IN THE HIGH COURT OF JUDICATURE AT MADRAS

(IN INSOLVENCY)

FRIDAY, THE 27TH DAY OF JULY 2018

THE HON'BLE DR.JUSTICE G.JAYACHANDRAN
AND
THE HON'BLE MR.JUSTICE C.V.KARTHIKEYAN

APPLN. No.156 of 2017
&
APPLN.NOS.62,63, 64 AND 65 OF 2018
&
APPLN.NOS.33, 34 & 35 OF 2018
in
I.P. No.25 of 2014

In the matter of the Presidency Towns Insolvency Act, III of 1909 and In the matter of Arjunlal Sunderdas ...Debtor

I.P.NO.25 OF 2014

Smt.Chitra Desai
residing at 3A-302, Oakland Park,
Yamuna Nagar, Lokhandwala Complex,
Andheri (West), Mumbai. ... Petitioning Creditor

-Versus-

Mr.S.Arjunlal Sunderdas
23, Anderson Road, Nungambakkam,
Chennai-600 006. ... Respondent / Debtor

APPLN. No.156 of 2017

Dr.M.Arumugam,
S/o.A.Murukiah Pillai,
No.7, Khader Nawaz Khan Road,
Nungambakkam,
Chennai 600 006. ... Applicant

-Versus-

1.The Official Assignee,
High Court, Chennai - 104. ... 1st Respondent

2.Smt.Chitra Desai
residing at 3A-302, Oakland Park,
Yamuna Nagar, Lokhandwala Complex,
Andheri (West), Mumbai. ... 2nd Respondent/
Petitioning Creditor

Application praying that this Hon'ble Court be pleased to direct the exemption of the property at No.23, Anderson Road, Nungambakkam, Chennai 600 034, from the administration of the 1st respondent as per the order dated 21.04.2014 passed by this Hon'ble Court in I.P.No.25 of 2014.

APPLN. Nos.62 TO 65 of 2018

The Official Assignee,
High Court, Madras. ... Applicant

-Versus-

1.International Sea Foods Private Ltd.,
Pantheon Apartments,
No.17, Pantheon Road, 1st Lane,
Chennai 600 008.

2.Arjunlal Sunderdas,
C/o.Dinesh D.Bajaj,
Flat No.8181, TVH Lumbini Square,
127A, Brick Klin Road,
Purasawakkam, Chennai 7. ... 2nd Respondent/Debtor

3.S.Manohar Lal @ S.M.Lal,
Flat No.D, Third Floor,
Advika Apartments,
Door No.11, and Old No.6, 6B and 7,
First Street, Subbarao Avenue,
Chennai 600 006. ... 3rd Respondent

4.Dr.M.Arumugam,
S/o.Murukiah Pillai,
7, Khadar Nawaz Khan Road,
Nungambakkam, Chennai 600 006. ... 4th Respondent

Application No.62 of 2018 praying that this Hon'ble Court be pleased to declare the first respondent company International Sea Foods Pvt.Ltd., having registered office at 5-9-656 Gun Foundry Hyderabad 500 001 Telangana and functioning from Pantheon Apartments, No.17, Pantheon Road, 1st Lane, Chennai 600 008 is a shell company and on lifting

the corporate veil, the real owner is Mr.Arjunlal

Sunderdas, the Insolvent.

Application No.63 of 2018 praying that this Hon'ble Court be pleased to declare the Arjunlal Sunderdas is the owner of the property at 23, Anderson Road, Chennai 600 006, which is morefully described in the schedule to the application and on adjudication of Arjunlal Sunderdas statutorily vest in the Official Assignee.

Application No.64 of 2018 praying that this Hon'ble Court be pleased to direct the fourth respondent herein to return the original title deeds relating to the property at No.23, Anderson Road, Nungambakkam, Chennai 6 which is morefully described in schedule to the application.

Application No.65 of 2018 praying that this Hon'ble Court be pleased to permit the Official Assignee to sell the property at No.23, Anderson Road, Nungambakkam, Chennai 6, which is morefully described in Schedule to the application and apply the sale proceeds to the estate of Arjunlal Sunderdas insolvent for the benefit of general body of creditors.

<u>SCHEDULE OF PROPERTY IN APPLN.NOS.63 TO 65 OF 2018</u>

All that piece and parcel of land comprised in plot No.1A in Layout No.40/64 together with the incomplete bungalow thereon, bearing new Corporation Door No.23 and forming part of Old Survey No.423 and Resurvey No.85 and part of old Survey No.424 and Resurvey No.86 situated in Anderson Road, nungambakkam, madras bounded on the

North by - Anderson Road, Nungambakkm,

East by - 30 ft Road

South by - Plot No.1B &

West by - Resurvey No.84

measuring

East to West : On the Northern side 100 ft, with a slant at the North-Eastern side measuring 10 Ft.
North to South: On the Eastern and Western side 78.1/2 ft

East to West : On the Southern side 100 feet
in all 3 grounds and 625 sq.ft. Or thereabouts within the Registration Sub District of Theyagarayanagar and within the Registration District of Madras South.

APPLN. Nos.33 TO 35 of 2018

The Official Assignee,
High Court, Madras. ... Applicant

-Versus-

1.Sunil Anand & Co., P.Ltd.,
Pantheon Apartments,
No.17, Pantheon Road, 1st Lane,
Chennai 600 008.

2.Mr.Arjunlal Sunderdas
23, Anderson Road, Nungambakkam,
Chennai-600 006. ... 2nd Respondent/Debtor

3.S.M.Lal,
1-A, Pantheon Apartments,
34, Pantheon Road, Egmore,
Chennai 600 008. ... Respondents

Application No.33 of 2018 praying that this Hon'ble Court be pleased to declare that the first respondent Sunil Anand & Co. P.Ltd., Pantheon Apartments, No.17, Pantheon Road, 1st Lane, Chennai 600 008 is a shell company and on lifting the corporate veil, the real owner is Mr.Arjunlal Sunderdas, the Insolvent.

Application No.34 of 2018 praying that this Hon'ble

Court be pleased to declare that Arjunlal Sunderdas is the owner of the property of Ground Floor of 11888 sq.ft. of built up area with 832 sq.ft., of UDS at No.96 Pantheon Road, Egmore, Chennai 8 which is morefully described in the schedule to the application and on adjudication of Arjunlal Sunderdas, statutorily vest in the Official Assignee.

Application No.35 of 2018 praying that this Hon'ble Court be pleased to grant permission to the Official Assignee to sell the property Ground Floor of 11888 sq.ft of built up area with 832 sq.ft of UDS at No.96 Pantheon Road, Egmore, Chennai 8 which is morefully described in Schedule to the application and apply the sale proceeds to the benefit of general body of creditors.

SCHEDULE OF PROPERTY IN APPLN.NOS.34 AND 35 OF 2018

SCHEDULE 'A'

All that piece and parcel of land of about 13 grounds and 1133 sq.ft. In R.S.No.1623/1 and 1624/4 in the premises bearing old No.101 and New No.96, Pantheon Road, Egmore, Chennai situate within the Sub Registration District of Periamet and Registration Distirct of Madras Central, Bounded on the

North by : R.S.No.1624 and 1625

South by : Premises No.31/2 and 31/3, Pantheon Road,

East by : R.S.No.1626 Part

West by : Pantheon Road

SCHEDULE 'B'

11888 sq.ft. Of built up area in the Ground Floor with

832 sq.ft. Proportionate share in the common areas in all measuring to 12720 sq.ft in the building constructed in Schedule 'A' property together with 12,720/125843 undivided share of land in schedule 'A' property including proportionate open car parking space in the Ground Floor around the building.

The above applications having been heard on 27.06.2018 in the presence of Mr.S.R.Raghunathan, advocate for the Applicant in Appln.No.156 of 2017 and for 4th respondent in Appln.Nos.62 to 65 of 2018; Mr.K.V.Ananthakrushnan, advocate for the Official Assignee, the Applicant in A.Nos.62 to 65 and 33 to 35 of 2018 and for the 1st Respondent in Appln.No.156 of 2017 Mrs.R.Bamini, advocate for the 2nd respondent/ Insolvent in Appln.Nos.62 to 65 & 33 to 35 of 2018; M/s.R.Venkatraman, S.Saibarath, advocates for the 3rd respondent in Appln.Nos.62 to 65 and 33 to 35 of 2018 and upon reading the Judges summons and reports of the Official Assignee filed in Application Nos.62 to 65 & 33 to 35 of 2018 and Report of the Official Assignee filed in Appln.No.156 of 2017 and the judges Summons and affidavit of Dr.M.Arumugam, filed in Appln.No.156 of 2017 and this Court having stood over for consideration till this date and coming on this day before this Court for orders in the presence of the above said advocates,

The Court made the following order:-

"Truth is stranger than fiction, but it is because

fiction is obliged to stick to possibilities; Truth Isn't"- wrote *Mark Twain* in his Travel Book titled "Following the Equator: A Journey Around the World."

2. We get a taste of his Wisdom while dealing this case besides reminding this Court, the Fiction, "Not a Penny More; Not a Penny Less," authored by Jeffrey Archer. This Court also wonders whether the ghost of "Sir George Arbuthnot" haunts the corridors of this Court after a Century.

3. Arjunlal Sunderdas, the main character in this case, is now dead and gone to the grave with a tag of insolvent. While he was alive, he and his brother S.Manohar Lal @ S.M.Lal were in trade of Sea Food and Real Estate. **"International Sea Foods Private Limited"** having its registered office at Hyderabad was floated by Arjunlal Sunderdas and S.Manohar Lal, withholding of 71.20% and 28.80% shares respectively. The main object of the said Company was to carry on business of Trawling, Procurement, Processing, Freezing, Marketing of meat of lobster of other sea products. The said Company was incorporated under the Companies Act, 1956 on 12th day of May 1977. Another Company by name " **Sunil Anand and Company Private Limited"** having its registered office at Chennai, State of Tamil Nadu was floated by this duo with main object to carry on business of Real Estate, Constructions, advance money, to lend and to receive money on deposit or loan at interest. This Company was incorporated under the Companies Act, 1956

on 25th September 1981. In this Company, Arjunlal Sunderdas and S.Manoharlal were holding 75% and 25% shares respectively. The records produced indicate that both the Companies were active and performing at least on paper till two years before I.P.No.25 of 2014 filed by Tmt.Chitra Desai.

4. When Tmt.Chitra Desai filed a petition under Sections 9 d (iii)(g) and 10 to 12 of the Presidency-Towns Insolvency Act, 1909 to adjudicate Arjunlal Sunderdas as insolvent and direct the administrative of estate in a regular manner, Arjunlal Sunderdas who was till then considered as man of wealth and credibility surprisingly made an admission that his liabilities are more than the assets and that he has no objection to adjudicate him as an insolvent. On his admission, Arjunlal Sunderdas was adjudicated as an insolvent by this Court on 21.04.2014. In the course of the insolvency proceedings, the Official Assignee has filed a report, dated 09.12.2015 before this Court, informing that as per the letter dated 01.07.2015 given by the insolvent, 91 creditors owe him money to a tune of Rs.106,37,23,748/-, while 240 unsecured creditors has filed their claims to a total sum of Rs.114,56,20,871/-. A Meeting of creditors was conducted on 13.10.2015. A Committee of Inspection consisting of certain creditors in the transaction was appointed by order of this Court, dated 18.12.2015. For quite some time, the insolvency petition was heard by learned Judges of this Court including My

Brother Judge Justice C.V.Karthikeyan. On every hearing, new facts or allegations against each other were cropping up to the effect that the transactions of Arjunlal Sunderdas (insolvent) with others were not mere lending and repaying, but certain other murky dealings in violation of law had taken place. The persons, who can give the true details about the transactions, were not ready to disclose the truth. Therefore, the Court was unable to make any progress in determining the details from the insolvent. Therefore, by an order dated 02.03.2017 in A.No.27 of 2016, this Court directed the Official Assignee to file a criminal complaint before the Superintendent of Police, Economic Offence Wing, Chennai regarding larger scale diversion of funds by the insolvent. Accordingly, a First Information Report in Cr.No.6/2017 dated 10.04.2017 had been registered by the EOW II, under Sections 409 and 420 IPC against the insolvent Arjunlal Sunderdas.

5. Since the records disclosed indulgence of systematic diversion of funds both prior and subsequent to the adjudication of Arjunlal Sunderdas as insolvent, My brother Judge, Justice C.V.Karthikeyan has addressed the Hon'ble Chief Justice to appoint a Special Bench so that effective orders can be passed and an execution of such order has also been monitored by this Court.

6. In the said circumstances, the Hon'ble Chief Justice has constituted this Special Bench, consisting of Myself and My Brother Judge, Justice C.V.Karthikeyan to

hear the lis in re Arjunlal Sunderdas. This Bench during its deliberation found despite entrustment of investigation to the State Police, there was not much progress. The trail of money alleged to have been collected by Arjunlal Sunderdas could not be traced. Therefore, the investigation has been transferred to CBI and the investigation is pending in RC 3/E/2018-CBI/EOW, Chennai.

7. Most of the money transactions were not through banking system. The statement of accounts furnished by Thiru.Rengaramanujam, Auditor of the insolvent appears to be the foundational documents. At the public hearing, the insolvent had feigned ignorance of the money transactions and had placed the responsibility at the door steps of his Auditor Thiru.Rengaramanujam. Tmt.Chitra Desai (petitioner) would say that she came to know about the insolvent through one Lata Krishnamurti and on her advise, she and her husband lent Rs.60 lakhs to Arjunlal Sunderdas. In turn, Lata Krishnamurti in her affidavit had stated that she came to know about the insolvent through one Mr.Ram Jethmalani. The affidavit instead of furnishing informations adequate to help this Court, only contained the names of persons highly placed and nothing more. But the bare truth that Arjunlal Sunderdas has collected several crores of money from several persons and not paid. One such person Dr.M.Arumugam in his Application No.156/2016 had averred that he was made to believe by the Insolvent that he will be giving some flats in the apartment to be constructed by

Arjunlal Sunderdas. Later the said contract was substituted by a deed of mortgage of the property bearing No.23, Anderson Road, Nungambakkam, Chennai. Thereafter, the insolvent as well as his Brother S.Manoharlal agreed to pay a sum of Rs.8,20,00,000/- and settle the dispute, but nothing happened except filing of insolvency petition by Chitra Desai and Arjunlal Sunderdas conceding to the petition. Ms.Anna Mathew, the counsel for one Suman Aggarwal alleges that nearly Rs.46 crores had been stealthily moved away from India by the insolvent to his son living abroad. Also, she alleges that prime property in Chennai had been settled in the name of the minor sons of S.Manoharlal to defeat the creditors.

8. In the above said background, two sets of applications filed by the Official Assignee to pierce the corporate veil. One in respect of M/s.International Sea Foods Private Limited and another in respect of M/s.Sunil Anand and Company Private Limited. The reason to file these petitions is that the insolvent is the major shareholder and his brother S.Manoharlal in the minor shareholder. S.M.Lal had relinquished his right in shares in favour of his brother the insolvent (though now retracts). These two companies have become defunct long back. They are struck off from list by ROC. The names of these two companies were used as a veil for the purpose of collecting the money by the insolvent and there is no element of corporate in the dealings. The records before us also indicates that the

insolvent Arjunlal Sunderdas and his brother S.M.Lal had received funds either personally or in the name of their companies and had used it as their personal money, diverted the funds and properties to conceal the money collected. Reports from 2 auditors one by Rangaramanujam and other by Annamalai Associates does not rule out window dressing.

9. Under the Presidency Towns Insolvency Act, 1909, the Insolvency Court is empowered to stretch the arm of law to find the truth and retrieve the money in whichever or whatever form it be at present. It is empowered to recover and distribute the estate equitably to the creditors. For the said purpose tracing and piercing is permissible under law. Undoubtedly, this is a case where to meet the ends of justice, such an exercise is inevitable. The reasons for such conclusion are discussed below by Justice C.V.Karthikeyan in extenso and I totally agree with him.

IP.No.25 of 2014 had been filed, under Sections 9(d)(iii)(g), 10 and 12 of the Presidency Towns Insolvency Act, 1909, by Chitra Desai, Advocate, Mumbai, residing at Mumbai, seeking to adjudicate the Respondent, Arjunlal Sunderdas, then residing at Chennai, as Insolvent and seeking, administration of the estate in a regular manner.

