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**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION**

**INTERIM APPLICATION NO. 2173 OF 2019
IN
OFFICIAL LIQUIDATOR REPORT NO. 153 OF 2019
IN
COMPANY PETITION NO. 9 OF 2010**

Rohstoffe International Pvt. Ltd.

... Applicant

In the matter between:

The Official Liquidator of
M/s. Sonal Garments India Pvt. Ltd.

... Petitioner

Versus

The Collector, Mumbai & Ors.

... Respondents

Mr. Vishal Kanade a/w Ms. Nidhi Singh, Ms. Nidhi Faganiya i/b
Vidhii Partners, for the Applicant.

Mr. Amar Mishra, A.G.P., for the Respondent No. 1 – State.

Mr. Mohit Khanna a/w Ms. Chhaya Parab, Ms. Meghna Mehta i/b
M/s. Shah & Sanghavi, for the Respondent No. 2 – Society.

Mr. Gaurav Aswani i/b Mr. Mutahhar Khan, for the Official
Liquidator.

CORAM: SOMASEKHAR SUNDARESAN, J.

DATE: SEPTEMBER 30, 2026

JUDGEMENT:

Context and Factual Background:

1. The core controversy in the captioned proceedings is what the market value should be in Company Court-monitored auctions of office units for the State of Maharashtra to charge a premium on an *ad valorem* basis under Section 37A of the Maharashtra Land Revenue Code, 1966 (“**MLRC**”) for registration of the transfer where the office unit is in a building that stands on land leased by the State to a premises society.
2. According to the State, the premium should be charged on market value as set out on the annual statement of rates (“**Ready Reckoner Value**”) notified under the Maharashtra Stamp (Determination of True Market Value of Property) Rules, 1995 (“**Market Value Rules**”), ignoring the price discovered in the auction process (“**Auction Purchase Value**”) because that is the rate statutorily stipulated for purposes of computing transfer premium under Section 37A of the MLRC.
3. According to the Applicant, Rohstoffe International Pvt. Ltd., which is the auction purchaser (“**Auction Purchaser**”), the transfer premium should be computed on the Auction Purchase Value and not the Ready Reckoner Value, because that is the true market value and is identified as such even under the law governing Stamp Duty.
4. Originally, the Auction Purchaser had questioned even the right of the State to charge a premium on an individual unit in a building standing on

leasehold land owned by the State. However, in the course of the hearing, it became common ground that the State indeed has a right to charge a premium to register a transfer of an office unit in a building erected on the State's land leased to a premises society. The only quarrel is on the computation of the charge of transfer premium.

5. The captioned proceedings, Interim Application No. 2173 of 2019 (“**IA 2173**”) also entail a question about a charge of a contribution to a common amenity fund imposed by the Mittal Court Premises Co-operative Society Limited (“**Society**”) on the Auction Purchaser as the incoming member. Whether such a charge may be imposed on an incoming member or whether it should have been imposed on the outgoing member i.e. effectively, on the liquidation estate is also a question to be answered.

6. The factual matrix relevant for the adjudication of this case may be summarised thus:

A] Sonal Garments (India) Private Limited (“**Company**”) was subjected to liquidation proceedings and winding up order was passed on April 16, 2012;

B] As part of the liquidation proceedings, Office Unit No. 134-A Mittal Court, Nariman Point, Mumbai, (“**Office Unit**”), an office in the Society, was auctioned by the Official Liquidator under the oversight of

the Company Court. The transfer of the Office Unit pursuant to the auction was approved by an order dated October 10, 2018 passed by the Company Court, for the Auction Purchase Value of Rs. 2,65,00,000/-;

C] Under a Government Resolution dated July 7, 2017 (“**2017 GR**”), the transfer premium is to be computed at the higher of Rs. 2,000 per square foot and the amount computed at a rate of 6% of the Ready Reckoner Value, whichever is higher. Towards this end, on the basis of the Ready Reckoner Value of Rs. 5,93,26,567/-, the premium has claimed by the State as amounting to Rs. 35,59,600/- (rounded up);

D] The State also has claims about a past transfer of the Office Unit and a past mortgage without State approval and the transfer premium claimed on it is Rs. 3,69,100/-. On November 27, 2019, the State issued a notice demanding Rs. 39,26,700 for issuance of a no-objection certificate to recognise the transfer;

E] Upon the State refusing to effect registration of the transfer in favour of the Auction Purchaser unless such transfer premium were paid, IA 2173 was filed by the Auction Purchaser. By an order dated July 27, 2020 (“**Interim Order**”), a Learned Single Judge set out an *ad interim* working arrangement in IA 2173 for the Auction Purchaser to be given a no-objection certificate by the State and by the Society. This entailed the following actions, subject to the outcome in IA 2173:

