* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

% **Judgment reserved on : 13 December 2024**
Judgment pronounced on : 08 January 2025

\+ CO.APP. 19/2023

CRB CAPITAL MARKETS LIMITED (IN PROVISIONAL LIQUIDATION) THROUGH ITS EX DIRECTOR MR. C. R. BHANSALI .....Appellant

Through: Mr. Sudhanshu Batra, Sr. Adv. with Mr. Bhuvan Gugnani, Ms. Sakshi Garg and Mr. Rupender Sharma, Advs.

versus

ANOOP JAIN AND ORS. .....Respondents

Through: Mr. Dayan Krishnan, Mr. Jayant Mehta, Mr. Manik Dogra, Sr. Advs. with Mr. Karan, Ms. Devika Mohan and Mr. Ankit Banati, Advs. for R-1.
Ms. Jahanvi Worah, Adv. for R-2.
Ms. Ruchi Sindhwani, SSC with Ms. Megha Bharara, Adv. for Official Liquidator.

\+ CO.APP. 20/2023

CRB CAPITAL MARKETS LIMITED (IN PROVISIONAL LIQUIDATION) THROUGH ITS EX DIRECTOR MR. C. R. BHANSALI .....Appellant

Through: Mr. Sudhanshu Batra, Sr. Adv. with Mr. Bhuvan Gugnani, Ms. Sakshi Garg and Mr. Rupender Sharma, Advs.

versus

BIHARI LAL SARAF AND ORS. .....Respondents

Through: Mr. Dayan Krishnan, Mr. Jayant Mehta, Mr. Manik Dogra, Sr. Advs. with Mr. Karan, Ms. Devika Mohan and Mr. Ankit Banati, Advs. for R-1.
Ms. Jahanvi Worah, Adv. for R-2.
Ms. Ruchi Sindhwani, SSC with Ms. Megha Bharara, Adv. for Official Liquidator.

\+ CO.APP. 21/2023

CRB CAPITAL MARKETS LIMITED (IN PROVISIONAL LIQUIDATION) THROUGH ITS EX DIRECTOR MR. C. R. BHANSALI .....Appellant

Through: Mr. Sudhanshu Batra, Sr. Adv. with Mr. Bhuvan Gugnani, Ms. Sakshi Garg and Mr. Rupender Sharma, Advs.

versus

MURARI LAL SARAF AND ORS. .....Respondents

Through: Mr. Dayan Krishnan, Mr. Jayant Mehta, Mr. Manik Dogra, Sr. Advs. with Mr. Karan, Ms. Devika Mohan and Mr. Ankit Banati, Advs. for R-1.
Ms. Jahanvi Worah, Adv. for R-2.
Ms. Ruchi Sindhwani, SSC with Ms. Megha Bharara, Adv. for Official Liquidator.

\+ CO.APP. 22/2023

CRB CAPITAL MARKETS LIMITED (IN PROVISIONAL LIQUIDATION) THROUGH ITS EX DIRECTOR MR. C. R. BHANSALI ....Appellant

Through: Mr. Sudhanshu Batra, Sr. Adv. with Mr. Bhuvan Gugnani, Ms. Sakshi Garg and Mr. Rupender Sharma, Advs.

versus

BANWARI LAL SARAF AND ORS .....Respondents

Through: Mr. Dayan Krishnan, Mr. Jayant Mehta, Mr. Manik Dogra, Sr. Advs. with Mr. Karan, Ms. Devika Mohan and Mr. Ankit Banati, Advs.for R-1.
Ms. Jahanvi Worah, Adv. for R-2.
Ms. Ruchi Sindhwani, SSC with Ms. Megha Bharara, Adv. for Official Liquidator.

CORAM:
HON'BLE MR. JUSTICE YASHWANT VARMA
HON'BLE MR. JUSTICE DHARMESH SHARMA

O R D E R

DHARMESH SHARMA, J.

1. The aforesaid Company Appeals have been preferred on behalf of the Ex-Management of the CRB Capitals Markets Limited ["**CRBCML**"] (in provisional liquidation) and CRB Corporation Limited ["**CCL**"] under Section 483 of the Companies Act, 1956 ["**The Act**"]. These appeals come up for re-hearing for a decision on the issue of their maintainability in terms of directions of the Supreme Court[1] dated 05.08.2024. The appeals assail the impugned judgment dated 25.07.2023, passed by the learned Single Judge in four

[1] Civil Appeal No. 8451of 2024 [Arising out of SLP (Civil) No. 16753 of 2024 titled Anup Jain v. CRB Capitals Limited and ors.] with Civil Appeal No. 89452-8454 of 2024 (Arising out of SLP (Civil) No. 17018-1710 of 2024]

Company Applications[2] in Company Petition No. 191/1997, moved separately by each of the respondents No. 1 to 4.

FACTUAL BACKGROUND:

2. In a nutshell, the learned Single Judge in Company Petition No. 191/1997 on the aforementioned four company applications directed the Official Liquidator that the equity shares totalling about 7000 in their respective names be transferred and be registered in the name of the respective applicants, who would be entitled to all accretions earned on the said shares from 1997 onwards of RIL[3].

3. Shorn of unnecessary details, the aforesaid applications in Company Petition No.191/1997 were preferred by the applicants about 18 years ago, and the learned Single Judge adopted the **Company Application No. 782/2006** filed by the applicant, namely Murari Lal Saraf as the lead case. It is a matter of record that the applicant purchased 1500 equity shares of RIL by way of open market transactions on 25.04.1997, but the same were not transferred in his name purportedly owing to certain directions passed by this Court in the present Company Petition filed in the year 2006. It would be relevant to take notice of a communication dated 09.04.1997 which was addressed by the RBI[4] to CRBCML, in which the following mandate was given:

> "5. Further, the Reserve Bank of India on being satisfied that it is necessary so to do in the public interest, hereby directs your company in accordance with the provisions of section 45 MB (2) of the Reserve Bank of India Act, 1934 not to sell, transfer, create

[2] No. 1232/2005 by Anup Jain; 782/2006 by Murari Lal Saraf; 783/2006 by Bihari Lal Saraf and 784/2006 by Banwari Lal Saraf
[3] Reliance Industries Limited
[4] Reserve Bank of India

> charge or mortgaged or deal in any manner with its property and assets without prior written permission of the Bank for a period of six months from the date of this Order."