2. Even before entering into a detailed discussion on the facts of the case, it must be mentioned that the Insolvent, Arjunlal Sunderdas died on 07.05.2018, pending

the proceedings. However, he had been declared as Insolvent on 21.04.2014 and his properties had vested with the Official Assignee. Though the Insolvent had died, the issues in the applications are still determined, by virtue of Section 93 of the Presidency Towns Insolvency Act, 1909, which reads as follows:-

> "**93. Continuance of proceedings on death of debtor:-** If a debtor by or against whom an insolvency petition has been presented dies, the proceedings in the matter shall, unless the Court otherwise orders, be continued as if he were alive."

3. **<u>IP.No.25 of 2014:-</u>**

The insolvency petition was filed on 10.3.2014. In the petition, it had been stated that the Petitioner came to know the Respondent, Arjunlal Sunderdas through a close friend, Lata Krishnamurti, who lived in Delhi. The Respondent was proclaimed to be in the business of accepting deposits on interest at 12% p.a., which was higher than the interest rates offered by Banks. The Petitioner got in touch with the Respondent in March 2010. The Respondent stated that he would give stamped promissory notes for the deposits made. The Respondent also gave the names of other similar depositors, who were prominent persons in Judiciary and in the legal profession. Inspired by this information and placing trust on the Respondent, the Petitioner sent a cheque, dated 8.4.2010 for a sum of Rs.10 lakhs and drawn on Axis Bank, Andheri (West), Mumbai.

The Respondent sent a promissory note for the amount. He also sent monthly interest on the due dates. Thereafter, the Petitioner and her husband, Anang Desai, deposited further amounts to a total of Rs.60 lakhs with the Respondent.

4. It had been further stated in the insolvency petition that the Respondent started committing default in payment of interest from August 2013. The interest was not paid even in September 2013. The Petitioner claimed that she tried to call the Respondent several times, but there was no response. She got in touch with Lata Krishnamurti in Delhi, who also informed that she was also not receiving interest and that the Respondent could not be contacted. The Petitioner contacted her friend again on 22.10.2013. She tried to contact the Respondent on 16.11.2013. She stated that the Respondent lived in a big bungalow and she did not suspect that the Respondent was in insolvent circumstances. The Petitioner and K.Murali, brother of Lata Krishnamurti gave a complaint to the State Police at Chennai. On 6.1.2014, the Petitioner came to Chennai when she heard that the Respondent was at the Police Station. The Respondent issued post dated cheques, all dated 6.4.2014 in the name of the Petitioner and in the name of her husband. However, on 25.1.2014, Lata Krishnamurti called the Petitioner and told her that the Respondent had requested everyone to whom he had issued cheques, to refrain from depositing the cheques until further instructions. The Petitioner was informed that the

Respondent did not have liquid cash in his account. It had been further stated that the Petitioner again tried to contact the Respondent on his Cell No.09841035850, but the mobile was always switched off.

5. The Petitioner further stated in the petition that she came to know that the Respondent was transferring properties to select creditors with a view to fraudulently prefer one over the other.

6. It was specifically stated that the Respondent sold 9.5 acres of land at No.33-34, College Road, Chennai, to one Amarnath Reddy, owner of Amara Group for Rs.36 crores though the market value was Rs.100 crores. It was also stated that the said transfer was effected only to defeat the claims of the creditors. It was further stated that Amarnath Reddy, was not a bona fide purchaser, but had colluded with the Respondent, to defeat the claims of the creditors. The said transaction took place in June 2013. By August 2013, the Respondent had started to default in payment to the creditors. The Respondent also owned 105 acres of land in Bangalore, which he had purchased for Rs.12 crores about 17 years back. It was further stated that even after purchase, the document had not been registered in the name of the Respondent. This was again only to defeat the claim of the creditors. The vendor was one Raj Kumar Menon, who resided in Chennai. The Respondent also owned 26 acres of land in Sriperumbudur in a prime locality. He had purchased it for Rs.11.5 crores

in 2007. He had purchased it from Era.Anbarasu, former Member of the Parliament. The Petitioner stated that the land was again not registered in the name of the Respondent only to defeat the claims of the creditors. The Petitioner further stated that the Respondent and his brother S.M.Lal were also owners of the property at 23, Anderson Road, Nungambakkam, Chennai. They also owned a commercial premises, measuring 12700 sq.ft. at No.96, Pantheon Apartments, Janpriya Court, Egmore, Chennai. It was further stated that the Respondent and his wife Maya Arjunlal also owned an office property at No.17, Pantheon Apartments, 1st Lane, Pantheon Road, Chennai.

7. The Petitioner sent a legal notice to the Respondent on 28.2.2014. There was no reply. The Petitioner claimed that the amount due to her was Rs.64.2 lakhs. Rs. 60 lakhs was towards principal and Rs.4.2 lakhs was towards interest. Claiming that the Respondent had committed acts of insolvency, this IP.No.25 of 2014 had been filed, seeking the reliefs as stated above.

8. Even before going further into the facts of the case, it must be pointed out that the details of the cheques through which the Petitioner had allegedly paid money to the Respondent, were not disclosed in the petition. Copies of the said cheques were also not furnished. Along with the petition, to substantiate the averments, three promissory notes executed by the Respondent, dated 8.4.2010, 15.9.2010 and 1.3.2010 were

filed. The Petitioner has also filed a statement of Axis Bank.

9. It must also be mentioned that even though in the petition, continuous reference had been made to one Lata Krishnamurti, she was merely described as a friend and introducer of the Respondent, but her address and other details were not disclosed in the petition.

10. Along with the petition, the Petitioner had also filed as document a letter, dated 25.1.2014 and the Registry, in the first instance, had returned the papers, stating that the letter dated 25.1.2014, was not addressed to the Petitioner and explanation was sought as to the maintainability of the insolvency petition. The learned counsel for the Petitioner had made an endorsement that the letter was addressed to Lata Krishnamurti, through whom the Petitioner had given money to the Respondent. It was reiterated that the petition was maintainable. The insolvency petition was then taken on file.

11. Notice was directed to the Respondent. The Respondent did not appear, but through his counsel, Mr.A.Babu, filed an affidavit, attested by a Notary in Bangalore. The Respondent did not sign the affidavit, but affixed his left thumb impression. In the affidavit, the Respondent stated that he was unable to pay debts to his creditors and he had no objection for being declared as Insolvent. He further undertook to cooperate with the Official Assignee.

12. The petition and the affidavit of the Respondent came up before a learned Single Judge (S.Tamilvanan, J.) on 21.04.2014 and the following order was passed:-

> "4. The learned counsel appearing for the debtor/ Respondent submits that the debtor/ Respondent is in a serious condition, after taking by-pass surgery and he has admitted that his liabilities are more than the assets and he has no objection in adjudicating him as an Insolvent. In view of the same, it has been established that the debtor/ Respondent has committed an act of insolvency and therefore, the debtor/ Respondent is liable to adjudicated as an Insolvent, as per procedure known to law.
>
> 5. Accordingly, this petition is allowed adjudicating the debtor/ Respondent as an Insolvent. Consequently, the estate of the debtor/ Respondent shall vest with the Official Assignee at Chennai, for the benefit of the general body of the creditors. The cost of this petition shall be paid by the Official Assignee from and out of the estate of the debtor / Respondent. The Insolvent is granted 18 months time to apply for discharge. Cost of the proceedings will also come out of the estate."

<u>13. IP.No.25 of 2014:- Meandering to nowhere - Non-cooperation of the Insolvent</u>:- The matter proceeded in its own slow way. The Insolvent provided a long list of creditors and debtors and this list was primarily given by the Respondent's Auditor, Ranga Ramanujam. Public examination of the Insolvent commenced after considerable delay. The Insolvent never cooperated with the Official Assignee. A learned Single Judge (Pushpa Satyanarayana, J.) before whom the matter came up, appointed a Committee of Inspection to assist the Official Assignee, Lata

Krishnamurti was also included among the Committee of Inspection.

14. Several applications came to be filed. Frustrated, the Official Assignee filed A.No.27 of 2016, seeking public examination of the Insolvent, Arjunlal Sunderdas before the Deputy Registrar (OS) and to refer the diversion of funds for investigation by CBI.

15. In the application, it had been stated by the Official Assignee that the statement of the Insolvent was recorded on 20.5.2014. He then appeared before the Official Assignee only on 8.9.2014 and again on 9.9.2014. He claimed that the account books for the relevant financial years 2011-2012, 2012-2013 and 2013-2014 were not available. He produced only old account books. He shifted responsibility to one Ranga Ramanujam, his Auditor. On letters being addressed to the Auditor, ledger accounts of the Insolvent were sent only on 24.03.2015. This was printed from the Tally Software available in his office for the years ending 31.3.2012, 31.3.2013 and 31.3.2014. After several other letters to the Auditor, seeking list of debtors, creditors and their addresses, the details were finally given on 24.03.2015.

16. The Insolvent did not file his schedule of affairs. He did not provide the addresses of all the debtors. The Auditor disclaimed knowledge about the addresses of the debtors. The Official Assignee could not take steps to collect the debts due to the estate. The

Insolvent had given a list of 91 debtors on 01.07.2015 and claimed that a sum of Rs.106,37,23,746/- was due from them. However, he did not furnish the addresses of 44 debtors. The Official Assignee took out Master's summons in A.No.242 of 2015 and the Master issued warrant for arrest of the Insolvent on 27.08.2015. The warrant was sent to the Commissioner of Police, but, it was not executed. The Insolvent then appeared along with his counsel on 30.11.2015 and stated that he did not have the addresses of the debtors and he had also not obtained promissory notes for the amounts due from them. It was claimed that the amount due to the estate was Rs.122,13,80,619/-. The Auditor, who promised to give statement of accounts, also delayed in furnishing the same. The Official Assignee also received 257 claim petitions from the creditors and the total amount was Rs.116,92,15,343/-. A learned Single Judge (M.M.Sundresh, J.) had ordered on 22.2.2016 as follows:-

> "Heard and perused.
>
> Learned counsel for the Insolvent has no serious objection for ordering public examination.
>
> In view of the same, the Plaintiff/ Official Assignee is permitted to conduct public examination only after issuance of notice to the parties concerned."

17. **<u>Directions to the Official Assignee to file a criminal complaint:-</u>** The application was also placed before one of us (C.V.Karthikeyan, J.) when the matter was

heard in the insolvency Court on 02.03.2017. On that date, it was observed that there was a strong touch of illegality and fraud on the transactions. It was further observed that the Insolvent and his Auditor had not cooperated with the insolvency proceedings. They did not disclose the addresses of the debtors. It was also observed that as on that date, as many as 277 claim applications had been filed and the total claim amount was Rs.148,66,77,093/-. The list of debtors were 91 in number and the total amount due to the estate was Rs.106,37,23,747/-. It was held that the entire case must be referred to the Economic Offences Wing, CBCID, Tamil Nadu Police, for investigation as to whether the transactions were made through black money or diverted funds or whether they were hawala funds. The Official Assignee was directed to file a criminal complaint before the Superintendent of Police, CBCID, Economic Offences Wing, Chennai, regarding large scale diversion of funds by the Insolvent, Arjunlal Sunderdas. The Superintendent of Police was directed to investigate into the matter, to register a First Information Report and file a report before this Court, regarding status of investigation. The CBCID registered the First Information Report in Cr.No.6 of 2017 on 10.04.2017 under Sections 409 and 420 of IPC, against the Insolvent, Arjunlal Sunderdas.

18. Referral to Division Bench:-

Several orders were passed by the learned Single Judges, who presided over the insolvency Court and efforts were taken to expedite the hearing. But, unfortunately, the Insolvent and his Auditor did not cooperate with the Official Assignee by providing the details. Thereafter, one of us (C.V.Karthikeyan, J.) while sitting in the insolvency Court, by a reference dated, 22.09.2017, addressed to the Honourable Chief Justice, had again extracted the nature of the petition and the staggering amount involved. It was also mentioned that the Court had directed the Official Assignee to file a criminal complaint before the Superintendent of Police, CBCID, Economic Offences Wing, Chennai. The status report filed by the Investigating Officer, wherein it was stated that the Insolvent, Arjunlal Sunderdas, who was categorised as an accused, was involved in large scale diversion of funds, which included the offences under FERA, FEMA and Prevention of Money Laundering Acts, was examined. The Economic Offences Wing requested that the case may be transferred to any Central Investigating Agency. The Honourable Chief Justice was requested to form a Special Bench to examine in detail the acts of fraud committed by the Insolvent, leaving behind 291 creditors to a sum of Rs.160,56,34,093/- and claiming that there were 91 debtors, to a sum of Rs.106,37,23,747/-. It was also stated that the offences required continuous monitoring and the sanctity and dignity of the Court had to be maintained. The Honourable Chief Justice, on the basis of the said note, formed this Bench to examine in detail the issues connected with IP.No.25 of 2014.

19. Proceedings before the Special Division Bench - Transfer of investigation to CBI:-

During the hearing, on 04.04.2018, a report of the action taken by S.Sekar, Inspector of Police, Economic Offences Wing II, Chennai, was considered. The representation of the Additional Public Prosecutor that out of 291 creditors, 280 had been summoned for enquiry and out of 91 debtors, 80 had been served with notice and 4 had appeared before the Investigating Officer and had given statements, was noted. It was also represented that there had been transfer of monies from the accounts of the Insolvent, his brother and the accounts in Bombay and the investigation was progressing to find the trail of money. It was also stated that there was strong suspicions of money laundering and money was being diverted to various accounts of persons close to the Insolvent. It was stated that the Economic Offences Wing, Chennai, may not be able to complete the investigation with its restriction on territorial jurisdiction.

20. After considering the facts of the case and the fact that there was diversion of funds from other States to Tamil Nadu and vice-versa and the further fact that the claims were from New Delhi, Maharashtra, Uttar Pradesh, Andhra Pradesh, Telengana, Haryana, Karnataka and Pondicherry and also New York, USA, this Court had transferred the First Information Report

registered by the Economic Offences Wing, in Cr.No.6/2017 to the CBI, EOW, Chennai for continuation of the investigation. The Investigating Officer appointed was also required to furnish reports about the stage of the investigation. The CBI, EOW, Chennai, registered the First Information Report in RC.3/E/2018-CBI/EOW/Chennai on 24.05.2018 under Sections 409 and 420 of IPC against Arjunlal Sunderdas and unknown others.

21. Proceedings before the Special Division Bench – Further progress:- The Bench also examined the role played by Lata Krishnamurti, who had been named in the petition, seeking to declare the Insolvent as Insolvent and also finding that the said individual had been appointed as one of the Committee of Inspection, had thought it fit to keep the said order in abeyance. Further orders were passed with an aim to assist the Official Assignee to enquire into the issues and to determine the amount payable to the creditors and the amounts receivable from the debtors.

22. While the matter stood thus, the applications, now under consideration, came to be filed.

23. A.No.156 of 2017 had been filed by Dr.M.Arumugam, under Sections 7, 59(2) and 90(1) of the Presidency Towns Insolvency Act, 1909, seeking exemption of the property at No.23, Anderson Road, Nungambakkam, Chennai, from the administration of the Official Assignee.

24. A.Nos.62 to 65 of 2018 had been filed

by the Official Assignee. These applications related to M/s.International Sea Foods Private Limited and the Official Assignee sought a declaration that the said Company is a Shell Company and further declaration that the real owner of the property of the Company, on lifting the corporate veil, was the Insolvent, Arjunlal Sunderdas and also to declare that the owner of the property at No.23, Anderson Road, Chennai, which was also the property mentioned in A.No.156 of 2017, wherein Dr.M.Arumugam had sought exemption of the property from the administration of the estate of the Insolvent, is the Insolvent, Arjunlal Sunderdas and also to direct Dr.M.Arumugam to hand over title deeds of the property and also to permit the Official Assignee to sell the property and apply the sale proceeds to the estate of Arjunlal Sunderdas.

25. Since the Official Assignee had invited the Court to give a finding of lifting the corporate veil of the Company, in which the the Insolvent was a Shareholder/Director and since the same arguments were also advanced in A.Nos.33 to 35 of 2018, which related to the property owned by another Company, M/s.Sunil Anand and Company Private Limited, in which also the Insolvent, Arjunlal Sunderdas, was also a Director/Shareholder, those applications were taken up for consideration together.

26. A.No.33 to 35 of 2018 had been filed by the Official Assignee for a declaration that the 1st Respondent, namely, M/s.Sunil Anand and Company Private

Limited is a Shell Company and for declaration that the Arjunlal Sunderdas is the owner of the said Company, which would be evident on lifting the corporate veil and further direction to sell the property of the said Company, namely, premises at the ground floor of 96, Pantheon Road, Chennai.

27. Though the Insolvent had incorporated various other private Limited Companies, this Court is presently concerned with two companies, namely, (1) M/s.International Sea Foods Private Limited and (2) M/s.Sunil Anand and Company Private Limited.