- (i) The Auction Purchaser was directed to pay to the Collector a sum of Rs. 35,59,600/- which is referable to the transfer premium attributed by the State to the transfer in question (leaving out the past transfer and the past mortgage), against which the no-objection certificate would be issued by the State;
- (ii) Since according to the Auction Purchaser, the amount payable was only Rs. 15,90,000/-, which is 6% of the Auction Purchase Value, the State would refund a sum of Rs. 19,69,600/- to the Auction Purchaser, should the final decision go in favour of the Auction Purchaser and against the State, along with interest at 6% per annum;
- (iii) Likewise, the Auction Purchaser would pay to the Society a sum of Rs. 6,39,920/- towards the Society's claims, of which Rs. 3,92,515/- was payable towards the common amenity fund, against which the Society would also issue its no-objection certificate. If the Society were to fail and the Auction Purchaser were to succeed in IA 2173, the amount of Rs. 3,92,515/- would have to be refunded by the Society with interest at the rate of 6% per annum; and

(iv) Against issuance of these no-objection certificates, the Official Liquidator and the Auction Purchaser were to execute a conveyance; and

F] The aforesaid arrangement set out in the Interim Order was implemented by the parties. By the time IA 2173 was heard finally, the Auction Purchaser had sold the Office Unit onwards. The outcome in this judgement would determine how much transfer premium is actually payable, if at all, and whether the Auction Purchaser is entitled to the refunds from the State and from the Society.

7. By consent of parties, IA 2173 was taken up for final hearing and disposal. I have heard Mr. Vishal Kanade, Learned Advocate for the Auction Purchaser, Mr. Amar Mishra, Learned Assistant Government Pleader, and Mr. Mohit Khanna, Learned Advocate on behalf of the Society. None appeared for the Official Liquidator throughout the hearing. With the assistance of the advocates, I have examined the material on record.

Points for Determination:

8. The following points for determination arise in this Application:

A] Whether the State is entitled to charge a premium at all for transfer of a unit in a building standing on State-owned leasehold land;

B] What would be the value on which premium at the rate stipulated in the 2017 GR should be computed – the Ready Reckoner Value or the Auction Purchase Value; and

C] Is the Society's claim for a common amenity fund legitimate and whether such a charge is payable by the Auction Purchaser or by the Official Liquidator.

ANALYSIS AND FINDINGS:

State's Entitlement to Charge Premium:

9. Mr. Kanade had initially pitched the Auction Purchaser's case on the decision in ***Aspi Chinoy***¹, to contend that there is no basis at all for the State to charge a transfer premium, importing from that case where premium was sought to be charged for transfer of units in housing societies. However, after Mr. Mishra pointed to the decision by a Learned Division Bench in ***Bulchandani***², Mr. Kanade would concede that the State having a basis to impose a charge is no longer in doubt.

¹ *Aspi Chinoy & Anr. Vs. State of Maharashtra & Ors.* – **judgement dated September 29, 2009 in Writ Petition No. 713 of 2001; 2009 SCC OnLine Bom 2541**; affirmed by the Supreme Court in *State of Maharashtra & Ors. Vs. Aspi Chinoy & Anr.* by **judgement dated September 30, 2022 in Civil Appeal No. 5809 of 2011**

² *State of Maharashtra & Ors. Vs. Kamal R. Bulchandani & Anr.* – **judgement dated July 13, 2026 of a Learned Division Bench in Review Petition (L) No. 27315 of 2024 in Writ Petition No. 1462 of 2019 with Contempt Petition No. 33 of 2023 – 2026 SCC OnLine Bom 8500**

10. The law declared in ***Bulchandani*** makes it clear that the introduction of Section 37A in the MLRC with effect from March 3, 2015 was, in itself, a legislative intervention to deal with the ruling in ***Aspi Chinoy*** and to provide a statutory basis for premium to be charged for transfer of a unit in a building owned by a Society standing on leasehold land. The 2017 GR stipulates the applicable charging rate (6% of the Ready Reckoner Value) pursuant to the power delegated to the State to issue orders stipulating the premium rate under the provisions of Section 37A. Therefore, it was held that the power of the State to charge a premium for such a transfer is no longer in doubt.

11. In fact, the judgement in ***Bulchandani*** was rendered in a Review Petition to review an order that had disposed of a writ petition based on a concession by the State's advocate that ***Aspi Chinoy*** would cover the issue of whether any transfer premium can at all be charged for transfer of an individual office unit in a building standing on land leased by the State. The Learned Division Bench reviewed the earlier order, and has provided a detailed analysis of how, after the introduction of Section 37A of the MLRC, ***Aspi Chinoy*** would no longer hold the field. It was held that Section 37A is the basis of the charge, and the 2017 GR is the instrument issued pursuant to the power conferred under Section 37A.