4. It was the case of the applicants that such 1500 equity shares of RIL were purchased through M/s. A.G. Vidya Sagar and Company ["**AGV**"], a broker registered with the Delhi Stock Exchange ["**DSE**"], on 25.04.1997 @ Rs. 298.75/- per share through account payee cheques, which were duly encashed by AGV. Relevant Contract Notes under which the shares were purchased, as well as the bank statement of the AGV, were placed on the record. It was also additionally stated by the applicant Murari Lal Saraf that his brothers, namely Bihari Lal Saraf and Banwari Lal Saraf, purchased 600 and 900 equity shares of RIL, respectively, at the same rate, making a total payment of Rs. 8,96,268/-. The payments made by his brothers, who are applicants in Company Application Nos. 783/2006 and 784/2006, respectively, were substantiated by the production of bank statement of AGV, suggesting an inference that payment was made on 01.05.1997.

5. Emphasizing that the abovesaid communication by the RBI was not in the public domain, the grievance of the applicants was that upon lodging the shares with KARVY Consultants Limited ["**KARVY**"], which was acting as Registrar/Share Transfer Agent of RIL KARVY, on 30.04.1997, along with duly executed and stamped transfer deeds for the transfer of the respective shares in their names, they came to know for the first time about the RBI directions from the reply of the KARVY, which *vide* response dated 20.06.1997 expressed its inability

to transfer such shares in the name of the applicants, citing an order dated 22.05.1997 passed by the Company Court in the present Company Petition No. 191/1997, whereby all assets of CCL were frozen, and a Provisional Liquidator had been appointed to manage the assets.

6. At the same time, it is an admitted position that on 14.06.1999, the DSE issued a Circular No. 58/1999 whereby it clarified about the status of any shares held by or on behalf of the CCL with the Share Transfer Agent prior to 21.05.1997, which reads as under:

> "If such securities have been lodged with the company prior to 21st May, 1997 then it do not require certification, if any one or both of the following conditions has/have been complied.
>
> (i) the securities have already been transferred to the name of a person as on 21.5.97.
>
> (ii) the securities have been lodged with the company for transfer prior to 21st May, 1997."

7. In light of the aforesaid circular, it appears that the applicants then corresponded with the DSE on 15.06.1999, seeking clarifications regarding the status of 1500 equity shares of RIL held by the applicant as purchased from AGV. The DSE responded *vide* letter dated 22.06.1999, clarifying that since the shares belonging to CCL entities that were transferred prior to 21.05.1997 did not require any certification, they could be lodged with the company/Share Transfer Agent for registration in the name of the subsequent purchaser. Upon the applicant again approaching KARVY on or about 23.06.1999 for registration of the shares in his name, KARVY in its response *vide* letter dated 05.10.1999, reiterated the communication dated 06.06.1997 issued by the RBI, prohibiting transfer of shares held by

CCL since the latter company was under liquidation. It was in the aforesaid backdrop that the instant applications were moved by the applicants seeking clarification on the status of the their equity shares in RIL so that the shares could be registered in their respective names.

8. Interestingly, although no replies were filed by the Ex-Management of CRBCML as well as by the Official Liquidator, the reliefs claimed in the applications were vociferously opposed. It is also a matter of record that during the course of submissions before the learned Single Judge on the aforesaid applications, *an issue of maintainability of the objections raised by CRBCML was also raised and addressed*. It would be relevant to reproduce the reasons that prevailed in the mind of the learned Single Judge while deciding the aforesaid applications *vide* impugned order dated 25.07.2023, which go as under:

> **"27.** The applicant has placed, on record, each of the 30 cancelled share certificates, covering 50 shares each, whereunder the shares were purchased by CRBCML from RIL, which tally with the Distinctive Numbers of the shares which were purchased by the applicant from AGV. The sale bills, raised by AGV on the applicant, which also reflect the same Distinctive Numbers of the shares, have also been placed on record. The applicant has also filed the Share Transfer Form, which indicate that the said shares of RIL were originally held by CRBCML and were transferred to the applicant. The Share Transfer Form bears the signature of the Director of CRBCML, as well as the stamp of AGV, as the broker, on the reverse. **There can, therefore, be no doubt, whatsoever, about the fact that the shares forming subject matter of the present controversy were RIL equity shares originally issued to CRBCML, and had been purchased, for consideration, by the applicant, from AGV, in the open market. The objections raised by the respondents in this regard are, in my considered opinion, completely bereft of substance.**
>
> **28.** Mr. Dayan Krishnan is correct in his submission that, so long as the subject 1500 shares were initially issued to CRBCML, and

had been purchased in the open market by the applicant from a broker registered with the DSE, the applicant cannot be denied the right to have the shares transferred in its name. The Statement of account of AGV, which has been placed on record, indicates that the amount of ₹ 896,268/–, received against sale of the 3000 shares to the applicants, Bihari Lal Saraf and Banwari Lal Saraf, was indeed credited in the said account on 1 May 1997. As to why AGV paid ₹ 13,67,000 to CRB Corporation, is something for which the applicant can hardly be made to answer.