28. **A.Nos.62 to 65 of 2018 and A.No.156 of 2018:-** These applications relate to a private Limited Company, called, M/s.International Sea Foods Private Limited. It has its registered Office at No.5-9-656, Gun Foundry, Hyderabad 500001, Telungana. It functioned from Pantheon Premises at 17, Pantheon Road, I Lane, Chennai-8.

29. A.No.62 of 2018 had been filed, seeking a declaration that the said Company is a Shell Company and that on lifting its corporate veil, the real owner is the Insolvent, Arjunlal Sunderdas.

30. A.No.63 of 2018 has been filed for declaration that the Insolvent, Arjunlal Sunderdas is the owner of the property at No.23, Anderson Road, Chennai-6 and that the said property vests in the Official Assignee.

31. A.No.64 of 2018 had been filed for a direction to the 4th Respondent, namely, Dr.M.Arumugam, who is the Applicant in A.No.156 of 2017, to hand over the

title deeds of the property at No.23, Anderson Road, Nungambakkam, Chennai-6.

32. A.No.65 of 2018 has been filed for permission to sell the property at No.23, Anderson Road, Nungambakkam, Chennai-6 and apply the sale proceeds to the estate of Arjunlal Sunderdas for the benefit of the general body of creditors.

33. A.No.156 of 2017 had been filed by Dr.M.Arumugam, for a direction to exempt the property at No.23, Anderson Road, Nungambakkam, Chennai-6, from the administration of the Official Assignee.

34. Since all these applications relate to a Company by name, M/s.International Sea Foods Private Limited and the property at No.23, Anderson Road, Nungambakkam, Chennai-6, these applications are taken up together.

35. Soon after Arjunlal Sunderdas had been declared as Insolvent by this Court, among the properties, which Official Assignee had taken control and custody, was the property at No.23, Anderson Road, Nungambakkam, Chennai-6. This property measures an extent of 3 grounds and 625 sq.ft. .

36. In the report filed in support of A.Nos.62 to 65 of 2018, the Official Assignee has stated that the 1st Respondent, M/s.International Sea Foods Private Limited, was a Company, having registered Office at Hyderabad. The 2nd Respondent was the Insolvent, Arjunlal

Sunderdas. The 3rd Respondent was S.Manoharlal @ S.M.Lal, brother of Arjunlal Sunderdas. The 4th Respondent was Dr.M.Arumugam, who had filed A.No.156 of 2017, seeking to exempt the property, from the administration of the Official Assignee.

37. The Official Assignee has further stated that the 1st Respondent M/s.International Sea Foods Private Limited owned the property at No.23, Anderson Road, Nungambakkam, Chennai-6, ad measuring 3 grounds and 625 sq.ft. Arjunlal Sunderdas was the Managing Director of the said Company and he was holding 71.20% of the shares and the 3rd Respondent, S.M.Lal, his brother was holding the remaining 28.80% of the shares. There were no other shareholders. The 3rd Respondent, S.M.Lal had transferred and relinquished his 28.80% of the shares in favour of Arjunlal Sunderdas, who became 100% shareholder. He had been declared as Insolvent and consequently, his 100% share on transmission vested with the Official Assignee. It has been further stated that though the 1st Respondent, M/s.International Sea Foods Private Limited is a Company incorporated under the Companies Act, 1956, piercing the corporate veil would reveal that it is actually a partnership firm under the guise of a Company with the Insolvent, Arjunlal Sunderdas and his brother, S.M.Lal, as partners.

38. It has also been stated that the Company was shown as a debtor to Arjunlal Sunderdas to a

sum of Rs.74,31,306/-. The Company is defunct and there was no one to represent the Company since the Managing Director was Arjunlal Sunderdas and he had been declared as the Insolvent. It has been further stated that the Company cannot be distinguished from Arjunlal Sunderdas and that the property of the Company is the property of the Insolvent, Arjunlal Sunderdas and vests with the Official Assignee.

39. It has been further stated that A.No.169 of 2016 had been filed against M/s.International Sea Foods Private Limited by the Official Assignee for recovery of Rs.74,31,306/-. Notices or letters could not be served on the Company since there was no one to represent the Company. It was a closely held Company between two brothers. It is, as on date, defunct. It is a private limited Company. There is no distinguishing factor between the shareholders and the Company. The Company cannot be distinguished from its Managing Director Arjunlal Sunderdas. It has been further stated that the Official Assignee had taken steps before the Company Law Board, Hyderabad, to recognize the Official Assignee as the shareholder to represent the defunct Company. It has been further stated that the entire sale consideration towards purchase of the property was paid only by Arjunlal Sunderdas. It has been further stated that since he had paid the entire sale consideration, he must be deemed to be the owner of the property.

40. It was also stated that the 4th Respondent, Dr.M.Arumugam had filed CS.No.214 of 2014 in this Court, seeking a mortgage decree for a sum of Rs.8 crores and 20 lakhs on the basis of a mortgage created by deposit of title deeds. The 4th Respondent had filed A.No.2045 of 2014, seeking a decree under Order 12 Rule 6 of CPC. The Official Assignee has been contesting the suit and the applications. This decree was sought on the basis of a Memo of Compromise, dated 11.11.2013 in Cr.OP.No.26317 of 2013 filed by S.M.Lal, seeking to quash the First Information Report, which had been filed at the instance of Dr.M.Arumugam. The Official Assignee has claimed that there was no mortgage and the 4th Respondent, Dr.M.Arumugam should rank himself along with other creditors. It is under these circumstances that the Official Assignee has filed these applications, as stated supra.

41. S.M.Lal had filed a counter in the applications. According to him, the 1st Respondent Company was struck off pursuant to notice dated 21.7.2017 issued by the Registrar of Companies, Hyderabad. It has been further stated that thereafter, the 2nd and 3rd Respondents stood disqualified to act as Directors of the 1st Respondent Company. The 3rd Respondent however, claimed that he continues to be 28.80% shareholder of the Company. He further stated that in 2014, Lata Krishnamurti, who had been named earlier in the insolvency petition had informed him that she represents a group of creditors of Arjunlal

Sunderdas and in order to prevent the creditors from coming to his house, she advised him to execute a Special Power of Attorney, in favour of Arjunlal Sunderdas. Accordingly, the 3rd Respondent executed a Special Power of Attorney on 12.2.2014 and also handed over the signed share transfer forms to Lata Krishnamurti without receiving any consideration. It has been further stated that the share transfer forms were handed over to her in trust and there was no reason to doubt that she would hand it over to the Official Assignee. He however still claimed to continue to be 28.80% shareholder of the M/s.International Sea Foods Private Limited. It has been further stated that the said Company was incorporated on 12.05.1977 with the Registrar of Companies, Hyderabad. It had been acquired by the Insolvent, Arjunlal Sunderdas, the 3rd Respondent, S.M.Lal and Purushotam Sunderdas and Vasudev Sunderdas with 28.80% shares each as a going concern from the then shareholders. Thereafter, Purushotam Sunderdas and Vasudev Sunderdas relinquished their respective 28.80% shares in favour of the Insolvent Arjunlal Sunderdas. It has been further stated that the Company was in the business of real estate and finance. It has been further stated that there was no evidence produced to press the doctrine of lifting of corporate veil. It has been further stated that the share transfer form is silent about the consideration received and the Official Assignee had not filed any document to show transfer/ transmission of shares in the name of Insolvent, Arjunlal Sunderdas. It has been further stated that there was no sufficient pleading to order the corporate veil to be lifted. The property of the Company cannot be treated as the property of the Insolvent. Consequently, the property cannot be said to have been vested with the Official Assignee. At any rate, the 3rd Respondent claimed that he continues to be the shareholder with 28.80% of the shares. It has been further stated that the applications must be dismissed.

42. The 4th Respondent, Dr.M.Arumugam has also filed a counter affidavit. According to him, he had filed A.No.156 of 217, seeking exemption of the property at No.23, Anderson Road, Nungambakkam, Chennai-6, from the administration of the Official Assignee. According to him, he had paid a sum of Rs.7 crores, towards purchase of certain flat in a property which was represented to be developed at Old No.3/2A, New No.34, College Road, Nungambakkam, Chennai. Since the project did not take off and there was no concluded contract for purchase of the flat, , Arjunlal Sunderdas requested him to treat the amount paid as a loan promising to repay the same with interest at 24% p.a. It has been further stated that on 14.1.2011, original sale deed and extract of the permanent land register of the property bearing Door No.23, Anderson Road, Nungambakkam, Chennai were deposited with him with an intention to create equitable mortgage for the loan amount. Subsequently, on 14.2.2011, a Memorandum of Deposit

of Title Deeds was also entered into. The property had been purchased by the Company, by sale deed, dated 15.1.1998. The 4th Respondent filed a police complaint on 7.9.2013 since the property, in which the flats were to be promoted and for which he had given Rs.7 crores as consideration ,had actually been sold away to Amarnath Reddy. During the pendency of the enquiry by the Police, the 2nd Respondent admitted the amount and came forward to amicably settle the disputes by paying a sum of Rs.8,20,00,00/- as final settlement on or before 31.1.2014. This compromise was recorded in a Memo of Compromise dated 11.11.2013.

43. The said Memo of Compromise specifically stipulated that on failure to make the payment, the 4th Respondent would be entitled to enforce his rights against the property in respect of the entire amount due to him. The Company failed to make any payment as undertaken in the Memo of Compromise. Consequently, the 4th Respondent filed CS.No.121 of 2014, seeking a direction to pay a sum of Rs.8,20,00,000/- and in default that the suit property may be sold and proceeds may be adjusted towards payment of interest, principal and costs. That suit is still pending. Thereafter, the 2nd Respondent had been declared as the Insolvent by order dated 21.04.2014. The property had been taken custody by the Official Assignee. It has been stated that the present applications are not maintainable. It has been further

stated that a suit should have been filed. It has been further stated that Lata Krishnamurti had deliberately misled the Court verifying to a petition that the property belonged to the Insolvent and it is on that basis that the Official Assignee had taken possession of the property. The property actually belonged to M/s.International Sea Foods Private Limited and not to the Insolvent. It has been specifically alleged that Lata Krishnamurti had tried to knock away the property for herself. It has been specifically further stated that she reached out to the 4th Respondent and asked for the property documents. She threatened the 4th Respondent with dire consequences and also held out that she had great connections. It has been also stated that she had recovered substantial amount from the Insolvent in cash before filing the insolvency petition. The 4th Respondent denied the averments in the report of the Official Assignee and claimed that the applications must be dismissed as not maintainable.

44. The Official Assignee filed a reply report, where it has been stated that the 3rd Respondent, S.M.Lal had avoided all notices sent to his available addresses and also avoided participating in the enquiry by the CBCID, EOW, Tamil Nadu State Police. The address now furnished is at Surat. It has been stated that the 3rd Respondent was fully aware of the insolvency circumstances of the Insolvent who is his brother and that the 3rd Respondent was a partner in all the business activities of

the Insolvent.

45. It has been further stated that the 4th Respondent, Dr.M.Arumugam, filed a criminal complaint also against the 3rd Respondent for cheating. It has been further stated that the estates of the Company vested with the Official Assignee. It has been further stated that Arjunlal Sunderdas, the Insolvent held 71.20% of the shares and the 3rd Respondent, S.M.Lal held 28.80% of the shares. Those shares had also been relinquished by him. There were no staff as human agency to run the Company. The Company is defunct. The authorised capital is Rs.45 lakhs, divided into 45,000 shares of Rs.100 each. Registers, forms, minutes of meeting, resolution and other statutory books and annual body meeting and annual report have not been filed. The major shareholder had been adjudicated as the Insolvent. Except for the immovable property, the Company has no other assets.

46. It has been stated that though the 3rd Respondent was not a party to the suit in CS.No.121 of 2014, vakalat was filed and in collusion with the 4th Respondent, Dr.M.Arumugam, the 3rd Respondent filed a counter in the application filed under Order 12 Rule 6 of CPC submitting to a decree. It has been stated that the counsel for the Official Assignee had addressed a letter to the 3rd Respondent and his counsel as to the circumstances, under which they had submitted to the decree. The 3rd Respondent had been addressed by letter dated 24.08.2016

to pay a sum of Rs.17,27,53,923/- to the estate of the Insolvent.

47. The Official Assignee reiterated that the corporate veil of the Company must be pierced and the property must be declared to be that of the Insolvent and the Court must pass orders, permitting the Official Assignee to bring the property for sale.

48. Dr.M.Arumugam, who had been shown as the 4th Respondent in the above applications, filed A.No.156 of 2017, seeking exemption of the property, from the general estate of the Insolvent. In the affidavit filed in support of the application, he had stated the same facts as stated by him in the counter to the above applications. He has stated that he had paid a sum of Rs.7 crores towards purchase of certain flat in the property bearing Old No.3/2A, New No.34, College Road, Nungambakkam, Chennai, which property was to be developed by M/s.International Sea Foods Private Limited. However, since the property itself was sold and the project did not take place, the Company, M/s.International Sea Foods Private Limited represented by the Insolvent had requested the Applicant to treat the amount as a loan and promised to repay that with interest at 24% p.a. On 14.01.2011, the original sale deed and the extract of permanent land register of the property were deposited. A Memorandum of Deposit of title deeds was also handed over by the Insolvent. It was further stated that the Applicant had lodged a police complaint and during the

enquiry, the Insolvent admitted the loan and came forward to amicably settle the disputes by paying a sum of Rs.8,20,00,000/- as final settlement. A Memo of Compromise was also entered into. The Memo of Compromise was also filed before the Court in Cr.OP.No.2631 of 213 which had been filed for anticipatory bail by the Insolvent, Arjunlal Sunderdas, his wife, Maya Arjunlal and his brother, S.Manoharlal. Since the terms of the Memo of Compromise was not adhered to, the Applicant filed CS.No.121 of 2014 for a direction, against the Defendants to pay a sum of Rs.8,20,00,000/- and in default, to sell the suit property. Subsequently, it had come to his notice that Arjunlal Sunderdas had been declared as the Insolvent. It has been further stated that the Memo of Compromise was entered into between him and the Company and the Insolvent only stood as a guarantor. It has been further stated that the Insolvent was not the owner of the property and that since the Company is an independent entity and since the transactions were much prior to the insolvency proceedings, the property at No.23, Anderson Road, Nungambakkam, Chennai, should be exempted from the administration of the Official Assignee.

49. The Official Assignee was called upon to furnish his response on the application. A report had been filed. The Official Assignee stated that A.No.5278 of 2014 been filed by the Official Assignee to be impleaded in CS.No.121 of 2014. A.No.2045 of 2014 filed by

Dr.M.Arumugam, seeking judgement on admission is still pending. It has been further stated that M/s.International Sea Foods Private Limited was not a party to the suit. Similarly, S.M.Lal, the other 28.80% shareholder was not a party to the suit. It has been further stated that S.M.Lal had however entered appearance in the said suit and had filed a counter admitting the liability. It has been further stated that the transactions between Dr.M.Arumugam and M/s.International Sea Foods Private Limited / Arjunlal Sunderdas, the Insolvent, are not genuine transactions. The Petitioner in IP.No.25 of 2014, Chitra Desai had also filed A.No.1641 of 2015 to implead herself in the suit, but that application was dismissed on 15.7.2016 for non Prosecution. It has been specifically stated that the entire sale consideration for purchase of the property of the Company had been paid by the Insolvent and that the Company is a Shell Company. It has been further stated that the Official Assignee had become 100% shareholder of the Company. It has been stated that the application is misconceived and to be dismissed.

50. In the said application, the Petitioner in IP.No.25 of 2014, had also filed an affidavit. However, it must be mentioned that she had filed an application to implead herself as a party in CS.No.121 of 2014 and that application had been dismissed for non Prosecution on 15.7.2016. She claimed bona fide in the insolvency petition. It is not immediately clear as to why she has

filed this affidavit. Lata Krishnamurti had also filed an affidavit.

51. **A.Nos.33 to 35 of 2018:-** These applications relate to another Private Limited Company, called M/s.Sunil Anand and Company Private Limited.

(a) A.No.33 of 2018 had been filed by the Official Assignee for a declaration that the 1st Respondent, namely M/s.Sunil Anand and Company Private Limited is a Shell Company and for a further direction that on lifting the corporate veil, the Insolvent, Arjunlal Sunderdas should be declared as the real owner.

(b). A.No.34 of 2018 had also been filed by the Official Assignee for a declaration that Arjunlal Sunderdas, the Insolvent is the owner of the property of ground floor, measuring 11888 sq.ft. with a built up areas of 832 sq.ft. of undivided share at No.96, Pantheon Road, Chennai and that the said property vests on the Official Assignee.