12. For completeness, Section 37A of the MLRC must be noticed and analysed, and it reads thus:

37A. *Restrictions on sale, transfer, redevelopment, change of use, etc., in relation to Government land and nazul land.—*

(1) Every sale, transfer, redevelopment, use of additional Floor Space Index (FSI), transfer of Transferable Development Rights (TDR) or change of use of any Government land in Amravati and Nagpur Revenue Divisions, including the Mumbai City and Mumbai Revenue Divisions in the State, which is granted for various purposes under the provisions of this Code or the rules made thereunder or any law relating to land revenue, before the commencement of this Code, including the nazul lands in Amravati and Nagpur Revenue Divisions, shall be subject to taking the prior permission of the State Government.

(2) The State Government shall, while granting such permission as required under sub-section (1), recover such premium or charge and share of unearned income, subject to such terms and conditions as may be specified, by general or special order, issued by the Government, from time to time:

Provided that if the provisions of this section or any orders issued thereunder are inconsistent with the terms and conditions of the order of land grant or lease deed executed prior to the commencement of the Maharashtra Land Revenue Code (Second Amendment) Act, 2012, the terms and conditions of such order of land grant or lease deed shall prevail:

Provided further that in the case of nazul lands in Amravati and Nagpur Revenue Divisions, the provisions of sub-section

(1) shall not apply with retrospective effect.

Explanation.— For the purposes of this section—

(a) "Government land" includes the Government land or part of such land, or any building erected thereon, or any right, benefit or share arising out of or in relation to such land or building; and

(b) *****

[Emphasis Supplied]

13. As seen from the extract above, Section 37A(1) stipulates the need for permission of the State for any sale or transfer of “Government land”. That term is defined in the Explanation as including any right, benefit or share arising out of any building erected on land of the Government. Therefore, where land has been leased by the State to a Society, which has erected a building on it, and unit in such building is being transferred, permission of the State for such transfer would be necessary. Section 37A(2) provides for the State to seek any premium or charge when approving such transfer. The 2017 GR sets out how the charge is to be computed and that instrument has been held to be the general order of the State referred to in Section 37A(2).

14. Mr. Mishra would also point to Condition No. 19 in the instrument dated April 25, 1974 granting lease of land by the State to the Society (“**Lease Grant**”), which reads thus:

19. The lessee shall not assign or part with possession of the demised premises or transfer the lessees’ interest therein without the previous consent in writing of the lessor. The lessor will be at liberty to refuse such consent or grant it subject to such conditions including a condition requiring payment of premium as the lessor may in his absolute discretion think fit.

[Emphasis Supplied]

15. The submission is that there is nothing inconsistent in the Lease Grant with Section 37A of the MLRC for the Lease Grant to prevail, and on the contrary, Condition No. 19 is consistent with the position that the State may

require payment of premium for any assignment of any interest of the lessee in the property that is leased.

16. In a separate legislative intervention, while Section 37A(2) of the MLRC provided for a conflict between Section 37A and conditions in the lease to be resolved by giving primacy to the lease conditions, on August 22, 2016, a proviso was inserted into Section 295 by the MLRC (Fourth Amendment) Act, 2016, to stipulate that permission of the State would be necessary for transfer of leasehold rights regardless of the provisions in lease deeds. This brought uniformity into lease deeds across the board. Section 3 of this Amendment Act also validated all past premia charged by the State since inception, thereby invalidating any litigation for refund of such premia on the premise that until such amendment there was no power to charge any premium.

17. In ***Bulchandani***, the Learned Division Bench noted that the constitutional validity of both provisions had been considered and upheld by another Learned Division Bench in ***Hindustan Unilever***³, with the reconciliation that the State could not initiate fresh action to claim premium in cases that were already covered by the primacy granted to lease deeds by Section 37A(2), and held that future transfers after the introduction of Section 295 would be validly covered by the proviso to Section 295 and not by the

³ *Hindustan Unilever Ltd. & Anr. Vs. State of Maharashtra – judgement dated May 3, 2018 in a bunch of Writ Petitions led by Writ Petition (L) No. 122 of 2018 – (2018) SCC OnLine Bom 930*

primacy given to lease conditions under Section 37A(2). Applying these two provisions, it was emphatically endorsed in ***Bulchandani*** that transfer of office units in a premises society would be chargeable with premium.

18. Suffice it to say, for purposes of this Application, Mr. Mishra's submission that every member of a Society has an interest and share in the Society and its building erected on land leased by the State to the Society, is squarely covered by ***Bulchandani***. Transfer of such share in the Society in relation to transfer of an office unit in the Society's building attracts the statutory charge of premium under Section 37A of the MLRC read with the 2017 GR. The Learned Division Bench examined ***Aspi Chinoy*** and applied ***Hindustan Unilever*** to it, and clearly set out the implications of how the law had moved.

