NATIONAL COMPANY LAW APPELLATE TRIBUNAL

PRINCIPAL BENCH

NEW DELHI

COMPANY APPEAL (AT) NO.109/2025

(Arising out of judgement and order dated 02.05.2025 passed by National Company Law Tribunal, Mumbai in CA No.129/2024 and IA(Companies Act) No.82/2024 in Company Petition No.64(MB) of 2022)

In the matter of:

Madhukar Anantrao Pathak,
S/o Shri Anantrao Govindrao Pathak,
R/o Plot No.4, Yashashree Cooperative Housing
Society, Behind MIT Gate, Ex-Servicemen
Colony, Kothrud, Pune 411035 Appellant

Vs

1. MPTA Limited,
   DSHM Collage, Near Sanjeevani Hospital,
   Karve Road, Erandawana, Pune
   411038

2. Buttepatil Properties,
   657A, Gulab Pavilion,
   7th Floor, Deccan Gymkhana,
   Pune 411004

3. Abhishek Madhukar Pathak,
   Residing at Building No.14, Flat No.6,
   Anand Nagar, Paud Road, Kothrud,
   Pune, Maharashtra 411029

4. Sandeep Vijay Khardekar,
   36/17, Dadhe Ruikar Scheme, Canal Road
   Opposite SNDT, Pune, Maharashtra
   411038

5. Vaijinath Chandrappa Biradar
   Flat No.5, Building No.B 16, S.No.117,
   Pune, Maharashtra 411052

6. Vinayak Hanumantrao Ghorpade,

S.No.165A, Shivanjali Apartment,
Indira Nagar, Pune, Maharashtra 411033

7. Prashant Narsignh Mane,
B22A, Shivanjali Bungalow,
Ragvilas Society,
Pune, Maharashtra 411091 Respondents

For Appellant: Mr Akshay Petkar, Mr Vishesh Kalra, Ms Simran Shadija, Mr Preet Oberoi, Advocates.
For Respondent: Mr Kunal Tandon, Sr Advocate, Sinha Shrey Nikhilesh, Shwetal Sajepal, Mr Parth Davar, Advocates for R1.
Mr Amir Arsiwala, Mr Naman Kapoor, Mr SP Singh Chawla, Ms Neha Arya, Advocates for R2.

With

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   Pune, Maharashtra 411001 Respondents

For Appellant: Mr Akshay Petkar, Mr Vishesh Kalra, Ms Simran Shadija, Mr Preet Oberoi, Advocates.
For Respondent: Mr Kunal Tandon, Sr Advocate, Sinha Shrey Nikhilesh, Shwetal Shepal, Mr Parth Davar, Advocates for R1.
Mr Amir Arsiwala, Mr Naman Kapoor, Mr SP Singh Chawla, Ms Neha Arya, Advocates for R2.

JUDGEMENT

JUSTICE YOGESH KHANNA, MEMBER (JUDICIAL)

This appeal is filed by the appellant against the common judgement and order dated 02.05.2025 passed by the Ld. NCLT, Mumbai Bench in CA No.129/2024 as well as IA No.82/2024.

2. It is stated the appellant is a part of the group forming minority shareholding in the Respondent No.1 company and allegedly it was mismanaged by its directors and its majority shareholders. It is alleged while the Company Petition No.*64/2022* was pending, the Respondent company under the control

of majority, sold one of the two properties of the company being land bearing Final Plot No.887A/21, (TPS-1, Bhamburda, Pune, varied final) ad-measuring 446.16 sq.mts, carved out of S.No.198 A/6 and S.No.192/2 together with an old two-story residential building constructed thereon admeasuring 366.02 sq. mts built up inclusive of garage, situated at Village Bhamburda (Shivaji Nagar) of City of Pune namely Saakar Bungalow Property.

3. It is alleged the said property forms over *20%* of the undertaking of the company; was sold in gross violation of Section *180* of the Companies Act, 2013 and at a grossly undervalued rate to a related party. It was argued the sale was carried out during the pendency of Company Appeal (AT) No.*196/2023* wherein the appellant had challenged the order vacating the interim stay in Company Petition No.*64/2022*, despite hearing being complete. It is argued this Tribunal vide its order dated 06.03.2024 had directed the parties to maintain status quo till the Company Petition is decided but whereas the Ld. NCLT disposed of the two IAs and confirmed the sale of the property, rather than disposing of the company petition. Further it is argued the purchaser also acted mala fide.