(c) A.No.35 of 2018 had been filed by the Official Assignee, seeking permission to sell the property in the ground floor at No.96, Pantheon Road, Egmore, Chennai, measuring about 11888 sq.ft. with a built up area of 832 sq.ft. of undivided share and apply the sale proceeds for the benefit of the general body of creditors of the Insolvent, Arjunlal Sunderdas.

52. In the report of the Official Assignee filed in support of the three applications, it has been

stated that the 1st Respondent, M/s.Sunil Anand and Company Private Limited was a Company incorporated under the provisions of the Companies Act, 1956 and was having registered office at Pantheon Apartments, 17, Pantheon Road, First Lane, Chennai-8. The application has also been filed as against Arjunlal Sunderdas who was shown, as the 2nd Respondent and against his brother, S.M.Lal, who was shown as the 3rd Respondent. It has been stated that Arjunlal Sunderdas had incorporated among other companies the 1st Respondent Company.

53. It has been further stated that the 1st Respondent, M/s.Sunil Anand and Company Private Limited is the owner of ground floor apartment of 11888 sq.ft. with 832 sq.ft. of undivided share of land at No.96, Pantheon Road, Egmore, Chennai. The Insolvent, Arjunlal Sunderdas was the Managing Director of the Company and he held 75% of the shares and the 3rd Respondent S.M.Lal, his brother held 25% of the shares. There were no other shareholders. S.M.Lal transferred and relinquished his 25% of the shares in favour of the Insolvent, Arjunlal Sunderdas and Arjunlal Sunderdas became 100% shareholder. On adjudication as Insolvent, 100% share vested in the Official Assignee. It has been stated that though M/s.Sunil Anand and Company Private Limited, is a Company incorporated under the Companies Act, 1956 and is an independent entity, by piercing the corporate veil, it would be evident that it was actually a partnership firm under the guise of a

Company with the Insolvent, Arjunlal Sunderdas and his brother, S.M.Lal, as partners. The Company as a debtor owed a sum of Rs.8,39,65,591/- to the Insolvent. The Company is defunct and there was no one to represent the Company because Arjunlal Sunderdas, the Managing Director had been declared as Insolvent and his brother had transferred his entire shareholdings to the Insolvent.

54. It has been further stated that one sulekha.com, New Media Private Limited was in occupation as a tenant. On Arjunlal Sunderdas being declared as Insolvent, the Official Assignee became 100% shareholder and wrote letters dated 2.5.2014 and 26.8.2014, calling upon the tenant to pay the arrears of rent. The Official Assignee filed A.Nos.341-343 of 201 for a direction to deposit the rent. One of us (C.V.Karthikeyan, J.) had passed orders, directing the tenant to pay the arrears of rent and also hand over vacant possession. A sum of Rs.49,62,066/- had been deposited as arrears of rent and possession had been handed over on 22.12.2016.

55. There was a further order on 24.2.2017 to pay the balance of arrears amounting to Rs.1,15,92,611/-. With respect to the same, an appeal in OSA.NO.116 of 2017 is pending adjudication. It was further stated that the 1st Respondent, M/s.Sunil Anand and Company Private Limited is defunct as on date. Letters and notices could not be served. There was no one to represent the Company. Since all the shares had been transmitted and had vested in the

Official Assignee, it has been stated that these applications have been filed seeking permission to sell the property and distribute the money for the benefit of the general body of creditors.

56. The 3rd Respondent filed a common counter. The 3rd Respondent, S.M.Lal is the brother of Insolvent, Arjunlal Sunderdas. He had not participated in any of the proceedings, but thought it fit to join proceedings in these applications and file a counter affidavit. It has been stated that both the Insolvent and the 3rd Respondent had been disqualified as Directors of the 1st Respondent Company. However, he claimed to continue to be a 25% shareholder of the Company. It was further stated that in 2014, Lata Krishnamurti had informed the 3rd Respondent that she was representing a group of creditors and to prevent any creditor from claiming money from the 3rd Respondent, she persuaded him to execute a Special Power of Attorney in her favour and also to hand over blank share transfer forms.

57. In view of the precarious situation of the 2nd Respondent, who was his own brother, the 3rd Respondent claimed that having no other option, he had submitted share transfer forms and also executed a Special Power of Attorney on 13.2.2014 in favour of the said Lata Krishnamurti. However, it later transpired that she had handed over the same to the Official Assignee. It has been further stated that the Company had been incorporated

on 25.09.1981 and only the 3rd Respondent and the 2nd Respondent were shareholders/ Directors of the Company. The business of the Company was real estate and finance. It has been further stated that the Company could not be declared as a Shell Company and there was no evidence to force the Court to order to lift the corporate veil. The property cannot be sold and the sale proceeds cannot be applied for the general body of creditors. It has been further stated that even though the share transfer form was executed by the 3rd Respondent, he had not received any consideration. Moreover, the share transfer form had not been acted upon and it had not been forwarded to the Registrar of Companies. It has been further stated that there was no evidence to show that the promoters of the Company had attempted to evade any legal obligation of any person.

58. It has been further stated that the Official Assignee has also claimed a sum of Rs.8,39,65,591/- from the Company and this fact itself establishes that the Company is a separate entity. It has been further stated that the Company is declared as active in the master data provided by the Ministry of Corporate Affairs Website. The 3rd Respondent claimed that the applications must be dismissed.

59. **<u>The pleadings extracted above reveal the following facts:</u>**-

1)Arjunlal Sunderdas had inspired confidence on a vast number of prominent personalities in Chennai, Mumbai, Bangalore, Hyderabad and other places inside and outside India and as a result of such confidence and trust placed on him, more than 250 creditors had individually deposited their amounts with him. He had promised to repay the same with a higher rate of interest than what was provided by Banks and other Financial Institutions.

2) The amounts deposited run to more than Rs.200 crores.

3) Arjunlal Sunderdas and his brother S.M.Lal were 71.20%:28.80% Shareholders/Directors in M/s.International Sea Foods Private Limited respectively and 75%:25% shareholders in M/s.Sunil Anand and Company Private Limited, respectively.

4) Both the Companies own prime properties in Chennai.

5) The Companies did not do any business, but the properties owned by the Companies were sufficient to induce gullible prominent persons to deposit their amounts with Arjunlal Sunderdas.

6) The securities, which these persons received, apart from promissory notes executed by Arjunlal Sunderdas, were none.

7) Quite apart from inducement of offering a higher percentage of interest on the deposits, the availability of landed property, over which Arjunlal Sunderdas claimed ownership and

control were factors, which made these personalities to deposit huge amounts of money to Arjunlal Sunderdas.

8) In fact, Arjunlal Sunderdas and the two Companies, namely, M/s.International Sea Foods Private Limited and M/s.Sunil Anand and Company Private Limited blended into one unit and this amalgamation was wilful with intent to defraud the investors.

9) The only other shareholder, the own brother of Arjunlal Sunderdas never evinced any interest either in the functioning of the Companies or in the activities carried on by Arjunlal Sunderdas.

10) The Applicant in A.No.156 of 2017, Dr.M.Arumugam, claimed to have advanced a substantial amount to M/s.International Sea Foods Private Limited since they held out that they would develop a project in another property, but which project did not take off and consequently, when he demanded return of his money, a mortgage by deposit of title deeds was created. A suit has been filed seeking to enforce the mortgage and in an application filed for judgement on admission, S.M.Lal filed a counter admitting liability. In these circumstances, Dr.M.Arumugam in A.No.156 of 2017 claimed that the property in the name of M/s.International Sea Foods Private Limited should be exempted from the estate of the Insolvent, Arjunlal Sunderdas.

60. The Official Assignee had filed A.Nos.62-65 of 2018, seeking to pierce the corporate veil of M/s.International Sea Foods Private Limited, seeking a declaration that the Arjunlal Sunderdas was the actual owner of the properties and seeking declaration that since he had been declared as Insolvent, 100% of the shares of the Company vests with the Official Assignee and also to sell the property and apply the sale proceeds for the benefit of the general body of creditors.

61. The Official Assignee had filed similar application in A.Nos.33-35 of 2018 with respect to the property of M/s.Sunil Anand and Company Private Limited and also seeking the same reliefs. In these applications, S.M.Lal has filed his counter and had challenged the grant of such reliefs.

62. In the course of the transactions, a third party, Lata Krishnamurti appears to have acted independently even prior to the filing of the insolvency petition and had obtained a Special Power of Attorney in her name from S.M.Lal with respect to dealing with the properties of the two companies and also obtained share transfer forms signed by S.M.Lal transferring his entire shareholdings in both the companies to Arjunlal Sunderdas.

63. **The following points would arise for consideration:-**

1) Whether the jurisdiction of this Special Bench could be extended to examine the reliefs sought in the applications?

2) Whether the doctrine of tracing the trust can be applied in view of the fact that huge number of depositors had placed implicit trust on Arjunlal Sunderdas and on his financial status on the dates when they made the deposits which included claims that he owned properties in prime localities in Chennai which were viewed as a security for due repayment of the amounts deposited.

3) Whether the veil of the Insolvent can be pierced by analysing the facts of the case?

4) Whether the shares which were in the name of S.M.Lal also vested with the Official Assignee?

5) Whether the two Companies can be declared as Shell companies and whether on lifting the veil, declaration can be given that the Insolvent, Arjunlal Sunderdas was the real owner?

6) Whether as a consequence thereof the properties of the two companies can also be declared to have vested on the Official Assignee?

7) Whether the properties of the two companies can be sold and proceeds can be applied for the benefit of the general body of creditors?

8) Whether the property of M/s.International Sea Foods Private Limited must be exempted from

the administration of the estate of the Insolvent, as claimed by Dr.M.Arumugam?

64. The Points Discussed:-:- The principles enunciated in each one of the points enumerated above overlap and consequently, a comprehensive discussion is undertaken.

65. Heard Mr.K.V.Ananthakrishnan, the learned counsel for the Official Assignee and the applications in A.Nos.62 to 65 of 2018 and A.Nos.33 to 35 of 2018, Mr.Balasubramanian, the learned counsel for the petitioning creditor, Ms.Bamini, the learned counsel for the Insolvent, Arjunlal Sunderdas, Mr.R.Venkat Raman and Mr.S.Sai Barath, the learned counsel for the 3rd Respondent, S.M.Lal, Mr.S.R.Ragunathan, the learned counsel for the Applicant in A.No.156 fo 2017 and Ms.Anna Mathew, the learned counsel, who appeared for several creditors in the matter. Opportunity was also granted to Ms.Lata Krishnamurti to advance arguments and also to file an affidavit.

66. **Extending the long arm of justice:-** On 14.03.2014, an innocuous insolvency petition was presented before the Court. This petition had been filed under Sections 9(d)(iii)(g), 10 and 12 of the Presidency Towns Insolvency Act, 1909, by Chitra Desai, seeking to adjudicate the Respondent therein, Arjunlal Sunderdas, as Insolvent and seeking directions for administration of the

estates and also seeking costs of the petition from and out the estate.

67. Chitra Desai, an Advocate practising in Mumbai, claimed that she had come to know the Respondent through a mutual friend, Lata Krishnamurti, a resident of New Delhi, who held out that the Respondent, Arjunlal Sunderdas was in the business of accepting deposits and repaying them with interest over and above the rates offered by the Banks. To inspire confidence, a string of names, who at that time were quite prominent in the judiciary were also revealed. They were said to be depositors who had reposed confidence in Arjunlal Sunderdas. Chitra Desai claimed that she had sent a sum of Rs.10 lakhs by cheque drawn on Axis Bank, Andheri (West), Mumbai, in favour of the Respondent. However, the details of the cheque have not been disclosed in the petition. The Respondent sent a promissory note for the said amount and also commenced paying interest very promptly on the due dates. This promptness impressed the Petitioner and her husband, Anang Desai. They deposited further amounts. Again the details as to how the amounts were paid have not been given in the petition. In the petition, it is claimed that the total amount deposited with the Respondent was Rs.60 lakhs.

68. Chitra Desai filed a statement of accounts of the Axis Bank and also three promissory notes, executed by the Respondent, dated 08.04.2010, 15.09.2010

and 01.03.2010 respectively. She issued notice to the Respondent and a copy of such notice sent by her counsel, dated 28.2.2014 was also filed as a document. One more document was also filed and that was a letter sent by the Respondent to Lata Krishnamurti. This letter was dated 25.01.2014. The Registry, on perusal of the averments made and on perusing the documents filed, made the following endorsement, seeking further explanation from the Petitioner:-

> "On scrutiny, it appears that the letter dated 25.1.2014 is not addressed to the Petitioner, it is sent to one who is also cheated by the Respondent, in such case, how this IP is maintainable under Section 12(c) of the Presidency Towns Insolvency Act, 1909".

69. The learned counsel for the Petitioner gave the following explanation and urged the Registry to take the petition on file:-

> "The letter dated 25.1.2014 is addressed to the Petitioner's friend Ms.Lata Krishnamurti, through whom the Petitioner had given money to the Debtor. This fact is also averred in the petition. Further, in terms of Section 9(8) there is no requirement as to whom the notice of suspension is to be addressed. Thereafter, petition is maintainable. Relevant extract from Mulla's Commentary is also submitted."

70. In the insolvency petition, Chitra Desai stated that from August 2013, the Respondent started defaulting in making payments. She tried to contact him several times. As a matter of fact, she also gave his cell number in the petition. But, she claimed that there was no

proper response. She then tried to contact her friend, Lata Krishnamurti. She stated that she never suspected that the Respondent would be in insolvent circumstances, considering the fact that he lived in a big bungalow with many servants. She had also come to know that he owned 105 acres of land in Bangalore, 26 acres of land in Sriperumbudur and also owned house property at No.23, Anderson Road, Nungambakkam, Chennai and another commercial property at No.96, Pantheon Apartments, Janpriya Court, Egmore, Chennai and that he and his wife Maya Arjunlal also owned an Office property at No.17, Pantheon Apartments, I lane, Pantheon Road, Chennai. She also stated that she had come to know that he had sold 9.5 acres of land at Nos.33-34, College Road, Nungambakkam, but claimed that the said sale was a sham transaction since though it took place in June 2013, from August 2013, within two months, the Respondent had started to commit default in payment of interest. The Respondent had claimed that he was not able to repay the amounts owing to his ill-health and repeated hospitalisation.

71. The insolvency petition came up for consideration before this Court and notice was issued to the Respondent. He did not appear in person, but filed an affidavit through an Advocate. The affidavit was not singed by him, but he had affixed his left thumb impression. It was also attested by a Notary in Bangalore. In the said affidavit, he made a very categorical statement

that "I am unable to pay the debts to my creditors. I have no objection to being declared as Insolvent."

72. This affidavit came to be considered by a learned Single Judge of this Court (S.Tamilvanan, J.) on 21.4.2014 and the learned Judge, after perusing the affidavit and taking into consideration the fact that the Respondent was in a serious condition, after undergoing bypass surgery and that he had no objection in being adjudicated as Insolvent, held that the Respondent had committed an act of insolvency and was, therefore, liable to be adjudicated as an Insolvent and accordingly, allowed the insolvency petition on the same day. The Respondent was adjudicated as an Insolvent. It was also held that the estate of the Respondent vested with the Official Assignee for the benefit of the general body of creditors. The Insolvent was also granted 18 months time to apply for discharge. The Respondent did not apply for discharge either within the period of 18 months or subsequent period. Probably he found it convenient to remain and die as Insolvent.

73. The Official Assignee entered into the picture and made preliminary enquiries. The Insolvent gave a list of debtors from whom monies were receivable to his estate and called upon the Official Assignee to make further enquiries, collect their addresses and collect the monies from the debtors. Several claim petitions were also received by the Official Assignee.

74. A perusal of the records reveals that the Insolvent did not cooperate with the Official Assignee and as a matter of fact, never came down to Chennai to subject himself for public examination. He filed an application seeking public examination before the Commissioner at Bangalore. A Schedule providing a list of creditors and debtors and liabilities was finally filed by him and in due course, it came to be known that there were 345 creditors claiming a total sum of Rs.179,13,11,090/-. None of them were secured creditors. The value of the properties available was given as Rs.269.54 crores in the Schedule. Among these properties, were the property at No.23, Anderson Road, Nungambakkam, Chennai, which was valued at Rs.18 crores and another property at Janpriya Court, Pantheon Road, which was valued at Rs.10 crores. In the applications now under consideration, this Court has to adjudicate on the right, title and interest of those two properties.