19. Therefore, it is clear that there is no scope left for making any submissions on the basis of ***Aspi Chinoy*** to question the power to charge a premium on the transfer of the Office Unit, even if the transfer is pursuant to a Company Court-approved auction. The Auction Purchaser too has no quarrel now with conceding that the law declared in ***Bulchandani*** firmly applies to this case. Therefore, to avoid prolixity, copious extraction of all that the Learned Division Bench has said, which in any case binds this Single Bench, is not necessary.

Ready Reckoner Value vs. Auction Purchase Value:

20. This takes me to the issue of how the premium or the charge for permitting a transfer of the Office Unit under Section 37A of the MLRC is to be computed. It is common ground that the premium charge stipulated in the 2017 GR for commercial or industrial units is the higher of the amount computed at Rs. 2,000 per square foot, and 6% of the market value in terms of the annual statement or rates under the Stamp Act. Certain other Government Resolutions are also invoked for past transfers of interest for which premiums are sought to be collected from the Auction Purchaser. However, for purposes of adjudicating IA 2173, there is consensus that the core question to be answered is only about the premium chargeable for the transfer arising out of the auction conducted under the oversight of the Company Court.

21. As stated earlier, the core dispute in this case is about the base on which the 6% rate should be applied – the Ready Reckoner Value of Rs. ~5.93 crores or the Auction Purchase Value of Rs. 2.65 crores. If it is held that the 6% charge should be applied on the Auction Purchase Value, and such amount is lower than the charge on the basis of charging Rs. 2,000 per square foot, then the latter would need to be applied. If it is held that the 6% charge is to be applied on the Ready Reckoner Value, then no intervention would be necessary while disposing of IA 2173.

22. Mr. Kanade would submit that it is the Auction Purchase Value that demonstrates the real market value for the Office Unit in particular. Price discovery has taken place specifically factoring in the peculiarities of the property, he would submit, to invoke the ruling of a Learned Division Bench in ***Pinak Bharat***⁴ to submit that the Auction Purchase Value is conclusive for all statutory purposes. He would also rely on ***Bharat Bijlee***⁵ to contend that a statutory sale certificate is conclusive and that binds every authority thereafter dealing with the property. He would submit that it would be absurd for two different values being adopted as the market value for the same transaction. Mr. Kanade would also allude to the judgement of a Learned Single Judge of the Company Court, as upheld by the Learned Division Bench, in ***Transpower***⁶ to point to the fact that the Company Court can conclusively decide the issue on the same lines as it had in that case.

23. In contrast, Mr. Mishra would submit that the Collector is not at all second-guessing the Auction Purchase Value to invoke ***Bharat Bijlee*** and ***Pinak Bharat***. He submits that the Auction Purchase Value is irrelevant

⁴ *The Collector of Stamps, Mumbai City Vs. Pinak Bharat & Co. & Ors. – Judgement dated March 17, 2025 in Commercial Appeal No. 14 of 2024 with Commercial Appeal (L) No. 28626 of 2023 by a Learned Division Bench; 2025:BHC-OS:4598-DB*

⁵ *Bharat Bijlee Ltd. Vs. State of Maharashtra & Ors. – judgement of a Learned Single Judge dated August 28, 2002 in Writ Petition No. 1512 of 1998; 2002 SCC OnLine Bom 1315 : (2003) 105 (1) Bom LR 133*

⁶ *Maharashtra Industrial Development Corporation Vs. Transpower Engineering Ltd. – Judgement of the Learned Single Bench dated July 26, 2018 in Official Liquidator Report No. 466 of 2016 in Company Petition No. 606 of 1998 filed by Metal Tubes and Rolling Mills, upheld by the Learned Division Bench by judgement dated December 9, 2025 in Appeal (L) No. 533 of 2018*

because the statutory charge under the MLRC is specifically set out in the 2017 GR and all that the Collector is doing is compute the transfer premium in compliance with the requirement. Mr. Mishra would submit that the charge of premium by the State is a statutory first charge under Section 37A and Section 295 of the MLRC. Mr. Mishra would contend that the Auction Purchaser cannot expect to be treated as a *bona fide* purchaser for value without notice, because the charge under Section 37A of the MLRC applicable to the Office Unit (which is government land) is a statutory encumbrance, of which there was full notice to the world at large. Citing the meanings set out in the Black's Law Dictionary (10th Ed., 2014), Mr. Mishra would contend that a *charge* is an encumbrance arising by operation of law, running with the property in question, which requires no assent. On the other hand, a premium is a consensual consideration for forbearance or permission, conditional upon the lessor's assent.