29. I am constrained to observe that, if anything, CRBCML has been less than forthcoming with the Court in this regard. There is no dispute about the fact that CRB Corporation and CRBCML are both group companies of the CRB Group. Indeed, the order dated 22 August 1997, in Co. Pet. 280/1997, by which the Provisional Liquidator was appointed in the case of CRB Corporation Ltd, reveals that the sole ground urged before this Court, on the said occasion, was that a Provisional Liquidator has already been appointed in the case of CRBCML. **There is no doubt, therefore, of the fact that CRBCML would be well aware of the transactions with respect to the aforenoted 1500 shares, and as to why payment was made by AGV to CRB Corporation.** One would have expected, therefore, that, in the interests of fair play, CRBCML would have come upfront and explained the transaction, rather than seeking to stymie the legitimate claim of the applicant, who is a complete stranger to the transaction between AGV and CRB Corporation. It does not take much to read between the lines. **It is apparent that the CRB Group of Companies is unwilling to release hold over the 3000 shares which have, in due course and for due consideration, been purchased by the applicant and his brothers through AGV in the open market.**

30. This Court cannot possibly be an approver to such an attempt.

31. Once these facts are accepted and acknowledged, there can be no justifiable reason for this Court adopting a view different from that expressed by Sanjiv Khanna, J. (as he then was) in the order dated 25 November 2010 in Co. App. 176/1998. The 1500 RIL shares in issue were admittedly sold by CRBCML much prior even to 9 April 1997, when the proscription against sale of its asserts by CRBCML was put in place by the RBI. The statement, of CRBCML, that it did not sell any of the RIL equity shares held by it after 9 April 1997, stands accepted by this Court in the order dated 25 November 2010 in Co. App. 176/1998. As in that case, the applicant in the present case, too, purchased the shares from the open market prior to the order by this Court on 22 May 1997 and the letter dated 6 June 1997 issued by the RBI. The finding, of this

Court, in the order dated 25 November 2010, that "the shares were sold by CRB Capital Markets Ltd prior to 9th April, 1997 and are therefore not covered by the restraint orders dated 9th April, 1997, 22nd May 1997 passed by this Court in Company Petition No. 191/1997 or the subsequent letter of the Reserve Bank of India dated 6th June, 1997", therefore, applies to the present case, *mutatis mutandis*.

32. Though this Court, in its order dated 25 November 2010 in Co. App. 176/1998 in Vikram Commercial's application, entered a caveat that the right of Vikram Commercial to have the shares transferred in its name was "provided the said transfer and purchase is otherwise in accordance with law", I do not deem it appropriate to hedge in the present order with any such caveat, for two reasons.

33. Firstly, the applicant has placed, on record, ample material, to which this order already alludes hereinbefore, to vouchsafe the credibility of the purchase of the subject 1500 shares from AGV –including the Share Transfer Form which is signed by the Director of CRBCML, reflects the shares to be of RIL and shows the applicant as the transferee thereof. That these were indeed the shares originally held by CRBCML, besides being admitted by Mr. Batra, is also manifest by a comparison of the Distinctive Numbers of the shares in the Share Certificates issued by RIL to CRBCML with the Distinctive Numbers of the shares in the communications from Karvy. Neither of the respondents questioned the credibility or genuineness of any of these documents.

34. Secondly, it is now 17 years since this application was filed, and 26 years since the shares were purchased by the applicant from AGV. To keep this dispute alive, in the absence of any convincing reason to do so, would, in my opinion, be a travesty of justice. Given the ferocity of the opposition put up, to the present application, both by the OL and by CRBCML, I am convinced that, if any leeway is left with them to deny the applicant the right to transfer of the shares in its favour, they would take advantage thereof.

35. I am, therefore, only inclined, in the interests of balancing the equities, to enter a limited restraint on the applicant dealing with the subject shares for a period of 30 days from the date of pronouncement of this judgment, to allow the respondents an opportunity to seek their remedies against this judgment, if they so choose.

36. Subject to this limited rider, the applicant would, therefore, be entitled to transfer of the 1500 RIL equity shares in its name. On perusing the order sheets in this case, I find that, *vide* orders dated

22 May 2020 and 31 August 2020, passed by this Court, the OL was directed to open a DEMAT account in the name of CRBCML with Stock Holdings Corporation Ltd and to covert all shares into DEMAT form so that all accretions on the shares could also be received in the said account. The OL had also assured, on the said date, that the shares would remain protected, subject to further orders to be passed by this Court.

Conclusion

37. The OL is, therefore, directed to transfer the subject 1500 RIL equity shares in the name of the applicant within a period of 7 days from the date of pronouncement of this order. The shares would, forthwith thereupon, be registered in the names of the applicant. The applicant would also be entitled to all accretions earned on the said shares from 1997 onwards, such as dividend, bonus, and the like, in accordance with the judgment of the Supreme Court in ***Standard Chartered Bank v. Custodian***[5]."

{Bold portions emphasized}

9. Needless to state that based on the same factual matrix in the remaining application, and on the same reasoning Company Application No. 783/2006 by Bihari Lal Saraf and Company Application No. 784/2006 by Banwari Lal Saraf were allowed and so also that of applicant Anoop Jain bearing Company Application No. 1232/2005. However, it would be expedient to indicate that in so far as the applicant Anoop Jain is concerned, his matter is on a different footing since he evidently purchased 28900 equity shares of RIL through Ravi Kapur & Co., a share broker registered with the DSE in the open market and although the KARVY (Share Transfer Agent) transferred 24900 shares, it backtracked and refused to transfer remaining 4000 shares on similar grounds as have been delineated in the other three Company Applications. It was observed by the learned Single Judge that the applicant Anup Jain had placed on record the

[5] (2000) 6 SCC 427

blank Share Transfer Forms relating to the subject 4000 shares, in which the applicant has been shown as transferee and which are signed by the Director of CRBCML as well as the Share Certificates whereunder the said shares of RIL were subscribed by CRBCML.