75. The Insolvent also disclosed that there were 65 debtors to a total sum of Rs.94,68,29,897.55/-. During public examination, further 299 claim petitions were filed by the creditors and the amounts therein amounted to Rs.160,66,34,093/-. It was also found that a few months before the date of adjudication, a property at Nungambakkam was settled in favour of the grand daughter of his brother, S.M.Lal. An agreement of sale with B.V.Reddy Enterprises Private

Limited for sale of another property at Nungambakkam was also entered into. This agreement had been declared as null and void by this Court. Another property to an extent of 8 grounds and 1955 sq.ft. in College Road, Nungambakkam had been sold to P.Amarnath Reddy.

76. The insolvency petition meandered a slow course. During the public examination, the Insolvent, Arjunlal Sunderdas, shifted the responsibility of furnishing information to his Auditor, Ranga Ramanujam. The Auditor never cooperated and extracting details proved to be a difficult task for the Official Assignee. The Official Assignee also filed applications to conduct the public examination of the Insolvent before the Deputy Registrar (OS) and also permit the general body of creditors to cross examine him.

77. On another application filed by the Official Assignee, the Official Assignee sought appointment of a Committee of Inspection, as provided under Section 88 of the Act. Names were also suggested by the Official Assignee and one of the names suggested was Lata Krishnamurti, who had introduced the petitioning creditor to the Insolvent. She was appointed. The order has been kept in abeyance by this Bench. After much delay, the Auditor, Ranga Ramanujam forwarded the ledger accounts of the Insolvent. However, the books of accounts were not produced. Only a print out from Tally Software was provided. This was for the years ending 31.3.2012,

31.3.2013 and 31.3.2014. The Insolvent did not file his Schedule of Affairs. He disclaimed knowledge about the addresses of the debtors.

78. The list given by the Insolvent varied from that of the Auditor. The Insolvent gave a revised list of 91 creditors on 1.7.2015 and claimed that a sum of Rs.106,37,23,746/- was the amount payable to them. He also gave a list of 44 debtors, but did not give their addresses, but claimed that the amount due to the estate was Rs.122,13,80,619/-. Claim petitions kept flowing to the Office of the Official Assignee and a further 257 claim petitions were received, amounting to Rs.116,92,15,343/-. All these necessitated public examination as provided under the provisions of the Act. This was directed by the learned Single Judge of this Court (M.M.Sundresh, J.) on 22.2.2016, wherein it was ordered as follows:-

> "Heard and perused.
>
> Learned counsel for the Insolvent has no serious objection for ordering public examination.
>
> In view of the same, the Plaintiff/ Official Assignee is permited to conduct public examination only after issuance of notice to the parties concerned."

79. Public examination was conducted on 15.6.2016. During the public examination, it was revealed that the Insolvent had control of two private Limited Companies, namely, M/s.International Sea Foods Private Limited and M/s.Sunil Anand and Company Private Limited,

regarding which the applications under consideration have been filed.

80. Taking into account the extent of the amounts involved and observing that serious fraud was committed, one of us (C.V.Karthikeyan, J.) had directed the Official Assignee to file a criminal complaint before the Superintendent of Police, CBCID, Economic Offences Wing, Chennai, to examine the large scale diversion of funds by the Insolvent. The Superintendent of Police was also directed to register a First Information Report, to investigate into the matter and file a report regarding the status of the investigation. The CBCID registered the First Information Report in Cr.No.6 of 2017 on 10.04.2017 under Sections 409 and 420 of IPC, against the Insolvent, Arjunlal Sunderdas.

81. In order to expedite the hearing, a reference was made to the Honourable Chief Justice, by one of (C.V.Karthikeyan, J.), while sitting in the insolvency court, on 22.9.2017, addressing the Honourable Chief Justice, regarding the nature of the insolvency petition and the amounts involved and also pointing out the status report filed by the Investigating Officer, Economic Offences Wing, CBCID, Chennai, that there was a large scale diversion of funds. These included the offences under Sections of FERA, FEMA and Prevention of Money Laundering Acts and the Economic Offences Wing themselves requested that the investigation may be transferred to a Central

Investigating Agency. The Honourable Chief Justice was requested to form a Special Bench examine in detail the acts of fraud committed by the Insolvent.

82. During the hearing of IP.No.25 of 2014 before this Bench, a status report was presented by the Inspector of Police, Economic Offences Wing II, Chennai on 4.4.2018. It was mentioned that out of 291 creditors, 280 had been summoned for enquiry and out of 91 debtors, notices had been served on 80 debtors and as on that date, 4 had appeared before the Investigating Officer and had given statements. It must also be mentioned that when the matter was heard in the insolvency Court, one of us (C.V.Karthikeyan,J.) had directed that the Official Assignee must obtain the income tax returns, pancard and other necessary documents from both the creditors and the debtors to weed out false claims being made and fake claim being included in the list.

83. Before this Bench, the Investigating Officer stated that there had been transfer of monies from the accounts of the Insolvent in Mumbai and there were also diversion of funds from other States to Tamil Nadu and vice-versa and claims had been received from individuals from New Delhi, Maharashtra, Uttar Pradesh, Andhra Pradesh, Telengana, Haryana, Karnataka and Pondicherry and also New York, USA. It was urged that the investigation should be continued by a Central Investigating Agency. This Court had therefore transferred the First Information Report

registered by the Economic Offences Wing, in Cr.No.6/2017 to the CBI, EOW, Chennai for continuation of the investigation. The CBI, EOW, Chennai also registered the First Information Report in RC.3/E/2018-CBI/EOW/Chennai on 24.05.2018 under Sections 409 and 420 of IPC against Arjunlal Sunderdas and unknown others and has taken up the investigation The investigation is under way. Discussion in this order would naturally have to be quite circumspect to ensure that observations are not made touching upon the investigation being made by CBI.

84. There have been many occasions when Madras High Court in its exercise as Chartered High Court had thought it necessary to form a Special Bench. Jurisdiction of such Bench extends to examine the issues surrounding aspects involved and referred and also traversed beyond the ordinary jurisdiction which would have vested, had the same matters been examined by a learned single judge.

85. Section 4 of the Presidency Towns Insolvency Act, 1909 related to the jurisdiction to be exercised by a single Judge and it is as follows:-

> **4. Jurisdiction to be exercised by a single Judge.**- All matters in respect of which jurisdiction is given by this Act shall be ordinarily transacted and disposed of by or under the direction of one of the Judges of the Court, and the Chief Justice shall, from time to time, assign a Judge for that purpose.”

86. This jurisdiction has to be read in

conjunction with Clause 18 of the Letters Patent and it is as follows:-

> "18. **Provision with respect to the Insolvent Court:-** And we do further order that the Court for Relief of Insolvent Debtors at Madras shall be held before one of the Judges of the said High Court of Judicature at Madras and the said High Court and any such Judge thereof, shall have and exercise within the Presidency of Madras, such powers and authorities with respect to original and appellate jurisdiction and otherwise as are constituted by the laws relating to insolvent debtors in India."

87. Clause 37 of the Letters Patent provides that it would be lawful for the High Court of Judicature at Madras to regulate its proceedings and it shall be guided in making such rules and orders as far as possible within the provisions of CPC or any other law, which is in force. Judge/Judges of the High Court have been vested with powers to exercise within its territorial jurisdiction of Madras such powers and authorities with respect to the original appellate jurisdiction while dealing with the issues related to the insolvency court.

88. Under Section 7 of the Presidency Towns Insolvency Act, 1909 the court has been vested with powers to decide all questions of priorities and also other questions of law or fact which arise in case of insolvency and which the Court may deem it expedient or necessary to decide. Section 7 is as follows:-

> "**7. Power of Court to decide all questions arising in insolvency.-** Subject to the provisions of this Act, the Court shall have full power to decide all questions of

> priorities, and all other questions whatsoever, whether of law or fact, which may arise in any case of insolvency coming within the cognizance of the Court, or which the Court may deem it expedient or necessary to decide for the purpose of doing complete justice or making a complete distribution of property in any such case:
>
> Provided that, unless all the parties otherwise agree, the power hereby given shall, for the purpose of deciding any matter arising under section 36, be exercised only in the manner and to the extent provided in that section."

89. A careful reading of Section 7 of the Presidency Towns Insolvency Act, 1909 would reveal that the Court would have power to decide:-

i. All questions of priorities.

ii. All other questions whatsoever whether of law or fact.

iii. All questions which would arise in cases of insolvency.

iv. All questions which the Court deems expedient or necessary.

v. All questions required to be necessary to do complete justice.

vi. All questions to make complete distribution of property.

90. The above analysis places an obligation on the Court to extend its arms particularly, for the purpose of doing complete justice and for such purpose, examine the issues which are directly or indirectly under its cognizance. As a matter of fact, even under Section 7, the actual words which are given are "in any case of insolvency coming within the cognizance of the Court."

91. Section 7 must be read in conjunction with Section 36 of the Presidency Towns Insolvency Act, 1909 which relate to discovery of Insolvent's property.

92. Section 36(1) of the Presidency Towns Insolvency Act, 1909 which relate to the extent to which the Court may pass orders touching upon the properties of the Insolvent is as follows:-

> "**36. Discovery of insolvent' s property.- (1)** The Court may, on the application of the official assignee or of any creditor who has proved his debt, at any time after an order of adjudication has been made, summon before it in such manner as may be prescribed the insolvent or any person known or suspected to have in his possession any property belonging to the insolvent, or supposed to be indebted to the insolvent, or any person whom the Court may deem capable of giving information respecting the insolvent, his dealings or property; and the Court may require any such person to produce any documents in his custody or power relating to the insolvent, his dealings or property."

93. Section 36(5) of the Presidency Towns Insolvency Act, 1909 provides that the Court can also direct delivery to the Official Assignee such property or in part thereof if it is determined that the property belongs to the Insolvent.

94. Section 36(3) of the Presidency Towns Insolvency Act, 1909 relates to examination of any person relating to the dealings of the Insolvent over any other property.

95. Section 36(6) of the Presidency Towns Insolvency Act, 1909 has stated that orders passed therein

shall be executed as a decree for payment of money or as a decree for delivering of property.

96. White collar crimes are committed with impunity and with fraud as their base. On analysis of facts of this case, it is found that one single individual, Arjunlal Sunderdas had fraudulently inspired confidence of about 291 creditors, who had deposited a total sum of Rs.160,56,34,093/- with him and which sums remains unpaid out of his estate. He had also claimed that there were 91 debtors to the estate and that the receivables from them are Rs.106,37,23,747/-. He has however withheld crucial details like addresses of the debtors. It is also stated in the petition filed by Chitra Desai in IP.No.25 of 2014 that she was informed by the Insolvent that a large number of prominent personalities in the judiciary and in the legal field had placed trust on him and deposited their monies with him. This was another bait offered.

97. The Insolvent, Arjunlal Sunderdas claimed that he had control over several properties. He was also the Managing Director and majority shareholder in the two companies, in which we are now interested, namely, M/s.International Sea Foods Private Limited and M/s.Sunil Anand and Company Private Limited. The other shareholder was his own brother S.M.Lal, who never participated in the affairs of the two Companies. The properties owned by the two Companies were situated in prime locations in the City of Chennai. To a common depositor, it was not revealed

that it was the Companies which were the owners of the properties. Arjunlal Sunderdas always projected himself as the owner of the properties.

98. Tracing the Trust - Piercing the veil of the Insolvent:-

The above issues gave rise to complicated aspects to be determined. The Court had the responsibility to pay about 291 creditors, who filed claim petitions. There was always a lurking doubt that there were several more creditors, who had not approached the Court by filing claim petitions. The veracity of the claims had to be verified. The genuineness of the list of debtors had also to be examined. The Insolvent never cooperated during the public examination. He had also not filed statement of assets and liabilities and list of creditors and debtors and whenever questions were asked, he stated that only his Auditor Ranga Ramanujam would know the details. On the other hand, the Auditor Ranga Ramanujam also did not cooperate in producing the details. He had produced only an extract of the statements and stated that the books of accounts were not available. As a matter of fact, it has also come to light that Ranga Ramanujam himself has a claim over the estate.

99. Taking into account the large scale fraud committed, the Court had originally called upon the Economic Offences Wing of the Tamil Nadu Police to investigate into the matter and subsequently, seeing that

fraud had purported outside the jurisdiction of this side, had directed CBI to register a First Information Report and investigate into the aspects. It was also found that the amounts were layered into various transactions, which can be categorised as money laundering.

100. In **1997 9 SCC 377 (Air India Statutory Corporation Vs. United Labour Union)** while dealing with the issue with respect to whether the workmen were engaged as contract labourers despite prohibition of contract labour, the Honourable Supreme Court, in paragraph 59, had stated as follows:-

> "56. The founding fathers placed no limitation or fetters on the power of the High Court under Article 226 of the Constitution except self-imposed limitations. The arm of the Court is long enough to reach injustice wherever it is found. The Court as reach injustice wherever it is found. The court as sentinel in the qui vive is to mete out justice in given facts."

101. Much earlier in **AIR 1930 Lahore 465 (Emperor Vs. Sukhdev and Others)**, of course, on different facts, the Court had observed as follows:-

> "The authority of the Court exists for the advancement of justice. If any attempt is made to abuse that authority so as to prejudice justice, the Court must have power to prevent that abuse. Courts exist to promote justice and prevent injustice."

102. The jurisdiction of the insolvency Court to determine all questions which arose before this Court had been considered by the Constitutional Bench of the Honourable Supreme Court in **State of Punjab Vs. Rattan**

Singh (AIR 1964 SC 1223). The Constitutional Bench dealt with the Patiala Recovery of State Dues Act. The question was whether the insolvency Court can, at the time of hearing of a petition by the creditor for declaring a debtor, as Insolvent, determine the liability of an alleged debtor for the payment of the debt for the recovery of which, the creditor had obtained an order. In that case, one Jyoti Prashad was indebted to the Bank of Patiala. Being unable to pay the debt of Rs.5 lakhs, he approached the Bank in 1952 with a request to forbear from recovering the amount all at once and grant him time to pay the amount in instalments and the Bank agreed. In pursuance of the agreement, Sardar Rattan Singh, the Respondent stood surety to the extent of Rs.2 lakhs and entered into a contract of guarantee with the Bank. When Jyoti Prashad defaulted, the Bank started proceedings for recovery of its dues against Rattan Singh. One of the questions which was addressed to the Constitutional Bench was the jurisdiction of the insolvency Court. The question which arose was whether the alleged debtor really owed the debt. The Constitutional Bench considered the question in the light of the provisions of the Provincial Insolvency Act, 1920. The Constitutional Bench held in paragraphs 27 to 33 as follows:-

> "27.Subsequent to the adjudication of the debtor as an insolvent, the next stage for the preparation of the schedule of creditors under s. 33 of the Insolvency Act comes. ***All persons alleging themselves to be creditors of the***

insolvent in respect of the debts provable under the Act have to tender proof of the respective debts by producing evidence of the amount and the particulars thereof and the Court has then to determine the person who have proved themselves to be creditors of the insolvent in respect of such debts and the amount of debts, respectively, and then frame a schedule of such persons and debts. Creditors other than the creditor who had applied for the adjudication of the insolvent may have judgement debts against that insolvent and they will have to prove by evidence the amount and particulars of the debts owed by the insolvent to them. Judgements or decrees may be good evidence for proving of such debts, but it is open to the Court to require independent proof of the debt which had merged in the judgement debt. ***(Emphasis Applied).***

28. It is clear from the above provisions of the Insolvency Act that it is the duty of the Insolvency Court and therefore clearly ***within its jurisdiction to require proof to its satisfaction of the debts sought to be proved at the stage of the hearing of the insolvency petition or subsequent to the adjudication. (Emphasis Applied).***

29. There is plenty of case law in support of the view that the Insolvency Court can go behind the decree of a court in order to probe into the genuineness of the debt in connection with which the decree is passed.

30. In Ex parte Kibble. In re Onslow(AIR 1963 SC 222) it was said by Sir James, L.J., at p. 376:

"It is the settled rule of the Court of Bankruptcy, on which we have always acted, that the Court of Bankruptcy can inquire into the consideration for a judgement debt. There are obviously strong reasons for this, because the object of the bankruptcy laws is to procure the distribution of a debtor's goods among his just creditors. If a judgement were conclusive, a man might allow any number of judgements to be obtained by default against him by his friends or relations without any debt being due on them at all; it is therefore necessary that the consideration of the judgement should be liable to investigation."

In this case the probe into the judgement debt was made at the time of the adjudication proceedings.”