24. Mr. Mishra would submit that ***Transpower*** has no relevance to this case, and if at all, supports the State's position. The State's claim for premium is statutory under Section 37A of the MLRC unlike a contractual term applied by MIDC in ***Transpower***. Mr. Mishra would also rely on the terms and conditions for the auction, which put the auction purchasers to notice about the risk of pre-existing encumbrances. Reliance is placed on Clause 18 ("*as is where is and whatever there is*" purchase), Clause 14 (*earlier outgoings to be*

paid from the sale proceeds, which presupposes their existence) and Clause 12 (*purchaser's liability for taxes and charges from the date of sale confirmation*). The Auction Purchaser took only such title as the Company had, which was already a title burdened by Condition 19 of the Lease Grant, which then became a statutory first charge under Section 37A and Section 295 of the MLRC, and the instruments indicating the computation of charge.

25. Mr. Mishra would contend that ***Pinak Bharat*** does not decide anything either about statutory charge of premium under the MLRC being wiped out in a Court-monitored auction or about the Collector being bound by the auction price in computing transfer premium. On ***Bharat Bijlee***, Mr. Mishra would submit that the decision is confined to Stamp Duty valuation under the Market Value Rules and can have no application to transfer premium under the MLRC. Mr. Mishra would also contend that the two statutory regimes under MLRC and the Stamp Act deal with different legislative policy objectives and valuation methodologies. The proposition that a statutory auction price is conclusive would operate only under Rule 4(6) of the Market Value Rules which codifies such principle, and cannot displace the 2017 GR, which is also a statutory instrument under Section 37A of the MLRC.

26. The seminal question that one has to answer in adjudicating IA 2173 is whether the valuation referred to in the Market Value Rules under the Stamp

Act and the valuation referred to in GR 2017 read with Section 37A of the MLRC stand in different spheres, subserving different legislative objectives, and therefore can be distinct and separate in their own assessments of market value.

27. At first blush, both these being fiscal provisions, it appears logical to have a literal reading of each provision in its respective context and apply the formula as provided. However, one cannot forget that the MLRC framework has consciously chosen the Stamp Duty framework for arriving at the market value for computation of the premium amount. The question to ask therefore, is whether the special framework within the Stamp Duty framework to treat a value arrived at by an authority for purposes of Stamp Duty, can be ignored for purposes of computing transfer premium under the MLRC.

28. It is also noteworthy that each of ***Bulchandani*** and ***Hindustan Unilever*** was rendered in the case of a voluntary transfer between two living entities and neither entailed a case of a transfer caused in the course of a liquidation process. Likewise, the law declared in ***Bharat Bijlee*** and ***Pinak Bharat*** too is not dispositive of what is applicable under the MLRC since they did not entail a similar situation where price discovery took place pursuant to an auction in a liquidation. Therefore, the question that is still at large is whether the value attributed to any piece of “government land” (and this would include an office unit in a premises society in a building standing on

government-owned leasehold land) can be different for purposes of the Stamp Act and the MLRC.

29. At this juncture, Rule 4(6) of the Market Value Rules must be noticed and it reads thus:

4. Annual statement of rates of immoveable property

*(1) to (5) ******

(6) Every registering officer shall, when the instrument is produced before him for registration, verify in each case the market value of land and buildings, etc., as the case may be, determined in accordance with the above statement and Valuation Guidelines issued from time to time and if he finds the market value as stated in the instrument, less than the market value, determined as above, he shall refer the same to the Collector of the District for determination of the true market value of the property which is the subject matter of the instrument and the proper duty payable thereon:

Provided that, if a property is sold or allotted by Government or Semi Government body or a Government Undertaking or a Local Authority on the basis of the predetermined price, then value determined by said bodies, shall be the true market value of the subject matter property.

Provided further that, where the property is purchased or acquired or taken over by the Government, Semi-Government Body or a Government Undertaking or Local Authority, then the actual value determined as consideration by the said bodies as mentioned in the deed, shall be considered to be the true market value of the subject matter property.

Provided also that where the market value has been stated in accordance with or more than that prescribed in the statement issued by the Chief Controlling Revenue Authority, but the Registering Officer has reason to believe that the true valuation of the immoveable property cannot be arrived at without having recourse to local

enquiry or extraneous evidence he may, before registering such instrument, *refer the same to the Collector of the District for determination of true market value of property and the proper duty payable thereon.*

[Emphasis Supplied]

30. Rule 4(6) clearly has as its stated objective, the discovery of the “*true market value*”. The first proviso squarely provides that where a property is sold by an authority at a predetermined price, or where the price is determined by an authority, such value is the true market value of the property transacted in the instrument that is meant to be stamped.

