mack Star as nominees of Respondent Nos. 1 and 2. The impugned sale agreement was admittedly signed on behalf of Mack Star by Respondent No. 3 who, incidentally also served as director of HDIL for several years in the past. Vikram Homes i.e. Respondent No.5 is the purchaser of the units. It is the pleaded case of the Appellant that Vikram Homes is owned and controlled by Dharampal Talwar and his family and that one of the family members of the Talwars was a former director of HDIL.

It is in this backdrop that we must consider the pleadings pertaining to the impugned sale agreement. On 25th November 2009, Mack Star entered into a registered sale agreement with Vikram Homes. It is not in dispute that the sale agreement was signed by Respondent No. 3. The plaint alleges that Respondent No. 3 had no authority either by way of board resolution or power of attorney granted by Mack Star to enter into the impugned sale agreement. It is alleged that despite recitals of the sale agreement

recording that the consideration was paid to the developers, factually, the consideration for the impugned sale agreement was paid to HDIL and not to Mack Star. It is also the pleaded case of the Appellants that the agreement is substantially under valued and that Vikram Homes is not a bona fide third party since there was a demonstrable nexus between Respondent Nos 1, 2 and 3 on one hand and the Talwars on the other. The impugned sale agreement was in direct contravention of the safeguards engrafted by ODIL in the Articles Of Association of Mack Star. Thus, from the pleadings, the suit is founded on the fraudulent act of Vikram Homes entering into the impugned sale agreement in collusion with Respondent Nos. 1, 2 and 3. The pleadings also portray how the fraud was unearthed by ODIL during a title search in August 2017 when they became aware of the impugned sale agreement for the first time and thereafter in the internal inquiry carried out by Appellant No.2 which revealed the substantial undervaluation of the property.

12. The Appellants in the plaint have made out detailed allegations against Vikram Homes including the nexus between the Talwars and the Respondent Nos. 1 and 2, the lack of authority of Respondent No. 3 to enter into the impugned sale agreement on

behalf of Mack Star, the substantially undervalued consideration at which the property was sold and the fact that the consideration was paid to HDIL rather than Mack Star.

13. In the wake of the aforesaid discussion, we find that the Appellants have in the plaint, *prima facie* pleaded the manner in which the impugned sale agreement was entered into and also how the sale is vitiated by fraud. Needless to say that it is for the rival parties to prove or disprove the allegation of fraud in the proceedings before the Ld. Single Judge, and it is not for us to delve into these disputed questions of fact.

14. In the light of the aforesaid discussion, we are unable to agree with the finding of the Ld. Single Judge that the dispute arsing out of the suit pertains to the internal mismanagement of the affairs of the Appellants *inter-se* and hence covered by the provisions of Sections 241, 242 of the 2013 Act.

15. In the background of the aforesaid observations, we proceed to pass the following order:

:***ORDER:***

(i) The impugned order dated 4th May 2026 in Interim Application No. 2505 of 2020 in Commercial Suit No. 128 of 2021 is set aside.

(ii) The Interim Application No. 2505 of 2020 in Commercial Suit No. 128 of 2021 is remanded to the Ld. Single Judge for consideration afresh on all aspects including the appointment of Court Receiver, uninfluenced by our observations.

(iii) Commercial Appeal No. (L) No. 21982 of 2026 is allowed in the aforesaid terms. Accompanying Applications do not survive and disposed of accordingly.

ASHISH S. CHAVAN, J. *BHARATI DANGRE, J.*