31. In Ex parte Lennox, In re Lennox(AIR 1963 SC 222) Lord Esher, M.R., said at p. 323:

"The authority, however, of Ex parte Kibble(ILR 1961 14 (2) Punj 823) seems to me quite sufficient, and I think it was decided on right principles. If that be so it is not true to say that the mere fact of a judgement existing ought to prevent the Court at the instance of the debtor at the first stage of the proceedings, viz., when a receiving order is applied for, from inquiring whether there was any real debt as the foundation of the judgement, and, although by consenting to a judgement the debtor is estopped everywhere else from saying that there was no debt due-although the judgement is binding upon him by reason of his consent, and of its being the judgement of the Court, yet no such estopped is effectual as against the Court of Bankruptcy. The Court is not estopped by the conduct of the parties, but it has a right to inquire into the debt."

" Cotton, L.J., said at p. 325:

"It has been long established, as regards the proof of a debt in bankruptcy, that the trustee, acting on behalf of the creditors, can go behind a judgement, and that, although the judgement is prima facie evidence of a debt due to the creditor who claims to prove for the judgement debt, yet the trustee, on behalf of the creditors, may show that in fact the judgement does not establish a debt. That rule is founded upon this principle that, under whatever circumstances a judgement may have been obtained against the bankrupt, yet no act of his-collusion, compromise improperly entered into, or anything else-ought to prejudice the rights of the other creditors, because the assets ought to be distributed in the bankruptcy only amongst the honest bona fide creditors of the bankrupt."

Lindley, L.J., said at pp. 328, 329:

"Bankruptcy proceedings are not like ordinary proceedings; they are a very serious matter, not only to the debtor himself, but to all his other creditors; and, before the machinery of the

Court of Bankruptcy is put in motion, it appears to me that it is, not only the right, but the duty of the Court to see at whose instance it is asked to act. By the express language of sub-s. 3, of s. 7 the Court is enabled to look into a judgement debt;"

" "It means, I think, that, although the judgement debtor could not go behind the judgement, the Court of Bankruptcy will now allow itself to be put in motion at the instance of a person who is not a real creditor. The Court will not allow bankruptcy proceedings to be had recourse to for the purpose of enforcing debts which are fictitious, and not real, even although they are in the form of judgement debts."

32. In re Fraser, Ex parte Central Bank of London(AIR 1963 SC 222) Lord Esher, M.R. said at p. 635:

"As a matter of law the judgement, therefore stands as a good judgement against John Fraser and it cannot be questioned by him in any Court, except the Court of Bankruptcy. But, when it is sought to obtain a receiving order against him in respect of the judgement debt, the Court of Bankruptcy has to exercise its discretion, and for the exercise of that discretion one rule of conduct is to be found in s. 7 of the Bankruptcy Act, 1883, which provides, by sub-s. 3, that 'if the Court is not satisfied with the proof of the petitioning creditor's debt, or of the act of bankruptcy, or of the service of the petition, or is satisfied by the debtor that is able to pay his debts, or that for other sufficient cause no order ought to be made, the Court may dismiss the petition'."

33. In In re Van Laun, Ex parte Chatterton(AIR 1963 SC 222) Cozens Hardy M.R. said at p. 30 what Bigham J., had said in In re Van Laun. Ex parte Pattullo : (ILR 1961 14(2) PUNJ 823)

"The trustee's right and duty when examining a proof for the purpose of admitting or rejecting it is to require some satisfactory evidence that the debt on which the proof is founded is a real debt. No judgement recovered against the bankrupt, no covenant given by or account stated with him, can deprive the trustee of this right.

> He is entitled to go behind such forms to get at the truth, and the estopped to which the bankrupt may have subjected himself will not prevail against him."

The Constitutional Bench also observed that the above principles had been applied by the Courts in this country.

103. In **AIR 1965 SC 920 (Official Receiver, Kanpur Vs. Abdul Shakoor and others)** it was held in paragraphs 13 to 15 as under:-

> "13. A debt to be entered in the schedule must therefore be a real debt. A judgement against a debtor which is sought to be relied upon in proving a debt does not necessarily establish the existence of a real debt for the judgement may have gone by default, it may have gone by consent or it may have been procured for any other reason. In a proceeding relating to proof of debts the question which arises being not one between the insolvent and the proving creditor alone, the rights of other creditors of the insolvent have of necessity to be considered. Even if for some reason the debtor himself is estopped from denying the debt there will be no estoppel against the Insolvency Court.
>
> 14. The Court therefore in each case has jurisdiction to investigate whether there is a real debt: whether production of a judgement or a negotiable instrument or other evidence may be regarded as sufficient to regard the debt as proved is a matter for the Insolvency Court to decide. The question is not to be adjudged in the light of any estoppel which may operate against the insolvent or of any presumption. The Court in a given case may rely merely upon a judgement or a negotiable or other instrument, and admit the debt to the schedule not because there is an estoppel against the Receiver or the other creditors, or presumption of law in favour of the evidence produced, but because in its view in the light of the circumstances no further enquiry beyond proof of the judgement or negotiable instrument or other document evidencing the debt and proof of non-satisfaction of the debt since the date thereof is sufficient. The Court has power, however, to

> insist upon proof of the debt apart from the judgement or the negotiable or other instrument. ***The reason is that the Insolvency Court with a view to effectively distribute the estate of the insolvent among the creditors is entitled to go behind outward forms of transactions and to ascertain the truth of the debts sought to be proved, and the estoppel to which the insolvent may have subjected himself will not prevail against the Receiver.*** Whether the power should be exercised in the case of a judgement debt in a given case depends upon the discretion of the Court which has to be exercised on sound judicial principles. It is true that the Court ordinarily; does not go behind a judgement against the debtor, on a bare suggestion by the debtor that the debt which is merged in the judgement did not exist or was bad. There must undoubtedly be circumstances prima facie justifying an enquiry There must appear something that the judgement was procured by fraud or collusion, or that there has been miscarriage of justice But a mere irregularity or error in form will not be a sufficient reason for going behind the judgement" **(Emphasis Applied).**

The underlying ratio laid in the above judgement is that the insolvency Court is entitled to go behind the outward forms of transactions and to ascertain the truth of the debts sought to be proved.

104. The dictum laid in the above judgements is that a duty was cast upon the insolvency courts to examine the fraudulent acts of the Insolvent and particularly when he shielded himself behind incorporation of companies. This act of fraud is sufficient reason for this Court to extend its long arm to ensure that justice is done. In this connection, it should be remembered that courts in this country are bound by the solemn declaration 'Fiat, Justitia, Ruat Coelum' Let justice be done, though

the heavens should fall.

105. In A.Nos.62, 63, 64 and 65 of 2018, the Official Assignee had sought a declaration that M/s.International Sea Foods Private Limited is a shell Company and for a further declaration that on lifting the corporate veil, the Insolvent Arjunlal Sunderdas is the owner and consequently, that he is the owner of the property at No.23, Anderson Road, Chennai and that the property vests with the Official Assignee. The Official Assignee also sought permission to sell the property and distribute the proceeds for the benefit of the general body of creditors.

106. The said Company, M/s.International Sea Foods Private Limited had been registered at Hyderabad. The property at No.23, Anderson Road, Nungambakkam, Chennai, measuring 3 grounds 625 sq.ft. was owned by the said Company. The Insolvent Arjunlal Sunderdas was Managing Director and was holding 71.20% of the share. The 3rd Respondent in the applications, S.M.Lal was holding the remaining 28.80% of the shares. There were no other shareholders. The 3rd Respondent, S.M.Lal, had transferred and relinquished his 28.80% of the shares in favour of Arjunlal Sunderdas. The circumstances surrounding such transfer had been the scope of much arguments advanced before this Court.

107. In A.Nos.33, 34 and 35 o 2018, the Official Assignee had sought a declaration that M/s.Sunil

Anand and Company Private Limited is a shell Company and for a further declaration that on lifting the corporate veil, the Insolvent Arjunlal Sunderdas is the owner and consequently, that he is the owner of the property at No.96, Pantheon Apartments, Janpriya Court, Egmore, Chennai and that the property vests with the Official Assignee. The Official Assignee also sought permission to sell the property and distribute the proceeds for the benefit of the general body of creditors.

108. The said Company, M/s.Sunil Anand and Company Private Limited had been registered at Hyderabad. The property at No.96, Pantheon Apartments, Janpriya Court, Egmore, Chennai, measuring 12700 sq.ft. was owned by the said Company. The Insolvent Arjunlal Sunderdas was Managing Director and was holding 75% of the shares. The 3rd Respondent in the applications, S.M.Lal was holding the remaining 25% of the shares. There were no other shareholders. The 3rd Respondent, S.M.Lal, had transferred and relinquished his 25% of the shares in favour of Arjunlal Sunderdas. The circumstances surrounding such transfer had been the scope of much arguments advanced before this Court.

109. It had been claimed by S.M.Lal that one Lata Krishnamurti, informed him about the debts of his brother Arjunlal Sunderdas and with a view to protect him from the claims of creditors, she induced him to execute share transfer forms and also execute a Special Power of

Attorney in her name. He did so in trust. These documents ultimately landed up in the Office of the Official Assignee. It has been contended by the learned counsel for the S.M.Lal that the share transfer forms can have no legal value since transfer was not effected in manner known to law. This Court is not piercing the corporate veil of M/s.International Sea Foods Private Limited and M/s.Sunil Anand & Company Private Limited to determine as to who is the owner of the properties. This Court is adopting the doctrine of tracing the trust. The doctrine of tracing the trust had been often used in insolvency matters by Courts.

110. In **AIR 1978 Mad 112 (Bandi Chalapathi Rao and another Vs. Official Assignee, Madras High Court),** it was held as follows:-

> "2. No doubt, it is true that Section 7 of the Presidency Towns Insolvency Act, herein after referred to as the Act, as it stood without the proviso added to it in 1927, gave plenary powers to the Court to decide on questions whatsoever whether of law or of fact which may arise in any case of insolvency coming within the cognizance of the said Court. There was also the ancillary powers to the insolvency Court under the said provision to decide any question if in its opinion it was necessary or expedient to do so for doing complete justice or making a complete distribution of the property in any such case. The latter portion of Section 7, therefore, reflects the discretionary power in the Court to decide such matters. Expediency, necessity or obligation to render complete justice for the purpose of making equitable distribution of the Insolvent's property are all matters which the insolvency Court can look into for purpose of considering whether the question before it has to be decided by it or such questions have to be relegated to a Civil Court for a fuller adjudication of the subject matter. If once the insolvency Court decides that the matter could

be dealt with it, may be on the ground of expediency or necessity, may be also on the ground that it was to entertain and decide upon it so as to render justice, all such incidents reflecting upon the exercise of jurisdiction by the Court are pointers' to the fact that the Court exercised its discretion one way or the other.

9. .. the residuary power in the insolvency Court to decide all questions of priorities and all other questions whatsoever whether of law or of fact which may arise in any case of insolvency coming within the cognizance of the Court or which the Court may deem expedient or necessary to decide for the purpose of doing complete justice or marking a complete distribution of property in any such case is provided for expressly in the statute. We have to some extent in our earlier order referred to the scope and content of the power of the insolvency Court while dealing with such questions arising in insolvency. When the Legislature has vested the insolvency Court with a manifest jurisdiction to consider all questions in the name of expediency and convenience, then the very objective which the section serves is obvious. It is not only to afford speedy justice either to the Official Assignee as representing the body of creditors or to a creditor of the Insolvent estate under certain circumstances, but the way in which it runs through the process created by a special provision in this Act reflects on the main concept viz. that the insolvency Court is expected to render complete justice or a substantial justice while adjudicating the mattes which come before it for a decision."

111. In **1999 (2) BOMLR 428 (Yogini Chandrakant Mehta Vs. The Official Assignee, High Court, Bombay)** it was held as follows:-

""11. A perusal of the said section shows that the insolvency Court has the power to decide all questions of priorities and all other questions whatsoever, whether of law or fact, which may arise in any case of insolvency coming within the cognizance of the Court. Similarly, the insolvency Court has power to decide all

> questions which it may deem expedient or necessary to decide for the purpose of doing complete justice or marking a complete distribution of property in an insolvency matter. We were dealing with a case where the claims of the creditors are over Rs.3 crores. The husband, who has been adjudged Insolvent, claims to have transferred two flats by an unregistered document. The document is not signed by two witnesses. The observations of the learned Single Judge in the impugned order, show that the Insolvent husband himself was the Chairman of the Society. The transfer forms are blank in many columns. The share certificate has been signed by the Insolvent husband himself in his capacity as the Chairman of the Society. That apart, ***the wide amplitude of the provisions of Section 7, make it clear that the insolvency Court will have jurisdiction to decide the question which arose before it and was thought expedient or necessary to decide for the purpose of doing complete justice or marking complete distribution of the property."*** (Emphasis Applied).

112. If the monies are to be recovered to the advantage of the creditors, the doctrine of tracing the trust will have to be applied.

113. In the present case, the Companies were incorporated much earlier. They had prime properties in Chennai. The Insolvent, who controlled the affairs of the Companies projected himself as a man of means and inspired confidence of a huge number of prominent personalities to deposit their amounts with him offering to pay them a higher rate of interest.

114. The concept of tracing the trust had been upheld and discussed with much advantage also by the **Privy Council in Vol. 56 ILR 570 (The Official Assignee of Madras Vs. Krishnaji Bhat).** That was an appeal from a

judgement of the Madras High Court. In 1919, a sum of Rs.10,000/- was left in the hands of a firm of jewellers, T.R.Tawker & Sons. The Jewellers constituted a joint Hindu family. The Respondent in the appeal had brought a suit in the High Court against 8 Defendants, who constituted a joint Hindu family and who carried on business as Jewellers under the firm name T.R.Tawker & Sons. Even before the trial, the Defendants were adjudicated as Insolvents under the Presidency Towns Insolvency Act, 1909. The Appellant before the Privy Council, namely, the Official Assignee had joined as a Defendant and filed a written statement. The original Defendants did not appear at the trial. The Privy Council had dealt with a question whether the Respondent, who was the Plaintiff, was entitled to a charge upon the estates in the hands of the Official Assignee. Those assets were proceeds of sale of stocks and amounted to Rs.22,000/-. The question which arose was whether the sale of the stocks was properly made or made with an intention to defeat the right of creditors. The Privy Council held that the estates of the firm vested with the Official Assignee and the right of a beneficiary to follow a trust fund does not depend upon whether the fund has been properly or improperly disposed of.

115. Discussions were made with respect to applicability of Sections 63 and 66 of the Indian Trusts Act. It was found that the fund was to be used in the business, which consisted of buying and selling goods. It

was further held that a sum of Rs.10,000/-, which Respondent in the Applicant/ the Plaintiff claimed, can be traced into the assets of the firm. Before the Privy Council, it was opined that "the only possible question is whether the trust fund can be found in the assets of the trustee firm which have come to the Appellant." The Appellant was the Official Assignee. The Privy Council held that the Respondent was entitled to a charge of Rs.10,000/- on the available amount of Rs.22,000/- since the amount had passed into the hands of the Appellant on the insolvency.

116. Their Lordships of the Privy Council referred to the following passage in the judgement of TURNER L.J. In **Pennell Vs. Deffell (1853 43 ER 551):-**

> "It is, I apprehend, an undoubted principle of this Court, that as between cestui que trust and trustee, and all parties claiming under the trustee, otherwise than by purchase for valuable consideration without notice, all property belonging to a trust, however, much it may be changed or altered in its nature or character, and all the fruit of such property, whether in its original or in its altered state, continues to be subject to or affected by the trust."

117. The objections raised by the Official Assignee against creation of a charge over the amounts which had vested with them was rejected and it was held that the person who placed trust and deposited the amount in Tawker & Sons had a right to claim such amount from the estate of the Insolvent, which had vested in the Official Assignee.

118. Much earlier to this, there was yet another instance of act of insolvency which attracted much attention. Sir George Arbuthnot, Managing Partner of M/s.Arbuthnot & Company, presented a debtor's petiton in insolvency on 22.10.1906. At that time, the law applicable was the Indian Insolvency Act, 1848. He was adjudged bankrupt and his estate vested in the Official Assignee. In the mean while, the Presidency Towns Insolvency Act, 1909 was enacted and its provisions came to be applied visa-vis distribution of the amounts available in the estate to the creditors. The total debts proved and admitted by the Official Assignee came to Rs.2,76,28,420/-. Various claim petitions had been filed and they were dealt with separately subsequent to the adjudication as insolvency of George Arbuthnot. In those applications, the doctrine of tracing the trust was applied by the Madras High Court.