EARLIER JUDGMENT DATED 28.05.2024 BY THE DIVISON BENCH:

10. The aforesaid order dated 25.07.2023 passed by the learned Single Judge came to be assailed by the Ex-Management of CRBCML and CCL by way of appeals *viz.* Company Appeal 19/2023 (against Anoop Jain); Company Appeal 20/2023 (against Bihari Lal Saraf) and Company Appeal 21/2023 (against Banwari Lal Saraf). Suffice it to state that although the issue of maintainability of the appeals filed by the Ex-Management was raised by the respondents/applicants, the same was apparently not addressed by the learned Judges constituting the Division Bench of this Court and instead they proceeded to decide the appeals on merits. It would be pertinent to refer to the operative portion of the order, wherein it was observed as under:

> "**36.** It is an admitted position that the original share certificates of 4000 RIL shares (96 in number) along with transfer deeds are in possession of Shri Anoop Jain. Now the only issue raised is of consideration for these 4000 shares. Shri Anoop Jain has relied on Delhi stock exchange register within the cycle 12.04.1997 to 25.04.1997 to show that he had paid the consideration. He also stated that he got the delivery of the shares on 02.05.1997 along with the original shares and blank transfer deed. He also states that through his proprietorship concern Jain and company Mr. Anoop Jain made the payment to Delhi Stock Exchange.
> **37**. However, the appellants contents that the contract notes, bills for delivery of possession of shares and proof of having paid the consideration are not placed on record by the respondent No. 1.
> **38**. The CO. APP pertaining to Mr. Murari Saraf, CO. APP pertaining to Mr. Banwari Lai Saraf and CO. APP pertaining to

Mr. Bihari Lai Saraf (three SARAF Brothers): The above named three brothers have contended that they purchased a total 3000 RIL shares (60 in) number from the open market through the Delhi Stock Exchange Registered Broker i.e. A. G. Vidyasagar & Co. on 25.04.1997. The contract notes for purchase of the shares issued by A.G. Vidyasagar is dated 25.04.1997. It is further contended that as a matter of practice, without payment of this contract note, the stockbroker docs not deliver the share scrips and only upon receipt of payment, delivery is made. It is fiirther contended that the payment was made vide Cheques all dated 29.04.1997. It is further contended that they got the delivery of all 3000 RIL shares along with Blank Transfer Deeds duly signed by CRB Capital Markets Limited, being authorized signatory on 30.04.1997. Thus, here also it is an admitted position that the original share certificates of 3000 RIL shares (60 in number) along with transfer deeds are in possession of three Saraf Brothers.

39. Incidentally, Delhi Stock Exchange Registered Broker i.e. A. G.Vidyasagar & Co. had filed an application, though was dismissed for non prosecution, in which he had stated on oath that he had purchased 10000 shares of RIL (including 3000 shares, which were sold by it to Saraf brothers) from CRB Corporation Limited and paid consideration to CRB Corporation Limited between 16.04.1997 and 30.04.1997.

40. Appellant No. 1 has already made a statement which has been accepted by the learned Company Court that it had not sold any shares of Reliance Industries Limited after issue of the order dated 09.04.1997 passed by RBI. It is also admitted position that the original share scrips and original blank transfer deeds are/were in possession of each of the respondent No. 1. Thus, in effect the appellants' sole objection is that there is discrepancy in the timeline when the shares were sold by the appellant No. 1, and thereafter sold by broker to the respondent No. 1 in each appeal and that in Mr. Anoop Jain s case the contract notes, bills for delivery of possession of shares and proof of having paid the consideration is not coming forth and in Saraf brothers case the contract notes, bills for delivery of possession of shares and proof of having paid the consideration were placed on record by them after the order was reserved by the learned Company Court but hey did not get any chance to rebut the same.

41. Thus, it is necessary to attain satisfaction as to when the 4000 shares subject matter of transfer to Mr. Anoop Jain; 1500 shares subject matter of transfer to Mr. Murari Saraf, 900 shares subject matter of transfer to Mr. Banwari Lai Saraf and 600 shares subject matter of transfer to Mr. Bihari Lai Saraf brothers were sold by the Appellant No. 1, CRB Capital Markets Limited. Once it is

established that CRB Capital Markets Limited had sold these shares prior to 09.04.1997, then the only satisfaction is to be obtained is the dates of contract notes, bills for delivery of possession of shares and proof of respondent No. 1 in each appeal having paid the consideration for these shares stated to have been purchased.

42. Without disturbing the decision of the learned Company Court, the matter is remanded back to the learned Company Court only for the limited purpose to inquire when the 4000 shares subject matter of transfer to Mr. Anoop Jain; 1500 shares subject matter of transfer to Mr. Murari Saraf, 900 shares subject matter of transfer to Mr. Banwari Lai Saraf and 600 shares subject matter of transfer to Mr. Bihari Lai Saraf brothers were sold by the Appellant No. 1, CRB Capital Markets Limited and to whom; and that Mr. Anoop Jain, Mr. Murari Saraf, Mr. Banwari Lai Saraf and Mr. Bihari Lai Saraf have paid the consideration for these shares. Once it is established that appellant No.l had divested itself of the rights in these shares and sale was concluded before 09.04.1997; and that the consideration is paid by the respondent No. 1 in each appeal to the broker from whom they purchased these, the effect of the impugned order shall follow.

43. In view of above, the present appeals are disposed of with pending applications, if any.

44. The parties are directed to appear before learned Company Court on 03.07.2024 for directions."

11. Aggrieved by the aforesaid order passed by the Division Bench of this Court, the applicants approached the Supreme Court, which, *vide* order dated 05.08.2024 has passed the following directions:

"CIVIL APPEAL NOS.8452-8454 OF 2094
(Arising out of S.L.P.(Civil) Nos.17008-17010 of 2024)

O R D E R

Leave granted.

2. The first and second respondents were the appellants before the Division Bench of the High Court. Hence, service of notice to other respondents is not necessary. The first and second respondents are represented by the learned counsel who waives formal notice.

3. The- impugned judgment of the High Court notes that an objection was raised by the present appellants in both the appeals that the appeals preferred by the first and second respondents were not maintainable. The High Court has specifically recorded a finding that it is not deciding the issue

of maintainability. Nevertheless, the appeals have been partly allowed and an order of remand has been passed. The appeals could not have been decided on merits without deciding the issue of maintainability raised by the appellants.

4. Hence, the impugned judgment is quashed and set aside only on that ground. Company Appeal Nos. 19, 20, 21 and 22 of 2023 are restored to the file of the High Court of Delhi at New Delhi. The High Court will proceed to first decide the issue of maintainability raised by the appellants. All the contentions of the parties in that behalf are left open.

5. The interim relief which was operative till passing of the impugned judgment will continue to operate till the disposal of the appeals.