4. Thus the first argument raised by the appellant is non-compliance of Section *180(1)(a)* read with Explanation to the section, of the Companies Act, 2013. The provision is as under:-

> ***"180. Restrictions on powers of Board.****—(1) The Board of Directors of a company shall exercise the following powers only with the consent of the company by a special resolution, namely:—*
> *(a) to sell, lease or otherwise dispose of the whole or substantially the whole of the undertaking of the company or where the company owns more than one undertaking, of*

the whole or substantially the whole of any of such undertakings.

(b) Explanation. —For the purposes of this clause, —

(i) "undertaking" shall mean an undertaking in which the ***investment*** *of the company exceeds twenty per cent. of its net worth as per the audited balance sheet of the preceding financial year or an undertaking which* ***generates*** *twenty per cent. of the total income of the company during the previous financial year;*

(ii) the expression "substantially the whole of the undertaking" in any financial year shall mean twenty per cent. or more of the value of the undertaking as per the audited balance sheet of the preceding financial year;

5. It is the submission of the learned counsel for the appellant the net worth of the company *viz* share capital *plus* reserves as shown in the last relevant balance sheet was Rs.*20.89* crores and whereas the subject property was sold at value of Rs.*9.50* crores, thus being more than 20% of the net worth of the company and as such it could not have been sold *except* with the consent of the company by a special resolution. The learned counsel for the appellant has referred to the fact the Ld. NCLT had disposed of the application relying upon the judgement pronounced under the old Companies Act, 1956 and though Section *293* of the said Act of 1956 was substantially similar to Section *180* of the Companies Act, 2013 but with a difference that the *undertaking* is defined only in the later Act of 2013.

6. It was argued the Ld. NCLT has wrongly held the assets of the company does not fall within the ambit of the word *"undertaking"* as given in Explanation to Section *180(1)(a)* of the Companies Act. Further reference was made to sub-section *(3)* of Section *180* of the Companies Act, 2013 as under: -

"180. Restrictions on powers of Board.

(1) xxx
(2) xxx
(3) Nothing contained in clause (a) of sub-section (1) shall affect—
(a) the title of a buyer or other person who buys or takes on lease any property, investment or undertaking as is referred to in that clause, in good faith; or
(b) the sale or lease of any property of the company where the ordinary business of the company consists of, or comprises, such selling or leasing.

7. It was argued the purchaser was never a bona fide purchaser and has rather acted malafidely as he knew the litigation was pending *qua* the said property before the Ld. NCLT. In support of his arguments he submitted though the Ld. NCLT had granted the *status quo* upon the assets and shareholding as on 28.03.2022 but the *status quo* on the assets was vacated on 18.08.2023 and despite the filing of Company Appeal (AT) No.*196/2023* by the appellants herein on 29.09.2023, the said bungalow was sold. Reference was made to the following paras of the sale deed dated 09.11.2023 executed by the Company in favour of M/s ButtePatil Properties which allegedly reveal the purchaser knew about the pendency of litigation between the parties *qua* such property and despite knowing it, had purchased it at very less value by undervaluing it, in collusion with the Respondents herein and hence was never a bonafide purchaser but was a speculative one. The following paras of sale deed were referred to as under:

"The Seller company states that subsequent to vacation of the status quo order by the Hon'ble National Company Law Tribunal, As on date apart from the first charge of Axis Bank Ltd on the said property, no other encumbrances exist with respect to the said property including but no limited to any status quo order by the Hon'ble National Company Law Tribunal, Mumbai or the National Company Appellate Tribunal,

New Delhi which prohibits or stops the company from selling the said property.

T. That, after the vacation of stay order from Hon'ble NCLT Bench Mumbai dated 18.08.2023 and the notice(s) issued by Axis Bank Ltd, regarding the outstanding loan the Seller has decided to sale the said property for repaying the loan of Axis Bank Ltd. The Seller Company has passed necessary Board Resolution authorizing the Directors viz Mr Ravindra Undale and Mr Hemant Bhongale for the sale of the said property.

