

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY**  
**ORDINARY ORIGINAL CIVIL JURISDICTION**  
**OFFICIAL LIQUIDATOR REPORT NO. 34 OF 2025**  
**IN**  
**COMPANY PETITION NO. 198 OF 2011**

In the matter of M/s. Indage Vineyard Pvt. Ltd.  
(In Liqn)

Kotak Mahindra Bank Ltd.

...Petitioner

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**Mr. Anirudh Hariani**, *for Official Liquidator.*

**Mr. Amir Arsiwala**, *Counsel a/w Adv. Ashwini Gawade, Adv. Tej Lapsiya i/b Bijesh Balan in OLR/34/2025.*

**Mr. Chetan Shelke**, *Dy. Official Liquidator.*

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**CORAM: SOMASEKHAR SUNDARESAN, J.**

**DATE: JUNE 25, 2026**

**ORAL JUDGEMENT:**

**Context and Factual Background:**

1. The captioned proceeding is essentially an Official Liquidator's Report seeking a declaration that the transfer of the agricultural land, more particularly described in paragraph 18 of the Official Liquidator's Report ("**Subject Property**"), be declared as void, on the ground that a case has

been made out to attract the provisions of Section 531(1) of the Companies Act, 1956 (“*the Act*”).

2. The factual matrix of this case speaks for itself. The Subject Property had been acquired for a consideration of Rs. 84.50 lakhs on April 8, 2008, by Indage Vineyard Pvt. Ltd. (“*Company*”), which is now under liquidation. The Board of Directors of the Company resolved to transfer the Subject Property to the joint names of the then Directors and promoters, comprising the Choughule Family (“*Promoters*”) headed by one Mr. Sham G. Choughule. On April 15, 2011, an extraordinary general meeting of the Company was held and a resolution was passed purportedly under Section 293(1)(a) of the Act, which deals with approval of shareholders for the transfer of the whole or substantially the whole of the undertaking of a company.

3. It is common ground that this resolution forms the basis of the transfer being effected, with mutation entries being passed in the land records indicating that the Subject Property stood transferred to the Promoters without any other instrument being executed in respect of the transfer, much less a registered transfer deed documenting the conveyance of title from the Company to the Promoters. In other words, this was a related party transaction without being documented by anything other than a shareholder resolution and a board resolution, and yet the State Authorities were

convinced to make a mutation entry to change the land records to insert the names of the Promoters as the acquirer-owners of the Subject Property.

4. However, when one looks at the sequencing, it is noteworthy that the Company Petition for winding up had been filed on April 30, 2011, which, under Section 441 of the Act, would indicate the commencement of winding-up proceedings. The mutation entries to bring the names of the Promoters into the land records as owners of the Subject Property was effected two months later, on June 30, 2011. The winding-up Petition was admitted on February 17, 2012, and on September 26, 2014, the Company was ordered to be wound up and the Official Liquidator came to be appointed.

5. Mr. Sham G. Choughule, the head of the Choughule Family expired on August 23, 2020. This led to a further mutation entry on March 7, 2021, whereby his name was deleted and the name of Mrs. Aruna Sham Choughule was added as a joint owner of the Subject Property.

6. Against this factual backdrop, Mr. Anirudh Hariani, Learned Advocate on behalf of the Official Liquidator would point to the various documents on record to indicate that the Official Liquidator has been in constant communication with the Sub-Registrar of Assurances and the District Collector, indicating that the Subject Property belongs to the Company and not to the Promoters, and putting them on notice that no further mutation

entries and recognition of further transfers of the Subject Property should be effected.

7. As it transpires, the Promoters indeed executed a Memorandum of Understanding dated December 14, 2023 to sell the Subject Property to third parties. The Deputy Collector refrained from recognising this transfer, since the Official Liquidator had put him on notice about the Subject Property actually belonging to the Company. The Deputy Collector sought guidance from the Official Liquidator, who stood his ground, insisting that the Subject Property belonged to the Company. Upon the insistence of the Promoters and their demand that the Sub-Registrar should issue a written confirmation that he would not transfer the Subject Property, a further request for guidance from the Official Liquidator was made on December 19, 2024. This was responded to by a letter dated January 14, 2025, from the Official Liquidator, asserting that no transfer should be recognised since the Subject Property belonged to the Company. The Official Liquidator also called upon the Collector to provide copies of the documents and instruments on the basis of which the Promoters' names came to be entered in the land records in respect of the Subject Property.