6. The appeals are accordingly partly allowed in terms aforesaid."

ANALYSIS & DECISION:

12. Upon hearing learned Senior Counsels for the parties and on perusal of the record, at the outset, we have no hesitation in holding that the appeal filed by the appellant No.1 CRBCML, through appellant No.2 Mr. C.R. Bhansali is not maintainable in law. First things first, it is pertinent to mention that the learned Single Judge while passing the impugned order dated 25.07.2023 had delved into the issue of the maintainability of the objections that were being raised on behalf of the appellants, as also the learned Standing Counsel for the Official Liquidator and had observed as under:

"18. I may observe, here, that the applicant seriously questioned the *locus standi* of CRBCML to contest the present application. I, too, queried of Mr. Batra **as to how, once he accepted that CRBCML had, in fact, at one time been holding the 1500 shares in issue, and had thereafter sold them, CRBCML could retain any interest in the shares.** Though Mr. Batra was not able to provide any satisfactory response to the query, I nonetheless heard him and, therefore, do not intend to dwell further on the issue of *locus standi* of CRBCML.

19. Supplementing the submissions of Mr. Batra, Ms. Sindhwani, learned Counsel for the OL, placed reliance on the RBI communication dated 9 April 1997 to CRBCML. She further

submits that the said communication would squarely apply to the present case, as the Contract Note between AGV and the applicant is dated 25 April 1997, after the said communication had been issued. She has also drawn attention to the Contract Note, which has been placed on record, and which, even while acknowledging the sale of 1500 shares of RIL to the applicant by AGV, does not mention the identity of the person who was initially holding the shares. **She has drawn attention to the fact that, in the Bank Statement of AGV, consideration of ₹ 5 lakhs, ₹ 5 lakhs and ₹ 13,52,300/- has been shown to have passed from AGV to CRB Corporation on 22, 23 and 24 April 1997 *vide* Cheques No. 158099 and 158100 and 158080 for ₹ 3,52,300/-.**

20. Ms. Sindhwani has also raised the plea of limitation relying, for the purpose, on Section 446(2)(b)[6] of the Companies Act, 1956, which requires a claim to be lodged within 3 years, failing which it is no longer legally enforceable. She has also placed reliance, in this context, on the judgment of the Supreme Court in ***State of Gujarat v. Kothari & Associates***[7] and of this Court in ***P.T. Gajwani v. A.R. Chadha & Co***[8]**.** Ms. Sindhwani also places reliance on Section 531A of the Companies Act.

21. Arguing in rejoinder, Mr. Dayan Krishnan submits that the applicant cannot be concerned with whether AGV had purchased the shares from CRB Corporation or from anyone else. There is no dispute about the fact that the shares were initially held by CRBCML. The sole ground on which Karvy had refused to transfer the shares to the applicant was the embargo placed by this Court and by the RBI on transfer of shares by CRBCML. The matter, he submits, stands squarely covered by the order passed in Co. App. 176/1998 *supra* which holds, unambiguously, that no embargo on transfer of RIL shares, originally held by CRBCML, would apply where the shares had been transferred by CRBCML prior to 9 April 1997.

22. Insofar as the objection of Mr. Batra regarding the documents which were required to be available and forthcoming the purchase of the shares by the applicant from AGV was, in fact, an open market purchase, Mr. Krishnan submits that the only documents

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[6] **446. Suits stayed on winding up order**. –
(2) The Tribunal shall, notwithstanding anything contained in any other law for the time being in force, have jurisdiction to entertain, or dispose of –
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whether such suit or proceeding has been instituted or is instituted, or such claim or question has arisen or arises or such application has been made or is made before or after the order for the winding up of the company, or before or after the commencement of the Companies (Amendment) Act, 1960.

[7] (2016) 14 SCC 761

[8] 1973 ILR (2) Delhi 752

> which were required to be shown by him were the contract note and the share transfer certificate. He points out that he has placed on record, (i) the contract note with AGV, (ii) the delivery note by AGV, which indicated that the shares had initially been held by CRBCML, (iii) the Share Transfer Form from RIL with respect to the said shares, with the signature of the Director of CRBCML figuring thereon, in which the applicant is shown as the transferee and (iv) Share Certificate dated 16 March 1995 issued by RIL to CRBCML indicating that the said shares had in fact been purchased by CRBCML from RIL, as the Distinctive Numbers of the shares were forthcoming on the Share Certificate. **That the shares in controversy were, therefore, RIL shares which were originally held by CRBCML, and that they had been purchased by the applicant for consideration in the open market from AGV, submits Mr. Dayan Krishnan, cannot be doubted or questioned.** In that view of the matter, there can be no justification to refuse, to the applicant, relief in the terms granted by this Court to Vikram Commercial by order dated 25 November 2010 passed in Co. App.176/1998. " **{bold portions emphasized}**

13. In short, it is an undisputed position that the shares in questions were purchased by the applicants through the RBI- approved Stock brokers in the open market. Furthermore, it is a matter of fact that the Reserve Bank of India's (RBI) order dated April 9, 1997, directing CRBCML not to proceed with any sale, transfer, or charge on the property or assets without written consent, was not in the public domain, and the applicants had no notice of the directions passed by the Company Court. The applicants, in ignorance of such facts, apparently bought the shares from open market and paid the consideration thereof.

14. That being the case, the appellants must demonstrate that the Company Court, in the liquidation proceedings has jurisdiction to pass any directions with regard to non-registration of shares in the applicants' names, which were purchased from the open market. At

this juncture, it would be relevant to refer to Section 531 of the Act which is sought to be invoked to support the maintainability of the instant appeals, which provides as under:

> **"531. FRAUDULENT PREFERENCE**
> (1) Any transfer of property, movable or immovable, delivery of goods, payment, execution or other act relating to property made, taken or done by or against a company within six months before the commencement of its winding up which, had it been made, taken or done by or against an individual within three months before the presentation of an insolvency petition on which he is adjudged insolvent, would be deemed in his insolvency a fraudulent preference, shall in the event of the company being wound up, be deemed a fraudulent preference of its creditors and be invalid accordingly : Provided that, in relation to things made, taken or done before the commencement of this Act, this sub-section shall have effect with the substitution, for the reference to six months, of a reference to three months.
> (2) For the purposes of sub-section (1), the presentation of a petition for winding up in the case of a winding up by 1 [the Tribunal], and the passing of a resolution for winding up in the case of a voluntary winding up, shall be deemed to correspond to the act of insolvency in the case of an individual."