8. Heard.

9. Qua non-compliance of sub-section (a) of Section 180(1) read with its explanation, the Ld. NCLT held as follow: -

37. Ld. Counsel for MPTA has relied on the judgment in the matter *of Sree Yellamma Cotton, Woollen and Silk Mills Co., wherein the Hon'ble Madras High Court while dealing with the interpretation of the term "undertaking" under the Companies Act had observed as follows:*

> *"The word "undertaking" is not defined in the Act. One has therefore necessarily to depend upon the dictionary meaning or such secondary meaning the term might have acquired by commercial usage or long practice governing the workings of and borrowings by companies.*
>
> *The ordinary dictionary meaning is what has already been referred to by me while summarizing Mr. Ullal's arguments. It is not in its real meaning anything which may be described as a tangible piece of property like land, machinery or the equipment; it is in actual effect an activity of man which in commercial or business parlance means an activity engaged in with a view to earn profit. Property, moveable or immoveable, used in the course of or for the purpose of such business can more accurately be described as the tools of business or undertaking, i.e. things or articles which are necessarily to be used to keep the undertaking going or to assist the carrying on of the activities leading to the earning of profits."*

38. He further relied on P.S. Offshore Inter Land Services Pvt. Ltd. and Anr. Vs. Bombay Offshore Suppliers Ltd. and Ors: 1991 SCC OnLine Bom 555, the Hon'ble Bombay High Court had interpreted the expression 'undertaking', the relevant paragraph of which is extracted below:

> *"18. In my judgment, the expression "undertaking" used in this section is liable to be interpreted to mean "the unit", the business as a going concern, the activity of the company duly integrated with all its components in the form of assets and not merely some asset of the undertaking. Having regard to the object of the provision, it can, at the most, embrace within it all the assets of the business as a unit or practically all such constituents. If the question arises as to whether the major capital assets of the company constitute the undertaking of the company while examining the authority of the board to dispose of the same without the authority of the general body, the test to be applied would be to see* ***whether the business of the company could be carried on effectively even after disposal of the assets in question*** *or whether the mere husk of the undertaking would remain after disposal of the assets? The test to be applied would be to see whether the capital assets to be disposed of constitute substantially the bulk of the assets so as to constitute the integral part of the undertaking itself in the practical sense of the term."*

39. Ld. Counsel for MPTA further submits that the Companies Act, 2013 itself provides a legislative distinction between the term 'asset' and 'undertaking' which is indicative from the reading of section 2(16) of the Companies Act, 2013 whereunder the term 'charge' is defined as follows:

> *"an interest or lien created on the* ***assets*** *of a company or its* ***undertaking*** *or both as security and includes a mortgage."*

40. It is submitted that the disjunctive "or" in the above definition signifies that "asset" and "undertaking" are not intended to be synonyms, thus, the legislative drafting by employing "or" manifests a clear intent to ascribe distinct meanings to these terms.

41. Close analysis of the explanation of section 180(1)(a) of the act, 2013 shows that the meaning of undertaking for the purpose of section 180 is "an undertaking in which the investment of the company exceeds 20% of its net worth as per the audited balance sheet of the preceding financial year or an undertaking which generates 20% of the total income of the company during the previous financial year". In other words, the Legislature is referring to an undertaking for which

clarification and explanations have been given through judicial pronouncements under 1956 Act.

42. From the perusal of the judgments cited above, we agree with the submission of Ld. Counsel for MPTA that the expression "undertaking" cannot be taken as synonym of "asset"/ "property" of a company. Further, though the Companies Act does not expressly define and differentiate the terms "asset" and "undertaking", yet it can be inferred from the usage of the said expressions in the Companies Act together with the judicial pronouncements that there has a legislative intent to give different meanings to both the terms.

43. While 'asset' would generally mean a property of the Company whether moveable or immoveable and may or may not be used to generate revenue, an 'undertaking' of a company could be referred to as something that would constitute an integral part of a company and would be used as a tool for business purpose thereby contributing to the Company's generation of revenue and/or earning of profits.

44. In the present case, Ld. Counsel for MPTA submitted that the Saakar Bungalow Property was acquired in the year 2017 and it constitutes only an individual asset. It is further submitted that the said Property from the date of its purchase until the sale date i.e. 09.11.2023, did not generate any revenue for MPTA and in fact, it is a continuing liability due to accruing tax liabilities.

45. During the course of the argument, Ld. Counsel for the Petitioners admitted that the Saakar Bungalow Property is not being used for business purpose and is not generating any revenue.

46. Hence, we are of the view that the said Property was merely an individual asset of MPTA and the same cannot be intermingled or used as synonym to "undertaking" in view of the clear distinction made under the Legislature.

10. The question which arose in this appeal is if the said subject property can be treated as an *undertaking* per Explanation to Section *180(1)(a)*.

11. Now admittedly, the Ld. NCLT held the *undertaking* has different meaning altogether than from the *assets* of the company, as is explained in para *37* to *46* of the impugned order above. We see no reason to differ from the findings given

by the Ld. NCLT on the aspect. Section *180(1)(a)* applies only to disposal of an '*undertaking'* or substantially the whole thereof and not to isolated assets. The explanation in the said provision *qua* the *20%* threshold applies only once the subject matter qualifies as an *undertaking*.