119. In **1 Ind Cas 712 (The Official Assignee of Madras Vs. G.Smith) it was held as under:-**

> “3. .. It must, however, be borne in mind in considering this case that a banker who receives money as a trustee is not entitled to mix it with his own and use it, and this is why it is in accordance with the principle explained in In re Hallet's Estate (1880) 13 Ch.D.696; 49 Ch. 415; 42 L.T.421. In Faley V.Hill 2 H.L.28, Lord Brougham, at page 44, points out that if a banker were a trustee he could not use the trust money as his own without a breach of trust, and in The south Australian Insurance Company, Vs. Randell (1869-70) 3 P.C. 101 it was held by the Judicial Committee to be an indelible principle of trust property that a trustee can never make use of it for his own benefit. Mr.Heber Hard in

> his book on 'Banking', 2nd editin, page 485, quotes Cane, J., who decided In re Brown Ex parte plitt 60 LTR 397 as having observed during the argument ***"where the debtor (the banker) is to collect and remit, there is confidence and trust. Where the debtor is to use and repay on demand there is no trust."*** The question in the present case appears to resolve itself into this. Upon what terms did Messrs.Arbuthnot & Co. hold the Rs.627 collected by them pending the receipt of the balance when the whole sum was to be placed on fixed deposit." **(Emphasis Applied)**.

120. The right of a beneficiary under a fiduciary relationship to recover the trust property, particularly, from the person who mixed the trust property with his own funds or from a person to whom the property has wrongly been given and the obligation of a banker when money had been handed over to him had again be discussed in connection with the facts of Arbuthnot's case in **1910 20 MLJ 428 (The Official Assignee of Madras Vs. AEA.Lupprian)**, wherein it was held as under:-

> "3. The same principle would, I think, apply when money is handed to a Banker for the specific purpose of purchasing securities and, as has been shown, that is, in effect, the position in the present case. In Prince v. Oriental Bank Corporation (1878 3 AC 325 at page 334 it was observed that the decision in D.E.Bernales V. Fuller (1811-14-East.590) might be supported on the ground that money had been paid in specifically for the payment of the particular bill and had been accepted by the Bankers for that purpose and that they made themselves, by so accepting the money, agents to hold it for the Plaintiffs."

121. The rights of an Official Assignee to a joint family property when the managing member had been adjudicated as Insolvent was discussed by the Madras High

Court in **1922 43 MLJ 569 (The Official Assignee of Madras Vs. Allu N.Ramachandra Aiyar and Others)** wherein in paragraphs 3 and 4 it was held as follows:-

> "3. It can be taken as established law that the Official Assignee on the insolvency of the managing member of a joint Hindu family succeeds to two things, (1) the undivided interest of the insolvent in the joint property and (2) his rights as managing member so far as they can be exercised for his own benefit. It is also established that he is not entitled to have vested in him the shares of the other members although he can deal with them if the insolvent could lawfully have done so if there had been no insolvency. These propositions arc to be found clearly stated in the judgment of Latham J. in Fakir chart d Motichand v. Motichand Harruckchund (1883) I.L.R. 7 Bom. 438 which has been followed in many subsequent cases, This is the combined effect of Sections 7, 30 and 52 of the Presidency Towns Insolvency Act and of the Hindu Law as to the rights of a managing member - See Nunna Setti v. Chandra Boyina (1902) I.L.R. 26 Mad. 214. It follows that the Official Assignee standing for this purpose in the shoes of the insolvent can alienate the minor sons' interests in the joint property for the purpose of paying the insolvent's debts unless the debts in question were incurred for an illegal or immoral purpose, the presumption being that they were not.
>
> 4. The question remains whether the Official Assignee is entitled to possession of the joint property. He is joint owner of the property and, in my judgment, he must be entitled to joint possession thereof. It is no doubt true that a stranger cannot by reason of having purchased a share in the joint property insist on having joint possession. But the Official Assignee is not an alienee but the representative of the insolvent."

122. In the present case, the judgements stated above become directly relevant taking into consideration the conduct of the Insolvent who projected

himself as a man of means, which is evident from the statement of the Petitioner in the insolvency petition that she trusted him because he lived in a big bungalow with many servants and two cars and further from his statement to her listing out the names of prominent personalities in the judicial and legal fields and also by holding out as security the properties in prime locations in Chennai. What was not disclosed was that the properties were actually owned by the said two private Limited Companies, in which he had 71.20% and 75% of the shares and there was his brother, S.M.Lal, who held the balance of 28.80% and 25% shares.

123. S.M.Lal and his Status:- The right of a shareholder to the property of a Company had often been discussed. The shareholders who contribute and also known as subscribers, create the corpus towards the working capital of a private Limited Company. Though not restricted, quite often, the Directors of the Company are elected from among the shareholders.

124. In **Bacha F.Guzdar, Bombay Vs. Commissioner of Income Tax, Bombay, reported in AIR 1955 SC 74**, in paragraph No.9, it had been stated as follows:-

> 9. It was argued that the position of shareholders in a company is analogous to that of partners inter se. This analogy is wholly inaccurate. Partnership is merely an association of persons for carrying on the business of partnership and in law the firm name is a compendious method of describing the partners. Such is, however, not the case of a company which stands as a separate juristic entity

distinct from the shareholders. In Halsbury's Laws of England, Volume 6 (3rd Ed.), page 234, the law regarding the attributes of shares is thus stated :

"A share is a right to a specified amount of the share capital of a company carrying with it certain rights and liabilities while the company is a going concern and in its winding up. The shares or other interest of any member in a company are personal estate transferable in the manner provided by its articles, and are not of the, nature of real estate." "

125. M/s.International Sea Foods Private Limited and M/s.Sunil Anand and Company Private Limited had as their shareholders only two individuals, namely, the Insolvent Arjunlal Sunderdas and his brother S.M.Lal. They were both also nominated as Directors. The Companies had no staff. The Companies did not have Company Secretaries, who are statutory officials prescribed under the Companies Act, 1956. There are no records to show that the Companies actually presented their balance sheet. It is for that reason that the Companies were also struck off by the Registrar of Companies. The Companies were used only to induce depositors, who were convinced about the solvency of Arjunlal Sunderdas who at all material points of time fraudulently projected the properties of the Companies as his own individual estates.

126. S.M.Lal participated in these proceedings, records have not been produced with respect to him independently attending the Annual General Meeting, being allotted dividends or even participating in the day

today management of the Company.

127. It is the contention of the learned counsel for the 2nd Respondent, S.M.Lal that the corporate veil of a Company can be pierced only when it is found that from the point of inception, the Company was used as a shield to attract investors and protect the image of the directors. In the present case, this Court will have to deviate from that principle and examine a white collar crime where an individual blends himself with the Company and holds out the property of the Company as his own property and thereby attracts investments to be made in his individual name. This concept of blending of the Director/ Shareholder with a Company and using such projection of image to dishonestly induce investors would naturally entitle any judicial forum to look beyond the individual and seek to order that property which he had held out and vests with the Official Assignee for the benefit of the general body of creditors in case he is declared as Insolvent. We hold that S.M.Lal is not entitled to any share in the properties of the Companies. He will have to prove, in manner known to law, his claim of his share holdings in the two Companies. He would at the most rank with the general body of creditors and be entitled to no preference subject to the claim of the Official Assignee against him.

128. The contention of the learned counsel for S.M.Lal, the other Director that he must have a share

in the property to the extent of his shareholdings cannot be accepted since as discussed above the shareholder/subscriber/contributor can have proportionate division of the profits which is termed as a dividend. But, they do not have a right over the properties of the Company.

129. **M/s.International Sea Foods Private Limited and M/s.Sunil Anand and Company Private Limited:-**

In this case, Arjunlal Sunderdas had been declared as Insolvent on the petition filed by the petitioning creditor, Chitra Desai, who in her petition specifically mentioned that the properties of the two Companies were available for distribution among the general body of creditors.

130. In **State of Punjab Vs. Rattan Singh (AIR 1964 SC 1223)** the Constitutional Bench had actually affirmed the position that "no act of this collusion compromise improperly entered into or anything else ought to prejudice the rights of the other creditors because the estates ought to be distributed in the bankruptcy only amongst honest bona fide creditors of the banker.

131. In this case also, once the properties of the two Companies are traced to the individual, still there will be an obligation for each creditor to prove his/her debt in manner known to law.

132. Yet another submission had been made in view of the fact that M/s.International Sea Foods Private Limited and M/s.Sunil Anand and Company Private

Limited had been declared as non entities or have been struck off by the Registrar of the Companies.

133. Chapter XVIII of Companies Act, 1956 deals with "Removal of Names of Companies from the Registrar of Companies."

134. Under Section 248 of the Companies Act, 2013, the Registrar has the power to remove the name of a Company from the Register of Companies when the Company has failed commence its business within one year of its incorporation or when a Company has not carried on business or operation for a period of two immediately preceding financial years. The actual provision is given under Section 248(1)(a) and (c), which is as under:-

> "**248. Power of Registrar to remove name of Company from register of companies:-** (1) Where the Registrar has reasonable cause to believe that
>
> (a) a Company has failed to commence its business within one year of its incorporation (or)
>
> (c) a Company is not carrying on any business or operation for a period of two immediately preceding financial year sand ha snot made any application within such period for obtaining the status of a dormant Company under Section 455, he shall send a notice to the Company and all the directors of the Company of his intention to remove the name of the Company from the register of companies and requesting them to send their representations along with copies of the relevant documents, if any, within a period of thirty days from the date of the notice."

135. There is also a provision wherein the Registrar can remove the name of the Company from the

Register of Companies when a Company after extinguishing all its liabilities by a special resolution or consent of 75% of the members, files an application in the prescribed manner for removing its own name from the register.

136. In the instant case, M/s.International Sea Foods Private Limited and M/s.Sunil Anand and Company Private Limited have both been struck off from the register by the Registrar. This can be done by the Registrar, only on two grounds, namely, (i) when a Company fails to commence its business within one year of its incorporation or when a Company had not carried on business or operation for a period of two immediately preceding financial years. The two companies had been incorporated much before the date of presentation of the insolvency petition. Consequently, the Registrar had taken action only under Section 248(1)(c), in which he could do so, if, after following the procedures he had determined that the Companies had not been carrying on business or operations for a period of two immediately preceding financial years. The facts in the insolvency petition reveal that it was only in the two immediately preceding years that the Insolvent Arjunlal Sunderdas was very actively collecting deposits from gullible depositors. This leads us to a further inference that the two Companies were not carrying on any business or operations in accordance with their Memorandum of Association or Articles of Association. For all practical purposes, the companies were used as a screen

which can be drawn when the Insolvent ventured too far in its activities drawing him into a mine and also to open the screen when fraudulently, inviting gullible depositors to deposit their monies with the Insolvent. The deposits were made since the properties of the Companies were projected as valuable security for due repayment by the Insolvent.

137. Under Section 248(7) of the Companies Act,2013, it has been provided as follows:-

> "248(7):- The liability, if any, of every director, manager or other officer who was exercising any power of management, and of every member of the Company dissolved under sub section (5) shall continue and may be enforced as if the Company had not been dissolved."

138. Under this provision, the liability of every director of a Company which is dissolved shall continue and may be enforced as if the Company had not been dissolved. This provision has been introduced by the Statue to prevent applications made voluntarily by the directors to remove the name of a Company with a view to screen themselves from any possible action for acts of mismanagement or misappropriation. Consequently, even though the Registrar had declared that the Companies under consideration had been removed from the register of companies, the liability of the Director would still subsists. More particularly, the liability of the director, who had been declared as Insolvent and whose personal effects and properties had vested with the Official Assignee, would continue to be liable for any acts

of misfeasance either prior to the Company being struck off or prior to his being declared as the Insolvent. The liabilities carry forwards the acts of the Registrar is only a procedure contemplated under law. The liability of S.M.Lal is reinforced by his affidavit in CS.No.121 of 2014 admitting to the claim of Dr.M.Arumugam.

139. There is also another provision for revival of a Company which had been struck off by the Registrar. It has to be noted that neither the Insolvent before his declaration as an Insolvent or subsequently nor the other director, S.M.Lal had applied to revive the companies. The conduct of S.M.Lal in this connection is noteworthy since he had neither participated in the functioning of the Company nor in any of the business activities of the Company before the other director, Arjunlal Sunderdas was declared as Insolvent nor had he actively attempted to revive the Company after the other director Arjunlal Sunderdas had been declared as Insolvent. As a matter of fact, the records show that he had given his consent for transfer of shares in the name of the Insolvent.

140. Under Section 250 of the Act, where a Company had been dissolved under Section 248, then the certificate of incorporation issued to it shall be deemed to have been cancelled except for the purpose of releasing amounts either due to the Company or to discharge the liabilities of the Company.

141. In the instant case, M/s.International

Sea Foods Private Limited and M/s.Sunil Anand & Company Private Limited were wholly owned by two shareholders, who had appointed themselves as Directors. Arjunlal Sunderdas had 71.20% of shares and S.M.Lal had 28.80% of shares in M/s.International Sea Foods Private Limited. Arjunlal Sunderdas had 75% of shares and S.M.Lal had 25% of shares in M/s.Sunil Anand and Company Private Limited. No records have been produced either by the Insolvent or by S.M.Lal or by the Auditor to show that the two companies actually did any business. It is clear that they had been used only with a view to use such companies as a shield if any one of two directors are proceeded for their fraudulent acts. These fraudulent acts included accepting of deposits by false inducements . When fraud is writ large on the face of the Insolvent, naturally the Court will have to extend its arms, and open the veil on the face of the Insolvent. The properties of the Company had been projected to inspire confidence among the depositors. Trust had been misplaced and such trust had been induced by fraud.

142. In **2012 10 SCC 603 (Sahara India Real Estate Corporation Limited and others Vs. SEBI)** the Honourable Supreme Court, in paragraph 95, had held as follows:-

> "The maxim **'acta exterior indicant interiora secreta'** (external action reveals inner secrets) applies with all force in the case of Saharas, which I have already demonstrated on facts as well as on law. Conduct and actions of Saharas indicate their

> intention, we have to judge their so called intention from their subsequent conduct. Subsequent, illegality shows that Saharas contemplated illegality. ***A person's inner intentions are to be read and understood from his acts and omissions. Whenever, in the application of an enactment, a person's state of mind is relevant, the above maxim comes into play." (Emphasis Applied).***

This maxim would apply with all force to the conduct and actions of the Insolvent, Arjunlal Sunderdas, whose only intention was to defraud gullible depositors of their valuable money and also to S.M.Lal who had relinquished his rights in the two Companies by executing share transfer deeds and also general powers of attorney, to avoid creditors from knocking his door and also avoided notices issued by this Court and refrained from participating in the judicial proceedings till adjudication of the present applications. The Court, in such circumstances, will have to veil with which he had screened himself and pierce his dubious methods.

143. It must be mentioned that a letter of the Insolvent had been filed as a document along with the insolvency petition, stating that the title deeds of the property of M/s.Sunil Anand & Company Private Limited had been handed over to Lata Krishnamurti. The title deeds of the property of M/s.International Sea Foods Private Limited are with the Applicant in A.No.156 of 2017, Dr.M.Arumugam.

144. **The Points Answered:-** In view of the above discussions, we categorically held as under:-

1. The jurisdiction of this Special Bench must be extended to examine the reliefs sought in the applications.

2. The doctrine of tracing the trust can be applied in view of the fact that huge number of depositors had placed implicit trust on Arjunlal Sunderdas and on his financial status on the dates when they made the deposits which included claims that he owned properties in prime localities in Chennai which were viewed as a security for due repayment of the amounts deposited.

3. The Insolvent and the two Companies had blended with each other and the investors were led to believe that they were all one whole signle unit and not distinct entities. The veil of the Insolvent must be pierced in view of the facts of the case.

4. The shares which were in the name of S.M.Lal vested with the Official Assignee.

5. The two Companies are declared as shell Companies and the Insolvent, Arjunlal Sunderdas was the real owner of the properties of the two Companies.

6. The properties of the two Companies have also vested on the Official Assignee.

7. The properties of the two Companies have to be brought for sale in public auction and the proceeds have to be applied for the benefit of the general body of creditors.

8. The properties of M/s.International Sea Foods Private Limited cannot be exempted from the administration of the estate of the Insolvent as claimed by Dr.M.Arumugam.

145. **CONCUSION:-**

To conclude, by extending the long arms of this Court, and by applying the principle of tracing the trust, when the screen of the Insolvent, Arjunlal Sunderdas is pierced, the following conclusions are arrived at:-

i. M/s.International Sea Foods Private Limited turned into a sham and shell Company, which had been used only for the purpose of inducing gullible depositors with the sole aim of making personal gain.

ii. M/s.Sunil Anand and Company Private Limited turned into a sham and shell Company, which had been used only for the purpose of inducing gullible depositors with the sole aim of making personal gain.

iii. S.M.Lal, as a shareholder/Director had executed the share transfer forms in favour of the other sole Director, Arjunlal Sunderdas, prior to him being declared as Insolvent and consequently, the entire shareholdings of Arjunlal Sunderdas had vested with the Official Assignee. Moreover, the Companies having been struck off, S.M.Lal has no right or title or interest over the properties.

iv.The Official Assignee is directed to call for the original title deeds with respect to the properties of M/s.International Sea Foods Private Limited from Dr.M.Arumugam.