15. Section 531 of the Act deals with the effect of winding-up of a company on its antecedent transactions. It provides that a transfer or any other act done in relation to the property of a company within a period of six months before the commencement of its winding-up (hereinafter referred to as "the twilight period") shall be deemed to be a fraudulent preference of its creditors and, accordingly, be invalid. This provision must be read in conjunction with Section 531-A and Section 536 of the Act, which read as follows:

> **"531-A. Avoidance of voluntary transfer**.- Any transfer of property, movable or immovable, or any delivery of goods, made by a company, not being a transfer or delivery made in the ordinary course of its business or in favour of a purchaser or encumbrancer in good faith and for valuable consideration, if made within a period of one year before the presentation of a petition for winding

> up by the Tribunal or the passing of a resolution for voluntary winding up of the company, shall be void against the liquidator.
> **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 [the Tribunal], 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 [Tribunal] otherwise orders, be void."

16. Admittedly, the sale transaction of shares took place within the 'twilight period'. We find that a Division Bench of this Court in the case of **H.L. Seth v. Wearwell Cycle Co. (India) Ltd.**[9], , laid down the test to be applied for validating a transaction in exercise of the powers under section 536(2) as being that of "good faith in the ordinary course of trade, for the benefit of the company". We also find that in another matter titled **Reserve Bank of India v. Crystal Credit Corporation Ltd**[10], the following principles for exercise of the powers under Section 536(2) were laid down:

> "(i) Transactions bona fide entered into and completed in the ordinary course of trade must be protected.
> (ii) If the disposition is made for the purpose of preserving the business as a going concern, then also the discretion of the court must be exercised.
> (iii) A disposition must not be validated merely because the party bona fide entered into the transaction.
> (iv) Knowledge of the presentation of the winding up is immaterial."

[9] [1992] 46 DLT 599
[10] [2006] 132 Comp Cas 363 (Delhi)

17. That being the legal position, in order to show its *locus standi* and bring the matter within the jurisdiction of the Company Court, learned Senior Counsel for the appellants referred to the decision in the case of **Rishabh Agro Industries Limited v. PNB Capital Services Limited**[11] and attention was invited to paragraph (10) of the judgment, which goes as under:

> **"10.** It has been further suggested on behalf of the respondent Bank that the action of the appellant was mala fide inasmuch as it sought time from the Court to make the payment of the amount due and after seeking indulgence *malafidely* made the reference to BIFR on 30-9-1997. It is contended that after the order of the winding up and appointment of the Liquidator, the Board of Directors had no jurisdiction to move BIFR by passing a resolution. Such a submission cannot be accepted. In a winding-up petition the Liquidator is appointed to protect the assets of a company for the benefit of its creditors, secured and unsecured and others. It is not the function of the Official Liquidator to start the process of rehabilitation of the company as is aimed at under the Act. Despite appointment of the Official Liquidator, the Board of Directors continue to hold all residuary powers for the benefit of the company which includes the power to take steps for its rehabilitation. The Board of Directors in the instant case were not in any way by any judicial order debarred from taking recourse to the provisions of the Act for the purposes of rehabilitation of the Company. If there existed a power, its exercise cannot be termed to be mala fide only because it was initiated after availing the opportunity to make the payment of the amounts due and passing of the order of winding up of the Company.

18. We are unable to comprehend as to how the aforesaid observations could assist the appellants in sustaining the maintainability of the instant appeals. The power of ex-management, upon initiation of winding-up proceedings under Section 433[12], 434[13],

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[11] (2000) 5 SCC 515

[12] **[433. CIRCUMSTANCES IN WHICH COMPANY MAY BE WOUND UP BY TRIBUNAL**
A company may be wound up by the Tribunal, -

441[14] and 481[15] of the Act, is primarily to take measures for rehabilitation or revival of the company (in liquidation).The Ex-

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(a) if the company has, by special resolution, resolved that the company be wound up by the Tribunal ;
(b) if default is made in delivering the statutory report to the Registrar or in holding the statutory meeting ;
(c) if the company does not commence its business within a year from its incorporation, or suspends its business for a whole year ;
(d) if the number of members is reduced, in the case of a public company, below seven, and in the case of a private company, below two;
(e) if the company is unable to pay its debts ;
(f) if the Tribunal is of opinion that it is just and equitable that the company should be wound up ;
(g) if the company has made a default in filing with the Registrar its balance sheet and profit and loss account or annual return for any five consecutive financial years ;
(h) if the company has acted against the interests of the sovereignty and integrity of India, the security of the State, friendly relations with foreign States, public order, decency or morality ;
(i) if the Tribunal is of the opinion that the company should be wound up under the circumstances specified in section 424G :
Provided that the Tribunal shall make an order for winding up of a company under clause (h) on application made by the Central Government or a State Government.]

[13] **434. COMPANY WHEN DEEMED UNABLE TO PAY ITS DEBTS**

(1) A company shall be deemed to be unable to pay its debts –
(a) if a creditor, by assignment or otherwise, to whom the company is indebted in a sum exceeding [one lakh] rupees then due, has served on the company, by causing it to be delivered at its registered office, by registered post or otherwise, a demand under his hand requiring the company to pay the sum so due and the company has for three weeks thereafter neglected to pay the sum, or to secure or compound for it to the reasonable satisfaction of the creditor ;
(b) if execution or other process issued on a decree or order of any Court [or Tribunal] in favour of a creditor of the company is returned unsatisfied in whole or in part ; or
(c) if it is proved to the satisfaction of the [Tribunal] that the company is unable to pay its debts, and, in determining whether a company is unable to pay its debts, the 3 [Tribunal] shall take into account the contingent and prospective liabilities of the company.
(2) The demand referred to in clause (a) of sub-section (1) shall be deemed to have been duly given under the hand of the creditor if it is signed by any agent or legal adviser duly authorised on his behalf, or in the case of a firm, if it is signed by any such agent or legal adviser or by any member of the firm.