12. Upon considering the judgements of P.S. Offshore Inter Land Services Pvt Ltd & Others Vs Bombay Offshore Supplies & Services Ltd & Ors 1991 SCC Online Bom 555 and International Cotton Corporation (P.) Ltd. Versus Bank of Maharashtra & Anr 1969 SCC OnLine Kar 177, the following legal position emerges – *(a)* '*undertaking'* means a business as a going concern, not individual assets. It is an organized profit-making activity whereas assets are merely its tools; and *(b)* disposal of a single mortgaged property is not disposal of an undertaking.

13. A comparative reading of Section *293(1)(a)* of the Companies Act, 1956 and Section *180(1)(a)* of the 2013 Act demonstrates the latter merely introduced a quantitative threshold to govern the requirement of a special resolution in respect of the sale of an "*undertaking*." The explanation to Section 180 expressly provides the definition of "substantially the whole of the undertaking" is "for the purposes of this explanation" alone. Thus, the 20% threshold operates only as a limitation upon the necessity of passing a special resolution and cannot be read to expand the meaning of "*undertaking*" to cover individual assets. In fact, the phrase "*an undertaking in which…*" appearing before the specified percentages requires a preliminary qualitative assessment to ascertain whether the subject

matter qualifies as an "*undertaking*" at all. It is pertinent the Act does not define "*undertaking*," thereby requiring reliance on settled judicial interpretation.

14. The statutory scheme under the Companies Act, 2013 reinforces this distinction. Section *2(16)* of the Act defines 'charge' as an interest created on the assets or undertakings of a company— using the disjunctive 'or.' The legislative intent is that '*assets'* and '*undertakings'* are not synonymous.

15. Now, Saakar Bungalow, acquired in 2017, was allegedly a passive, non-revenue-generating mortgaged property, not part of the operational business. Its sale was disposal of an asset, not an undertaking. Therefore, the requirement of a special resolution under Section 180 was not necessitated. The Appellants' interpretation of provisions of Companies Act, is wholly misplaced in law. Admittedly it was not a sole asset of the company.

16. Qua good faith *per* sub-section *(3)* of Section *180* (supra), we note it was not a sale simplicitor by the company but a distress sale under the SARFAESI Act, 2002 by Axis Bank through the company. Admittedly Axis Bank had granted loan to Respondent No.1 company and admittedly the company had defaulted in re-payment of such loan(s) and the loan account was declared NPA and the personal guarantors/directors, including the appellants herein, were all proceeded against by Axis Bank under the SARFAESI Act.

17. Accordingly IA No.*110/2023* was filed on behalf of the company wherein it was prayed the company had availed credit facility from the Axis Bank on 16th August, 2019 and since it could not make repayments, their account was

declared NPA with effect from 24th August, 2022. The Axis Bank had served a notice on 05.05.2023 under Section *13(2)* of the SARFAESI Act calling upon the company and its guarantors, *including the appellants herein* to make payment of the outstanding dues, within the period of 60 days, failing which the action to take physical possession of the secured assets would be taken. Thus the application was filed for vacation of the *status quo* order of dated *28th March, 2022* so that mortgaged property of the company could be sold to pay off the bank loans and the current account of the company can be made operational and the company may be able to start again. It is pertinent to mention the appellants No.1 and 2 both were also guarantors to the said loan facility.

18. In their reply to the I.A, (supra), the appellants have rather admitted the Respondent No.1 company was facing *financial* difficulty but could have availed *other options* to meet financial requirements of the company rather than to sell off its assets. In this reply the appellants only blamed other directors of the company for this situation.

19. The Ld. NCLT then passed an order dated 18.08.2023 in CP No.*64/2022* noting all the above contentions and held both the groups in the company were at logger heads; the financial statements of the company were not filed since long due to misunderstanding between the groups; the company was a headless organization; the Axis Bank had initiated SARFAESI proceedings against the company as well as its directors for enforcement of their security interest against

the subject property mortgaged to it for recovery of its outstanding dues and the company was unable to clear such outstanding dues.