8. Mr. Amir Arsiwala, Learned Advocate for the Promoters would submit that the initial reply from the Promoters in these proceedings was a clear

assertion that the transfer to the Promoters had been valid and that the Official Liquidator's Report was misconceived. However, in a Sur-Rejoinder, after the Rejoinder of the Official Liquidator articulated the precise state of facts, there was a *volte face* but a legitimate one, from the Promoters who had discovered that they had been under a misconception that there had been a valid transfer from the Company to the Promoters. The Promoters' stance in the Sur-Rejoinder was that the late Mr. Sham Choughule had handled all the affairs of the Company and they were not personally aware of the precise factual position until their lawyers pressed them for documents to deal with the Rejoinder and then advised them about the legal position, namely, that there had been no valid transfer in favour of the Promoters in the first place.

9. To counter Mr. Hariani's contention that the Promoters are now seeking to escape the consequences of having taken an indefensible, unjustifiable and violative stance, Mr. Arsiwala would submit that since no transfer took place, there is no question of "*fraudulent*" preference. Mr. Arsiwala would submit that the Promoters have no basis to assert any right to the Subject Property since they have now come to the informed and considered view, based on legal advice, that the mutation entry effected in their favour could be no transfer at all and that the Subject Property always belonged to the Company. Mr. Arsiwala would also submit that a separate application has been taken out seeking a permanent stay of the liquidation with a proposal to revive the

Company. He would earnestly submit that even the transfer sought to be effected by the Promoters to third parties in 2023 under the Memorandum of Understanding was only with a view to raise funds to repay the creditors and revive the Company. He would submit that proceeds from the sale of the Subject Property would more than satisfy the amounts owed to the creditors, after which the Company could come out of winding up.

**Analysis and Findings:**

10. Having considered the rival contentions and having examined the record, it is clear that the upshot of the Promoters' submission is that the Promoters do not want the stigma of being declared as having indulged in a fraudulent transfer and a fraudulent preference under Section 531 of the Act.

11. At the threshold, it would be necessary to extract the provisions of Section 531(1) of the Act.

***“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.”*

**[Emphasis Supplied]**

12. It is clear from a plain reading of the provision that any transfer of property, movable or immovable, would be deemed to be a fraudulent preference if it is effected within a period of six months before the commencement of the winding up, had such transfer been regarded as fraudulent preference in the case of an individual facing insolvency having effected a transfer in the three months prior to the presentation of an Insolvency Petition. The transaction being regarded as one of fraudulent preference is a deemed position in the eyes of the law. Apart from the variation of the period from three months for individual insolvency to six months for corporate insolvency, the ingredients of fraudulent preference as stipulated in this provision is. uniform.

13. Having examined the record, it appears that the transfer from the Company to the Promoters was indeed effected in the land records in the absence of any instrument of transfer, well after the winding up petition was presented in April 2011. There is not a whisper of the consideration paid by the Promoters to the Company. The enabling shareholder resolution sought to be relied upon (although initially) as the transfer, is purported to have been

passed prior to the presentation of the winding up petition. One cannot forget the fact that the Company was a private limited company that was entirely owned by the Promoters.

14. The record shows that to justify the transfer of the Subject Property to themselves, the Promoters claimed to have lent funds to the Company, in consideration of which the Subject Property was moved out of the Company to the Promoters. However, there is no whisper of any amount so purported to have been owed by the Company to the Promoters; there is no whisper of valuation of the Subject Property; and no whisper of the manner in which the amounts claimed to have been owed by the Company compares with the value of the Subject Property.

15. A plain reading of Section 531(1) of the Act would show that the protectees of the provision are the creditors of the company. The persons who entirely own the Company may claim to believe that the properties of the Company are indirectly and beneficially owned by them. However, such a proposition is contrary to first principles of company law, namely, that the assets of a company are not the assets of its shareholders but also, one must never forget that the stakeholders whose interests have to be balanced in the context of Section 531 of the Act are the creditors of the Company and the Promoters.