[14] **441. COMMENCEMENT OF WINDING UP BY TRIBUNAL**

(1) Where, before the presentation of a petition for the winding up of a company by the Tribunal, 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 Tribunal, 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 Tribunal shall be deemed to commence at the time of the presentation of the petition for the winding up.]

[15] **481. DISSOLUTION OF COMPANY**

(1) When the affairs of a company have been completely wound up or when the [Tribunal] is of the opinion that the liquidator cannot proceed with the winding up of a company for want of funds and assets or for any other reason whatsoever and it is just and reasonable in the circumstances of the case that an order of dissolution of the company should be made, the [Tribunal] shall make an order that the company be dissolved from the date of the order, and the company shall be dissolved accordingly.

management may also be heard to protect assets under the control of the Official Liquidator to ensure that they are not wasted, pilfered, or dealt with in a manner detrimental to their interests as well as the creditors of the company (in liquidation).

19. However, it needs to be appreciated that the aforesaid observations in the case of ***Rishabh Agro Industries Limited (supra)*** were made in the context of a claim lodged by the Ex-management applicable to Section 22[16] of the Sick Industrial Companies (Special

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(2) A copy of the order shall, within thirty days from the date thereof, be forwarded by the liquidator to the Registrar who shall make in his books a minute of the dissolution of the company.
(3) If the liquidator makes default in forwarding a copy as aforesaid, he shall be punishable with fine which may extend to [five hundred] rupees for every day during which the default continues.

[16]22. Suspension of legal proceedings, contracts, etc .-(1) Where in respect of an industrial company, an inquiry under section 16 is pending or any scheme referred to under section 17 is under preparation or consideration or a sanctioned scheme is under implementation or where an appeal under section 25 relating to an industrial company is pending, then, notwithstanding anything contained in the Companies Act, 1956 (1 of 1956), or any other law or the memorandum and articles of association of the industrial company or any other instrument having effect under the said Act or other law, no proceedings for the winding up of the industrial company or for execution, distress or the like against any of the properties of the industrial company or for the appointment of a receiver in respect thereof [and no suit for the recovery of money or for the enforcement of any security against the industrial company or of any guarantee in respect of any loans or advance granted to the industrial company] shall lie or be proceeded with further, except with the consent of the Board or, as the case may be, the Appellate Authority.

(2)Where the management of the sick industrial company is taken over or changed [in pursuance of any scheme sanctioned under section 18] [Substituted by Act 12 of 1994, Section 12, for certain words (w.e.f. 1.2.1994).], notwithstanding anything contained in the Companies Act, 1956 (1 of 1956) or any other law or in the memorandum and articles of association of such company or any instrument having effect under the said Act or other law-

(a)it shall not be lawful for the shareholders of such company or any other person to nominate or appoint any person to be a director of the company;

(b)no resolution passed at any meeting of the shareholders of such company shall be given effect to unless approved by the Board.

(3)[Where an inquiry under section 16 is pending or any scheme referred to in section 17 is under preparation or during the period] [Substituted by Act 12 of 1994, Section 12, for certain words (w.e.f. 1.2.1994).] of consideration of any scheme under section 18 or where any such scheme is sanctioned thereunder, for due implementation of the scheme, the Board may by order declare with respect to the sick industrial company concerned that the operation of all or any of the contracts, assurances of property, agreements, settlements, awards, standing orders or other instruments in force, to which such sick industrial company is a party or which may be applicable to such sick industrial company immediately before the date of such order, shall remain suspended or that all or any of the rights, privileges, obligations and liabilities accruing or arising thereunder before the said date, shall remain suspended or shall be enforceable with such adaptations and in such manner as may be specified by the Board:

Provisions) Act, 1985. It was held that a mere order of winding up or appointment of a Liquidator does not have the effect of denuding the Board of Directors of the company of its jurisdiction to move BIFR[17], since the passing of the winding up order is the commencement and not the culmination of the proceedings before the Company Judge.

20. To the same effect was the position in law in the cited judgment in the case of **Foremost Industries (India) Limited v. AAIFR[18]** of the Division Bench of this Court, wherein it was held that appointment of a Liquidator on account of default under Section 456 and 457 of the Act does not debar proceedings against the assets of the sick companies before any decision is taken by the BIFR. In other words, it was held that mere appointment of a Liquidator in the winding-up proceedings does not oust the jurisdiction of the BIFR.

Provided that such declaration shall not be made for a period exceeding two years which may be extended by one year at a time so, however, that the total period shall not exceed seven years in the aggregate.

(4)Any declaration made under sub-section (3) with respect to a sick industrial company shall have effect notwithstanding anything contained in the Companies Act, 1956 (1 of 1956) or any other law, the memorandum and articles of association of the company or any instrument having effect under the said Act or other law or any agreement or any decree or order of a Court, tribunal, officer or other authority or of any submission, settlement or standing order and accordingly,-

(a)any remedy for the enforcement of any right, privilege, obligation and liability suspended or modified by such declaration, and all proceedings relating thereto pending before any Court, tribunal, officer or other authority shall remain stayed or be continued subject to such declaration; and

(b)on the declaration ceasing to have effect-

(i)any right, privilege, obligation or liability so remaining suspended or modified, shall become revived and enforceable as if the declaration had never been made; and

(ii)any proceeding so remaining stayed shall be proceeded with, subject to the provisions of any law which may then be in force, from the stage which had been reached when the proceedings became stayed.

(5)In computing the period of limitation for the enforcement of any right, privilege, obligation or liability, the period during which it or the remedy for the enforcement thereof remains suspended under this section shall be excluded.

[17] Board of Industrial and Financial Reconstruction

[18] 2000 (55) DRJ 439 (DB)

21. Learned Senior Counsel also cited the decision in the case of **Nitin Alloys Private Limited v. Rajendra Jain**[19], where and in the context of Section 483[20] of the Act it, was held that there is no residuary power in the hands of the Directors after an order to wind up the company has been passed. The Court observed that Directors hold office only for the purpose of filing the Statement of Affairs in aid of winding-up proceedings and not for any other purpose, and as such, no appeal under Section 483 of the Act would lie on behalf of the company under winding-up proceedings by or through its earlier Directors.