31. Indeed, each legislation subserves a different legislative objective. The Stamp Act provides for the State imposing a duty to be paid to ensure an instrument is admissible as evidence of the transaction documented in such instrument. The MLRC provides for the State charging a premium to be paid to ensure that the State recognises the transferred interest in government land. However, it is quite clear that in subserving the policy objective of Section 37A of the MLRC, the 2017 GR has, in its wisdom, felt that the best barometer of value would be the Ready Reckoner Value, which is nothing but a value provided for in the annual statement of rates under the Stamp Duty law. The annual statement of rates, popularly called the ‘Ready Reckoner’ is a statement drawn up under the Market Value Rules, which is subordinate law under the Stamp Act. Therefore, the distinction sought to be drawn between the two does not make any difference since consciously, the MLRC framework

adopts the Stamp Duty framework. The annual statement of rates is meant to be a tool to arrive at the true value of the property in question, and the nuance introduced in Rule 4(6) of the Market Value Rules cannot be wished away. The annual statement of rates is itself a product of factoring in the history of multiple comparable transactions.

32. Therefore, it is a conscious choice by the State through its instrumentality of the 2017 GR that the value on which the premium must be computed on an *ad valorem* basis is the Ready Reckoner Value. The Market Value Rules constitute subordinate legislation under the Stamp Act, tabled in the Legislature, and is an integral part of the Stamp Act. The policy underlying Rule 4(6) of the Market Value Rules is clearly that where the value is determined by an authority, such value would be the value involved for stamping purposes as well. The State in its capacity as a delegated authority under the Stamp Act has, in its wisdom, sought to adopt a rational meaningful and coherent approach of treating price discovered and approved by an authority to be the value for purposes of the Stamp Act and the Market Value Rules.

33. Evidently, the policy position is that Stamp Duty should be paid as a percentage of the true market value as stipulated in the various Articles in the Schedule to the Stamp Act. Where such value is discovered and finalised by an authority, such value is considered to be a sufficient and valid barometer of

market value. Therefore, when the State has consciously adopted the annual statement of rates as indicative of the value for purposes of Stamp Duty, the State has incorporated, by reference, the framework governing valuation for Stamp Duty purposes. Therefore, it stands to plain logic, reason and common sense to hold that the policy objective underlying the computation of premium under MLRC is aligned with the policy objective underlying the computation of Stamp Duty under the Stamp Act, by the 2017 GR incorporating the framework under the Market Value Rules.

34. Indeed, the proviso to Rule 4(6) of the Market Value Rules codifies such reliance on the value determined by an authority as the true market value, and such a codified proviso is missing in the 2017 GR. This is why it is necessary to squarely deal with such silence in the 2017 GR. While the 2017 GR is indeed a statutory instrument since it draws its source of power from Section 37A of the MLRC, it is still a policy instrument of the State while the Market Value Rules constitute subordinate legislation, and the underlying policy position contained in it stands on a higher pedestal. Since the policy underlying the 2017 GR adopts from the subordinate legislation under the Stamp Act, it is quite logical and rational to fill the silence on this front in the 2017 GR to prevent the manifest absurdity of two provisions adopting materially different values for the same property despite one provision incorporating the other by reference. The absurdity of any different view would be manifested in the

same Office Unit being considered to be worth Rs. 2.65 crores for computing Stamp Duty and to also be worth Rs. ~5.93 crores for transfer premium under the MLRC despite the MLRC having chosen to adopt the Stamp Duty framework's Ready Reckoner. Such absurdity would not at all arise if the displacement of the Ready Reckoner Value under the proviso to Rule 4(6) of the Market Value Rules by adoption of the Auction Purchase Value to compute Stamp Duty, is also applied to the computation of the transfer premium.

35. The Supreme Court has provided guidance on how silences in the law must be filled by resort to common sense in the case of ***Chatha***⁷, where it dealt with the sudden imposition of 200% customs duty on imports from Pakistan on February 16, 2019 after a terror attack in Pulwama, Kashmir. The Supreme Court had to rule on how to draw the line on the basis of which imports already made before such imposition of enhanced Customs Duty would be covered by the unamended regime and when one could consider the amended regime to take effect. The Customs Duty enhancement notification was uploaded at 20:46:58 hours on February 16, 2019 and it was silent on the time of day when it would take effect. Since the notification would otherwise be effective on the *date* and not the *time* on that date, importers of rice who had demonstrated through the electronic records of bills of entry that the rice

⁷ *Union of India & Ors. Vs. M/s. G.S. Chatha Rice Mills & Anr.* – **judgement dated September 23, 2020 in Civil Appeal No. 3249 of 2020; 2020 INSC 561**

had entered prior to the issuance of the notification, would also have had to pay import duty with retrospective all-day application.