16. Being a wholly-owned private limited company, the maintenance of records were entirely in the Promoters' control. The manner of the shareholders' resolution being dated prior to the date of presenting the winding up petition arouses serious suspicion. The resolution contains no value for the proposed transfer to the Promoters. The need to pass a resolution under Section 293(1)(a) of the Act applies to public limited companies and not to private limited companies. Even if the Company were a subsidiary of a public company and thereby passed such a resolution, there is nothing in the resolution to indicate the value at which a related party transaction was being approved. If the resolution had genuine underlying economic value, it would have indicated the amounts owed by the Company to the Promoters as of the last audited financial statements or even as of April 15, 2011, the date of the resolution.

17. Moreover, the Promoters helping themselves to the Subject Property for no stated consideration and worse, for a pretended consideration of past loans owed by the Company to the Promoters, would evidently and materially erode the ability of the creditors to recover their dues from the liquidation estate of the Company. This is precisely the mischief sought to be interdicted by the deeming fiction of fraudulent preference created in Section 531 – of shareholders of a company helping themselves to the assets of a company, from which the creditors would need to paid upon liquidation of such assets.

18. The Promoters had remarkable resourcefulness to have the land records mutated in their favour without any executed instrument much less a registered instrument. Once that was achieved, upon Mr. Choughule's demise, his widow's name was routinely substituted by another mutation entry. However, in 2023, the Promoters have attempted to further sell the Subject Property. By this time, Mr. Sham Choughule was long dead. In short, the Promoters enjoyed the title to the Subject Property and attempted to sell the Subject Property to third-party purchasers, which would have created further third party rights and complicated the ability of the creditors to get their rightful dues.

19. It is noteworthy that while the concept covered by Section 531 is one of fraudulent preference, the standard of proof is the civil standard of preponderance of probability and not the criminal standard of beyond reasonable doubt. Clearly, no reasonable mind, in view of the aforesaid analysis, could conclude that there was no element of deceiving the creditors of the wholly-owned private limited company by the shareholders of such company.

20. Mr. Arsiwala would earnestly submit that the Memorandum of Understanding executed in 2023 was only aimed at generating funds to repay the creditors and revive the Company and that this should be taken as an

indication of the *bona fides* of the Promoters. He contends that, thereby, this Court should hold that there had been no transfer at all for a cancellation to be necessary; and in any case, the provisions of Section 531 should not be invoked and the Promoters must not be visited with the consequences of being treated as persons who have participated in a fraudulent transfer.

21. Towards this end, he would rely on the judgement of a Learned Single Judge of this Court in the case of *Monark Enterprises*<sup>1</sup> to contend that merely because a transfer took place within a period of six months prior to the winding up Petition being presented, a transaction would not automatically be tainted with fraud under the Act. He would also rely upon the judgement of a Learned Single Judge of the Delhi High Court in *Morepen Finance*<sup>2</sup>, and in particular on the following paragraphs:

*“25. A. There is a consensus of opinion that in the case of the annulment of a transfer the burden of proof is on the official receiver of the creditors to prove the absence of good faith as well as of valuable consideration.*

*B. If valuable consideration is proved, good faith follows and the creditor or the receiver has to prove by way of cogent evidence that there was want of good faith in the transaction.*

*C. There may not be any direct evidence of want of good faith but the circumstances must be such as to lead to the only conclusion that the transfer in favour of the transferee lacked in good faith.*

*D. It must be shown, in addition that “the real object of transfer is to place the*

1 *Monark Enterprises v. Kishan Tulpule - 1991 SCC OnLine Bom 461*

2 *Morepen Finance Ltd. v. Reserve Bank of India - 2004 SCC OnLine Del 685*

*property beyond the reach of the creditor for the benefit of the debtor and is not for the payment of his debts*” but for protection of his interest. Thus, dominant intention must be to benefit the debtor as against the creditor.

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29. *Keeping in view the aforesaid principles in mind*, it cannot be said that transaction in question would amount to “fraudulent preference”. The *transaction is of a date before even winding up petition was filed*. Further, *valuable consideration is proved as the applicant advanced a loan in the form of an ICD in consideration whereof the bond in question was endorsed*. Therefore, *good faith in the transaction follows and there is not even a suggestion either by the official liquidator or the ex-director or the RBI which could shake this presumption*, what to talk of any cogent evidence establishing want of good faith. It was a contemporaneous act. It was *not a case where the ICD was given much earlier and the applicant was subsequently, to secure that loan, given the bond*. The report of the court commissioner, to which reference has already been made, has found the transaction to be genuine. Therefore, it cannot be termed as a “fraudulent preference”.