20. As the appellants in their reply have also submitted selling the property through an administrator would involve expenditure, the Ld. NCLT then directed the company to give a 15 days' prior notice to the appellants herein with details of the buyer, price etc. so as to enable the appellants to bring any buyer offering higher amount than brought by the company as the appellants though did not object to the sale of the property but alleged the property may fetch higher amount if it is disposed of in open market. The Ld. NCLT also noted the appellants were turning down every suggestion given by the Bench as well as by Respondent No.1 company and were taking advantage of the interim order to settle their scores with the Respondents.

21. Now admittedly the sale deed noted about the pendency of the litigation; vacation of the interim order as well as the fact that the outstanding amount of loan was approximately Rs.*12.68* crores and only after seeking valuation of the property, i.e. at about Rs. 8 crores it was sold for a sum of Rs.*9.50* crores. Now admittedly the purchaser is not a related party.

22. CA 129/2024 was then moved by the appellants herein for cancellation of the sale deed on the grounds *viz* violation of Section *180(1)(a)*; malafide act of the purchaser; and under valuation. However, a bare perusal of the application would show no allegation was made against the purchaser and the allegations of fraud were made only against the management of Respondent no. 1 company.

Further as is noted above CA *213/2023* for impleading Axis Bank and seeking a status quo against the Axis Bank restraining them to sell the mortgaged property was rather got dismissed as withdrawn by the appellants themselves. It was only thereafter the Axis Bank went ahead to sell properties to the purchaser. Admittedly the entire sale consideration *went to Axis Bank and adjusted against loan and not a single penny was given to other group or directors in Respondent no.1 company.*

23. Thus from the above facts it is clear it was a distress sale wherein the Axis Bank was pressurizing for recovery of its loan and even the appellants were aware of the fact but were of the view the property be sold to an outsider and not through the SARFAESI proceedings. Admittedly no allegations were ever made by the appellants in their pleadings against the purchasers and all allegations of malafide were made against another group of directors. Thus, the factum of good faith of purchasers cannot be questioned. Moreso by the time the Sale Deed was executed, the purchaser had already paid about Rs. *50* lakhs.

25. Qua the issue as to if the property was undervalued, the Ld. NCLT had held as under: -

> *58. It is to be noted that this Bench also had raised a query to MPTA regarding the non-inclusion of Potential FSI in the Valuation Report. In this regard, MPTA submitted that the FSI derived from the TDR is contingent and subject to specific conditions. It is further submitted that the said FSI has a limited validity period, typically one year and it requires a separate renewal process which would incur additional costs and administrative procedures which cannot be undertaken since the Respondent Company is currently non-operational and lacks the financial resources and operational capacity.*

> *Therefore, it is submitted that the potential FSI was consciously excluded in the Valuation Report to avoid misleading and untrue disclosures.*
>
> *59. We have considered the submissions of the parties. Keeping in view the same, we are of the view that a sale which has been otherwise conducted in a legal manner cannot be set aside solely on the ground that the property was sold at allegedly a lower price than the market value. Moreover, the Sale Deed dated 09.11.2023 clearly states that the sale is on 'as is where is basis' and it is also stated in the Sale Deed that:*
>
> > *"The offer given by the Purchaser was deemed to be reasonable considering the present dispute between the shareholders and outstanding loan from the bank, the offer extended close to fair market value as obtained from expert valuer appointed by the Seller and Purchaser independently as per prevailing market rate."*
>
> *60. Considering the same together with the submissions/clarifications given by MPTA regarding the valuation and FSI/TDR, we are of the view that there is no discrepancy or irregularity in the valuation of Saakar Bungalow Property conducted by MPTA warranting any interference.*

26. We see no reason to differ from the findings of the Ld. NCLT on this count. Even otherwise the law is settled that appellate interference with discretionary orders is extremely limited. The Hon'ble Supreme Court in Wander Ltd. v. Antox India (1990 Supp SCC 727) held–

> *"The appellate court will not interfere with the exercise of discretion of the trial court and substitute its own discretion except where the discretion has been shown to have been exercised arbitrarily, capriciously or perversely or where the court has ignored the settled principles of law regulating grant or refusal of interlocutory injunction."*

27. Considering the above legal position, the Hon'ble NCLT's judicial discretion in lifting the interim status *qua* order dated 18.08.2023 and subsequently upholding the sale by its Order dated 02.05.2025 cannot be substituted by this

Tribunal since the Appellant has failed to demonstrate any perversity or arbitrariness in the said Orders.

28. Thus both these appeals are devoid of merit and are accordingly dismissed.

29. Pending applications are also disposed of.

(Justice Yogesh Khanna)
Member (Judicial)

(Mr. Ajai Das Mehrotra)
Member (Technical)

Dated:09-03-2026
BM