36. The silence in the notification was filled by the Supreme Court disallowing retrospective application in the course of the day on February 16, 2019 prior to the notification being issued, taking note of digital time stamps to indicate point of entry of the imports. The following extracts are noteworthy:

35. _____ Mr Natraj is textually right when he emphasizes that Section 15 (1) contains a reference to date and not time. But there are two responses to his line of approaching the issue. First, the legislature does not always say everything on the subject. When it enacts a law, every conceivable eventuality which may arise in the future may not be present to the mind of the lawmaker. Legislative silences create spaces for creativity. Between interstices of legislative spaces and silences, the law is shaped by the robust application of common sense. Second, regulatory governance is evolving in India as new technology replaces old and outmoded ways of functioning. The virtual world of electronic filings was not on the horizon when Parliament enacted the Customs Act in 1962. Yet the Parliament has responded to the rapid changes which have been brought about by the adoption of technology in governance. In the provisions of Section 17 and Section 46, the impact of ICT-based governance has been recognized by the legislature in providing for the presentation of bills of entry in the electronic form on the customs automated EDI system. Precision, transparency and seamless administration are key features of a system which adopts technology in pursuit of efficiency. As we will explore in greater detail later in this judgment, technology has enabled both administrators and citizens to know precisely when an electronic record is uploaded. The considerations which Parliament had in its view in providing for crucial amendments to the statutory scheme by moving from manual to electronic forms of governance in the assessment of duties must not be ignored. Tax administration must leave behind the culture of an age in which the

assessment of duty was wrought with delays, discretion, doubt and sometimes, the dubious. The interpretation of the court must aid in establishing a system which ensures certainty for citizens, ease of application and efficiency of administration.

[Emphasis Supplied]

37. Applying the same logic and rationale, Mr. Mishra is textually right but this leads to the absurdity of the same transaction being treated as having two different values under two laws, despite one having adopted the other for determination of market value. I am satisfied that best way to fill the silence in the 2017 GR is to reconcile it with the policy approach to valuation under Rule 4(6) of the Market Value Rules. Much akin to the reference by the Supreme Court to Parliament having resorted to electronic data interchange in administration of Customs Duty, a reference must be made to the 2017 GR having streamlined the computation of transfer premium under the MLRC by incorporating the annual statement of rates under the Market Value Rules made under the Stamp Act. Every conceivable eventuality can indeed not have been foreseen in the 2017 GR, and akin to the Customs Duty notification, there is a silence in the 2017 GR about true market value discovered in a Court-monitored auction.

38. That silence has to be filled by robust application of common sense, such that there is certainty, ease of administration and predictability for those affected by the law. The reasoning in **Chatha** appeals to me for application in the situation at hand to bring home a robust commonsensical approach to

ensure that two parallel frameworks to determine market value, work in tandem and in locked step with each other by conscious policy choice, so that despite intended alignment, the two frameworks do not result in materially misaligned values being imposed.

39. While one may emphasise and underline the difference between the Stamp Act and the MLRC, both being fiscal and therefore amenable to literal interpretation, since the 2017 GR, for purposes of Section 37A of the MLRC, has consciously adopted the framework governing determination of market value under the Market Value Rules made under the Stamp Act, there is nothing irrational or perverse in effecting the intended policy alignment between the two. It is the contrary approach that would lead to an irrational and illogical absurdity by holding that the market value for the same transaction can vary by 123% – the difference between the Auction Purchase Value and the Ready Reckoner value as a percentage of the Auction Purchase Value. The Ready Reckoner Value is not a value cast in stone under the Stamp Act and its displacement, for good reason, must flow into its displacement for MLRC purposes too. An indicative and notional Ready Reckoner Value ignoring a real Company Court-approved valuation cannot be a rational basis of computing transfer premium, ignoring that the very metric that the MLRC framework consciously adopted is the Stamp Duty framework, which treats the Auction Purchase Value as the real market value.

40. Therefore, while one cannot quarrel about the fact that **Bharat Bijlee** and **Pinak Bharat** had nothing to do with MLRC, there can be no quarrel about the fact that these decisions are strong pointers to how true market value must operate when an authority determines the market value. The rationale and logic in these judgements about the true market value for purposes of computing Stamp Duty would hold the torch for determination of true market value for purpose of computing transfer premium as well.

41. In **Transpower**, the Learned Single Judge had held that the Company Court is the competent court with jurisdiction to decide whether the Maharashtra Industrial Development Corporation ("**MIDC**") is entitled to claim differential premium and extension charges, and that in a sale of leasehold rights approved by the Company Court, the transfer is an involuntary sale and therefore, no differential premium is payable, with only standard transfer charges being payable. As regards extension charges, it was held that the MIDC may lodge a claim with the Official Liquidator. The Learned Division Bench dismissed an appeal to hold that a sale in the course of winding up, under oversight of the Company Court is an involuntary transfer, attracting only standard transfer charges and not the differential premium. The Supreme Court has not entertained a special leave petition.