22. The cited case of **Shreeji Concast Ltd. v. Shreeji Oxygen P. Ltd**[21], was one where, after the commencement of the winding-up process under Section 433 and 434 of the Act, the Ex-management was able to make the payment of the entire outstanding dues of the creditors. Since no one else had come forward to raise objections about the proposal put forth by the Ex-management for the revival of the company, it was in the said backdrop that it was held that company was not prevented by any statutory provision from approaching the Court simply because a winding-up order had been passed. It was in such circumstances that the Court found that there was no valid

[19] 2016 SCC OnLine Raj 10232

[20] **483. APPEALS FROM ORDERS**
Appeals from any order made, or decision given 1 [before the commencement of the Companies (Second Amendment) Act, 2002], in the matter of the winding up of a company by the Court shall lie to the same Court to which, in the same manner in which, and subject to the same conditions under which, appeals lie from any order or decision of the Court in cases within its ordinary jurisdiction.

[21] 2006 SCC OnLine Guj 262

ground or justifiable reason remaining to allow the company to be wound up.

23. Avoiding a long academic discussion, we may refer to decision of this Court in the case of **Anil Kumar Sachdeva v. Four A Absestos Private Limited**[22], wherein it was reiterated that notwithstanding the appointment of the Provisional Liquidator, the Board of Directors retain some residuary power to question the continuance of the winding-up order when it is in a position to revive the company after satisfying the dues of its creditors. It is thus clear that the power to assail transactions on the anvil of Sections 521 & 531-A of the Act and seek appropriate reliefs primarily rests with the Provisional/Official Liquidator. While the ex-management may be said to retain some residual powers to rehabilitate or revive the company in liquidation or pray for the company being taken out of liquidation, the same cannot be construed as extending to the ex-management seeking to espouse a title dispute against *bona fide* purchasers of shares from the open market. This is notwithstanding the fact that such shares were held as assets of the company during the winding-up proceedings, unless the Official Liquidator initiates such a course of action by virtue of Sections 521 & 531-A of the Act. The right to petition for revival, rehabilitation or for the winding up order being revoked is clearly distinct from an asserted right to challenge decisions taken by the Official Liquidator or directions framed by the Company Court in the course of winding up. As it is well settled that the passing of an order of winding up or the appointment of a Provisional

Liquidator results in discharge of the erstwhile management who are then left merely with the statutory liability of submitting a Statement of Affairs and aid and assist the Official Liquidator in the winding up proceedings.

24. In light of the above discussion, it follows that it is not within the jurisdiction of the Company Court to investigate, at the behest of the appellants, the sale of shares by CRBCML, including the recipients or the consideration involved. Undoubtedly, the transfer of equity shares occurred during a period when such transfers were typically executed through the exchange of share certificates along with signed or blank transfer deeds. The sole requirements were a Contract Note in favour of the transferee, substantiated by the payment of the share amount to the Stock Broker.

25. The said aspect is exemplified from the concession made by the learned Senior Counsel for the appellants during arguments before the learned Single Judge, as reflected in the impugned order dated 25.07.2023, that the shares were held in trust by CRB Trustee Limited. However, the Company Court in the present winding-up petition cannot be called upon to inquire into the manner in which the equity shares in question, belonging to CCL, were sold. It was conceded by learned Senior Counsel for the appellant that the cancelled share certificates, which are the subject matter of the controversy, initially showed that the shares were held by CRBCML. Furthermore, it is not within the jurisdiction of the Company Court to decide whether any payments were made by the Stock Brokers to

[22] 1978 SCC OnLine Del 199

CCL, unless there is evidence of fraud or collusion between the buyers of such shares and the Ex-management, which would impact the company's assets and necessitate safeguarding the interests of the creditors. The learned Senior Counsel for the appellant also conceded that if the shares were purchased from the open market through a Share Broker, there could be no embargo on transferring the shares in the name of the applicants/transferees. If that is the case, it is not clear how any objection could be entertained, raised, or maintained by the appellant Ex-management of CRBCML.

26. In summary, the present appeal by Appellant No. 1, CCL, and Appellant No. 2/Ex-Director, is not maintainable under Section 483 read with Sections 521& 531-A of the Act. The objections raised by them to the clarification applications preferred by the applicants/transferees in the winding-up petition cannot be entertained in law. Assuming that such jurisdiction did exist, it needs to be emphasized that there was a clear admission on the part of the Ex-management in Company Application No. 176/1998, moved by M/s Vikram Commercial Ltd., wherein similar reliefs were sought as claimed by the present applicants in the instant Company Petition 191/1997, that no shares were sold subsequent to the directions of the RBI dated 09.04.1997, as reflected in the order dated 25.11.2010.

27. Hence, since the sale of shares took place prior to 09.04.1997, although the company (in liquidation) remained its *de jure* owner, the *de facto* legal right or title in the same passed on to the applicants in the ordinary course of business and thus was saved by Section 562(2) of the Act. Although the Ex-management retains some residual

powers to protect the company's assets during winding-up proceedings, the assets themselves remain under the control and disposal of the Official Liquidator. Notably, the Official Liquidator has not taken any action under Sections 521 or 531-A of the Act for the last 18 years. Furthermore, no creditor of the company (in liquidation) has come forward to challenge the sale of shares in question to the applicants.

28. In view of the foregoing discussion, we find that the instant appeals preferred by the appellants are clearly not maintainable. Resultantly, the impugned order passed by the learned Single Judge dated 25.07.2023 in respect of the instant applications moved by the respective applicants/transferees has to be given effect to forthwith in accordance with law.

29. Resultantly, the instant appeals filed by the ex-management are held to be not maintainable and the same are hereby dismissed.

YASHWANT VARMA, J.

DHARMESH SHARMA, J.

JANUARY 08, 2025
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