*[Emphasis Supplied]*

22. I am afraid that the aforesaid observations in **Morepen Finance** are of no assistance to the Promoters, and on the contrary sharpen why the principles articulated in Paragraph 25 of that judgement, extracted above, would support the Official Liquidator’s case in the instant case. In **Monark Enterprises** too there was an evident consideration necessitating demonstration of bad faith. In the instant case, there is not even a whisper of a consideration, much less a valid consideration. There is a claim of monies having been owed by the Company to the Promoters, without a whisper of the

quantum of such amounts purportedly owed. The absence of any consideration demonstrates the absence of good faith. In the instant case, there is not even an instrument executed much less a genuine underlying transaction holding the field. On the contrary, it now contended in a self-serving stance, and that too after multiple iterations and assertions to the contrary, that there had been no transfer at all.

23. The Promoters enjoyed title to the property and even attempted to convey it further. The only conclusion that one can draw is that the Promoters sought to place the Subject Property beyond the reach of the creditors in the course of the liquidation, and that too by helping themselves to it and thereafter by attempting to sell it further, and even asking the State officials to confirm in writing the basis in law for their refusal to effect further mutation entries. Even for the sake of argument, if the Company owed the unquantified sums to the Promoters, it would clearly show that the Company under the control of the Promoters gave preference to the Promoters over the other creditors – clearly the mischief sought to be remedied by Section 531 of the Act.

24. Mr. Arsiwala's submission on instructions from the Promoters, is that the attempt at transferring the Subject Property was only to raise funds to repay the creditors and revive the Company. If that were so, all that the

Promoters have to do is to introduce the proposed purchasers to the Official Liquidator to have the Subject Property sold in accordance with law to discover a good price. The Promoters could leverage this potential from such interested third parties to revive the Company and make such a proposal in accordance with law. All that can be considered in good faith in accordance with law, but as far as the factual matrix of what has already transpired is concerned, it is clear to me that a fit case of fraudulent preference against the creditors has been made out.

25. The contention that in the absence of an actual transfer instrument there was no transfer at all for it to be declared void is a circuitous one, turning the logic on its head. A transfer sought to be effected by whatever means would bring within its fold a transfer effected by way of mutation entries, which the Promoters were resourceful enough to effect with the Sub-Registrar's Office without so much as an instrument of transfer. Having done that, they have secured title to the Subject Property even without documentation, and that calls for nullification within the jurisdiction of Section 531(1) of the Act.

26. Whether the Promoters can legitimately attribute all decisions to the late Mr. Sham G. Choughule, indicating that they were not personally involved and therefore were unable to understand or explain the context in which the

transfers took place, may be considered appropriately if a meritorious application for permanent stay and revival of the Company is filed. The *bona fides* of the current Promoters will be adjudicated at that stage. In the facts of this case, the individuals concerned are expected to be well versed with affairs of corporate law, having been transferees of the Subject Property in the land records with no consideration whatsoever being discharged. Even if they were not individually legal experts, they had resources to engage legal advice and get acquainted with the law and the consequences of the law. In my opinion, a cogent case for an inexorable conclusion that the provisions of Section 531 are attracted is made out.

27. Now that the Promoters too concede that there was no transfer at all, to my mind, that position only points to the position that there had been no valid transfer for the mutation entries to be regarded as legal. The purported transfer was wholly illegal and the mutation of land records to the contrary deserve to be reversed. These entries, therefore, call for an intervention by declaring the to be wholly illegal. It is imperative that the mutation entries changing the title to the Subject Property from the name of the Company to the names of the Promoters including the mutation entry upon the demise of Mr. Sham Choughule would need to be reversed and the name of the Company now under liquidation would need to be entered in the land records.

28. The Collector is directed to ensure that such reversal of the mutation entries is effected on the basis of this judgement within a period of four weeks from the date on which the Official Liquidator serves this judgement on the Collector's office. The Official Liquidator shall issue notice within a period of three weeks from the upload of this judgement on the Court's website to the Collector, calling upon him to comply with this judgement.

29. In these circumstances, the Official Liquidator's Report deserves to be ***allowed***. The transaction in question is declared void and the directions as aforesaid shall be complied with by the State officials in charge of maintenance of land records. List under the caption "***Reporting Compliance***" on ***August 24, 2026***.

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

**[SOMASEKHAR SUNDARESAN, J.]**