146. There has been a reference to Lata Krishnamurti both by the petitioning creditor and also in the course of the above discussions. She had also filed an affidavit explaining her stand. Since the matter had been handed over to CBI, who had registered a First Information Report and is conducting investigation, it would be highly inappropriate for the Court to express any opinion. It is for the CBI to take appropriate decisions in furtherance of their investigation.

147. In view of the above conclusions, this Court, in order to satisfy the liabilities towards legitimate body of creditors, directs the Official Assignee to bring the properties at No.23, Anderson Road, Nungambakkam, Chennai-6 and at No.96, Pantheon Apartments, Janpriya Court, Egmore, Chennai, for sale by public auction and apply the sale proceeds thereof for the benefit of the general body of creditors.

148. There has been an earlier order of this Court that the creditors and the debtors must provide

their income tax returns, their pancards and other details to show their bona fide. Consequently, when the sale proceeds are applied, they could be applied only to the creditors whose bona fide are proved. That would be an exercise for the Official Assignee to conduct on the basis of evidence recorded before the Master.

149. **In the result,**

i.A.No.156 of 2017, seeking for a direction to exempt the property at No.23, Anderson Road, Nungambakkam, Chennai-6, from the administration of the Official Assignee. is dismissed, but, the claim of Applicant, as mortgagee, is preserved and would be determined, at the time of applying the sale proceeds.

ii.A.No.62 of 2018 is partly allowed to the extent that declaration is granted, holding that M/s.International Sea Foods Private Limited is a shell Company.

iii.A.No.63 of 2018 is partly allowed and it is held that the property at No.23, Anderson Road, Chennai-6 vests with the Official Assignee.

iv.A.No.64 of 2018 filed, seeking direction to the 4th Respondent, namely, Dr.M.Arumugam, who is the Applicant in A.No.156 of 2017, to hand over the title deeds of the property at No.23, Anderson Road, Nungambakkam, Chennai-6, is allowed.

v. A.No.65 of 2018 filed by the Official Assignee, seeking permission to sell the property at No.23, Anderson Road, Nungambakkam, Chennai-6 and apply the sale proceeds to the estate of Arjunlal Sunderdas for the benefit of the general body of creditors, is allowed.

vi. A.No.33 of 2018 is partly allowed to the extent that declaration is granted holding that M/s.Sunil Anand and Company Private Limited is a shell Company.

vii. A.No.34 of 2018 is partly allowed and it is held that the property of ground floor, measuring 11888 sq.ft. with a built up areas of 832 sq.ft. of undivided share at No.96, Pantheon Road, Chennai vests with the Official Assignee.

viii. A.No.35 of 2018 filed by the Official Assignee, seeking permission to sell the property in the ground floor at No.96, Pantheon Road, Egmore, Chennai, measuring about 11888 sq.ft. with a built up area of 832 sq.ft. of undivided share and apply the sale proceeds for the benefit of the general body of creditors of the Insolvent, Arjunlal Sunderdas, is allowed.

150. Post the IP on 01.02.2019.

151. The Official Assignee is at liberty to apply to the Court for any directions regarding the sale of the properties.

WITNESS, THE HON'BLE MS. INDIRA BANERJEE, CHIEF JUSTICE, HIGH COURT AT MADRAS, AFORESAID THIS THE 27TH DAY OF JULY 2018.

sd/-
ASSISTANT REGISTRAR
Original Side - I

//CERTIFIED TO BE TRUE COPY//

DATED THIS THE DAY OF 2018

MANAGER

INSOLVENCY OFFICE

From 25th Day of September 2008 the Registry is issuing certified copies of the Orders/Judgments/Decrees in this format.

cns 27.07.2018

HIGH COURT, MADRAS

APPLN. No.156 of 2017
and
APPLN.NOS.62, 63,64,65/2018
and
APPLN.NOS.33, 34 & 35/201
IN
I.P.NO.25 of 2014

THE HON'BLE DR.JUSTICE

G.JAYACHANDRAN

AND

THE HON'BLE MR.JUSTICE

C.V.KARTHIKEYAN

ORDER DATED: 27.07.2018

FOR APPROVAL: 27.07.2018

APPROVED ON : 27.07.2018

COPY TO:-

THE OFFICIAL ASSIGNEE
HIGH COURT, MADRAS.

IN THE HIGH COURT OF JUDICATURE AT MADRAS

(IN INSOLVENCY)

FRIDAY, THE 27TH DAY OF JULY 2018

THE HON'BLE DR.JUSTICE G.JAYACHANDRAN
AND
THE HON'BLE MR.JUSTICE C.V.KARTHIKEYAN

APPLN. No.156 of 2017
&
APPLN.NOS.62,63, 64 AND 65 OF 2018
&
APPLN.NOS.33, 34 & 35 OF 2018
in
I.P. No.25 of 2014

In the matter of the Presidency Towns Insolvency Act, III of 1909 and In the matter of Arjunlal Sunderdas ...Debtor

I.P.NO.25 OF 2014

Smt.Chitra Desai
residing at 3A-302, Oakland Park,
Yamuna Nagar, Lokhandwala Complex,
Andheri (West), Mumbai. ... Petitioning Creditor

-Versus-

Mr.S.Arjunlal Sunderdas
23, Anderson Road, Nungambakkam,
Chennai-600 006. ... Respondent / Debtor

APPLN. No.156 of 2017

Dr.M.Arumugam,
S/o.A.Murukiah Pillai,
No.7, Khader Nawaz Khan Road,
Nungambakkam,
Chennai 600 006. ... Applicant

-Versus-

1.The Official Assignee,
High Court, Chennai - 104. ... 1st Respondent

2.Smt.Chitra Desai
residing at 3A-302, Oakland Park,
Yamuna Nagar, Lokhandwala Complex,
Andheri (West), Mumbai. ... 2nd Respondent/ Petitioning Creditor

Application praying that this Hon'ble Court be pleased to direct the exemption of the property at No.23, Anderson Road, Nungambakkam, Chennai 600 034, from the administration of the 1st respondent as per the order dated 21.04.2014 passed by this Hon'ble Court in I.P.No.25 of 2014.

APPLN. Nos.62 TO 65 of 2018

The Official Assignee,
High Court, Madras. ... Applicant

-Versus-

1.International Sea Foods Private Ltd.,
Pantheon Apartments,
No.17, Pantheon Road, 1st Lane,
Chennai 600 008.

2.Arjunlal Sunderdas,
C/o.Dinesh D.Bajaj,
Flat No.8181, TVH Lumbini Square,
127A, Brick Klin Road,
Purasawakkam, Chennai 7. ... 2nd Respondent/Debtor

3.S.Manohar Lal @ S.M.Lal,
Flat No.D, Third Floor,
Advika Apartments,
Door No.11, and Old No.6, 6B and 7,
First Street, Subbarao Avenue,
Chennai 600 006. ... 3rd Respondent

4.Dr.M.Arumugam,
S/o.Murukiah Pillai,
7, Khadar Nawaz Khan Road,
Nungambakkam, Chennai 600 006. ... 4th Respondent

Application No.62 of 2018 praying that this Hon'ble Court be pleased to declare the first respondent company International Sea Foods Pvt.Ltd., having registered office at 5-9-656 Gun Foundry Hyderabad 500 001 Telangana and functioning from Pantheon Apartments, No.17, Pantheon Road, 1st Lane, Chennai 600 008 is a shell company and on lifting the corporate veil, the real owner is Mr.Arjunlal Sunderdas, the Insolvent.

Application No.63 of 2018 praying that this Hon'ble

Court be pleased to declare the Arjunlal Sunderdas is the owner of the property at 23, Anderson Road, Chennai 600 006, which is morefully described in the schedule to the application and on adjudication of Arjunlal Sunderdas statutorily vest in the Official Assignee.

Application No.64 of 2018 praying that this Hon'ble Court be pleased to direct the fourth respondent herein to return the original title deeds relating to the property at No.23, Anderson Road, Nungambakkam, Chennai 6 which is morefully described in schedule to the application.

Application No.65 of 2018 praying that this Hon'ble Court be pleased to permit the Official Assignee to sell the property at No.23, Anderson Road, Nungambakkam, Chennai 6, which is morefully described in Schedule to the application and apply the sale proceeds to the estate of Arjunlal Sunderdas insolvent for the benefit of general body of creditors.

APPLN. Nos.33 TO 35 of 2018

The Official Assignee,
High Court, Madras. ... Applicant

-Versus-

1.Sunil Anand & Co., P.Ltd.,
Pantheon Apartments,
No.17, Pantheon Road, 1st Lane,
Chennai 600 008.

2.Mr.Arjunlal Sunderdas
23, Anderson Road, Nungambakkam,
Chennai-600 006. ... 2nd Respondent/Debtor

3.S.M.Lal,
1-A, Pantheon Apartments,
34, Pantheon Road, Egmore,
Chennai 600 008. ... Respondents

Application No.33 of 2018 praying that this Hon'ble

Court be pleased to declare that the first respondent Sunil Anand & Co. P.Ltd., Pantheon Apartments, No.17, Pantheon Road, 1st Lane, Chennai 600 008 is a shell company and on lifting the corporate veil, the real owner is Mr.Arjunlal Sunderdas, the Insolvent.

Application No.34 of 2018 praying that this Hon'ble Court be pleased to declare that Arjunlal Sunderdas is the owner of the property of Ground Floor of 11888 sq.ft. of built up area with 832 sq.ft., of UDS at No.96 Pantheon Road, Egmore, Chennai 8 which is morefully described in the schedule to the application and on adjudication of Arjunlal Sunderdas, statutorily vest in the Official Assignee.

Application No.35 of 2018 praying that this Hon'ble Court be pleased to grant permission to the Official Assignee to sell the property Ground Floor of 11888 sq.ft of built up area with 832 sq.ft of UDS at No.96 Pantheon Road, Egmore, Chennai 8 which is morefully described in Schedule to the application and apply the sale proceeds to the benefit of general body of creditors.

The above applications having been heard on 27.06.2018 in the presence of Mr.S.R.Raghunathan, advocate for the Applicant in Appln.No.156 of 2017 and for 4th respondent in Appln.Nos.62 to 65 of 2018; Mr.K.V.Ananthakrushnan, advocate for the Official Assignee, the Applicant in A.Nos.62 to 65 and 33 to 35 of 2018 and for the 1st Respondent in Appln.No.156 of 2017 Mrs.R.Bamini, advocate for the 2nd respondent/ Insolvent in

Appln.Nos.62 to 65 & 33 to 35 of 2018; M/s.R.Venkatraman, S.Saibarath, advocates for the 3rd respondent in Appln.Nos.62 to 65 and 33 to 35 of 2018 and upon reading the Judges summons and reports of the Official Assignee filed in Application Nos.62 to 65 & 33 to 35 of 2018 and Report of the Official Assignee filed in Appln.No.156 of 2017 and the judges Summons and affidavit of Dr.M.Arumugam, filed in Appln.No.156 of 2017 and this Court having stood over for consideration till this date and coming on this day before this Court for orders in the presence of the above said advocates,

IT IS ORDERED AS FOLLOWS :

(1)That the Application No.156 of 2017 in I.P.No.25 fo 2014 be and is hereby dismissed and the claim of Applicant, as mortgagee, is preserved and would be determined, at the time of applying the sale proceeds.

(2) That Appln.No.62 of 2018 is partly allowed to the extent the first respondent company International Sea Foods Pvt.Ltd., having registered office at 5-9-656 Gun Foundry Hyderabad 500 001 Telangana and functioning from Pantheon Apartments, No.17, Pantheon Road, 1st Lane, Chennai 600 008 be and is hereby declared as a shell company.

(3) That A.No.63/2018 is partly allowed and it is held that the property at No.23, Anderson Road, Chennai 6 vests with the Official Assignee.

(4) That A.No.64 of 2018 is allowed and the fourth respondent in Appln.No.64 of 2018 be and is hereby

directed to hand over the title deeds relating to the property at No.23, Anderson Road, Nungambakkam, Chennai 6 which is morefully described in schedule hereunder.

(5) That A.No.65/2018 is allowed and the Official Assignee be and is hereby permitted to sell the property at No.23, Anderson Road, Nungambakkam, Chennai 6, which is morefully described in Schedule hereunder and apply the sale proceeds to the estate of Arjunlal Sunderdas insolvent for the benefit of general body of creditors.

(6) That A.No.33/2018 is partly allowed to the extent that the first respondent Sunil Anand & Co., P.Ltd., Pantheon Apartments, No.17, Pantheon Road, 1st Lane, Chennai 600 008 be and is hereby declared as a shell company.

(7) That A.No.34/2018 is partly allowed and it is held that the property of ground floor, measuring 11888 sq.ft. With a built up areas of 832 sq.ft. Of undivided share at No.96, Pantheon Road, Chennai vests with the Official Assignee.

(8) That A.No.35/2018 is allowed and the Official Assignee be and is hereby permitted to sell the property in the Ground Floor of 11888 sq.ft of built up area with 832 sq.ft of UDS at No.96 Pantheon Road, Egmore, Chennai 8 which is morefully described in Schedule hereunder and apply the sale proceeds to the benefit of general body of creditors of the Insolvent.

(9) That the Official assignee shall be at liberty

to apply to the Court for any directions regarding the sale of the properties.

(10) That the insolvency Petition No.25 of 2014 be posted on 01.02.2019.

SCHEDULE OF PROPERTY IN APPLN.NOS.63 TO 65 OF 2018

All that piece and parcel of land comprised in plot No.1A in Layout No.40/64 together with the incomplete bungalow thereon, bearing new Corporation Door No.23 and forming part of Old Survey No.423 and Resurvey No.85 and part of old Survey No.424 and Resurvey No.86 situated in Anderson Road, nungambakkam, madras bounded on the

North by - Anderson Road, Nungambakkm,

East by - 30 ft Road

South by - Plot No.1B &

West by - Resurvey No.84

measuring

East to West : On the Northern side 100 ft, with a slant at the North-Eastern side measuring 10 Ft.
North to South: On the Eastern and Western side 78.1/2 ft

East to West : On the Southern side 100 feet
in all 3 grounds and 625 sq.ft. Or thereabouts within the Registration Sub District of Theyagarayanagar and within the Registration District of Madras South.

SCHEDULE OF PROPERTY IN APPLN.NOS.34 AND 35 OF 2018

SCHEDULE 'A'

All that piece and parcel of land of about 13 grounds and 1133 sq.ft. In R.S.No.1623/1 and 1624/4 in the premises bearing old No.101 and New No.96, Pantheon Road, Egmore,

Chennai situate within the Sub Registration District of

Periamet and Registration Distirct of Madras Central, Bounded on the

North by : R.S.No.1624 and 1625

South by : Premises No.31/2 and 31/3, Pantheon Road,

East by : R.S.No.1626 Part

West by : Pantheon Road

SCHEDULE 'B'

11888 sq.ft. Of built up area in the Ground Floor with 832 sq.ft. Proportionate share in the common areas in all measuring to 12720 sq.ft in the building constructed in Schedule 'A' property together with 12,720/125843 undivided share of land in schedule 'A' property including proportionate open car parking space in the Ground Floor around the building.

WITNESS THE HON' BLE MS. INDIRA BANERJEE, CHIEF JUSTICE, HIGH COURT AT MADRAS, AFORESAID THIS THE 27TH DAY OF JULY 2018.

sd/-

ASSISTANT REGISTRAR
Original Side - I

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DATED THIS THE DAY OF 2018

MANAGER
INSOLVENCY OFFICE

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cns 07.08.2018

HIGH COURT, MADRAS

APPLN. No.156 of 2017
and
APPLN.NOS.62, 63,64,65/2018
and
APPLN.NOS.33, 34 & 35/2018
IN
I.P.NO.25 of 2014

THE HON'BLE DR.JUSTICE

G.JAYACHANDRAN

AND

THE HON'BLE MR.JUSTICE

C.V.KARTHIKEYAN

ORDER DATED: 27.07.2018

FOR APPROVAL: 07/08/2018

APPROVED ON : 09/08/2018

COPY TO:-

THE OFFICIAL ASSIGNEE
HIGH COURT, MADRAS.