42. Mr. Mishra is right in his submission that the transfer premium is a statutory charge payable under Section 37A as opposed to MIDC's charges

flowing from a provision of contract. Likewise, in **Transpower**, standard transfer charges were actually upheld even where the transfer was held to be an involuntary transfer. Therefore, despite not being a transaction between two solvent and willing parties striking a bargain for transfer of leasehold rights, the transfer premium is to be treated as a standard charge for recognising the transfer. However, the issue at hand is not about whether the premium may be charged but the manner in which the premium has to be computed, having recognised that the premium is chargeable. It is the gap between the Stamp Duty law adopted by the 2017 GR and the contents of the 2017 GR itself that needs reconciliation to make it logical, rational and sensible.

43. It is in that context that price discovery by an auction process overseen by the Company Court, cannot be wished away as meaningless for computation of transfer premium and that too under the 2017 GR which itself adopts the Ready Reckoner, an instrument of Stamp Duty law. It is in this light that the adoption of value from the Sale Certificate issued by the Income-tax authorities by the Learned Single Judge in **Bharat Bijlee** and the adoption of the sanctity of a Court-monitored auction with due deference being given to it, as was done by the Learned Division Bench in **Pinak Bharat**, resonates with me to give the real policy intent underlying the 2017 GR a full flow. The observation of the Learned Division Bench in **Hindustan**

Unilever, which upheld the constitutional validity of Section 37A and Section 295 of the MLRC and contains a clear pointer, also resonates with me. The following extract is noteworthy:

The quantification would be at such rate as may be specified by the Government by an order from time to time. If that order imposes onerous, excessive, unreasonable and unfair conditions unmindful of the market realities, then, depending upon other factors, such order can be challenged independent of the provision being held to be constitutional, legal and valid.

[Emphasis Supplied]

44. The approach of applying the 2017 GR to charge a transfer premium on the basis of a notional market value as obtained from the Ready Reckoner Value; ignoring the real market value that is blessed by the Company Court; ignoring that the very Market Value Rules require such Court-approved value to be adopted; and also ignoring that for Stamp Duty, the very same Auction Purchase Value has been the basis of payment of Stamp Duty, presents an onerous, excessive and unreasonable position that has led to IA 2173 being filed invoking the power of the Company Court to determine questions of law in the course of liquidation proceedings.

45. For the reasons set out above, I have no hesitation in answering the question of law by holding that in the case of Company Court-approved sale of interest in government land at a price discovered through a Company Court-overseen auction, the price approved by the Company Court by reference to

the proviso to Rule 4(6) of the Market Value Rules would be the value on which the element of 6% charge under the 2017 GR should be applied. Indeed, the working of the formula to apply the higher of the per square foot charge or the aforesaid charge would need to run its course.

46. I am conscious of the reference to the difference between the two values in the Interim Order but that was an ad interim arrangement. The formula as set out in the 2017 GR should be applied and the transfer premium must be computed in terms of the law declared in this judgement and the amount deposited that is in excess of such computation must be refunded to the Auction Purchaser along with interest at the rate of 6% per annum from the date of deposit until the date of actual payment, which must be made within eight weeks from the upload of this judgement on the Court's website.

47. Before parting with this point, I must also mention that the sanctity of a Court-approved auction has been subject matter of judicial endorsement in multiple judgements. The following passages from the observations of a three-judge larger bench of the Supreme Court in **ASL Vyapar**⁸, in a case dealing with exercise of powers of the Stamp Duty authorities in West Bengal to reopen adjudication of market value on the ground of undervaluation in the case of a Court-approved auction price, are instructive:

⁸ *Registrar of Assurances and Anr. Vs. ASL Vyapar Pvt. Ltd. and Anr.* – **(2024) 17 SCC 572**

24. On the conspectus of the matter, we have not the slightest hesitation in upholding the view that the provision of Section 47-A of the Act cannot be said to have any application to a public auction carried out through court process/Receiver as that is the most transparent manner of obtaining the correct market value of the property.

25. It is no doubt true that in a court auction, the price obtainable may be slightly less as any bidder has to take care of a scenario where the auction may be challenged which could result in passage of time in obtaining perfection of title, with also the possibility of it being overturned. But then that is a price obtainable as a result of the process by which the property has to be disposed of. We cannot lose sight of the very objective of the introduction of the section whether under the West Bengal Amendment Act or in any other State i.e. that in case of undervaluation of property, an aspect not uncommon in our country, where consideration may be passing through two modes - one the declared price and the other undeclared component, the State should not be deprived of the revenue. Such transactions do not reflect the correct price in the document as something more has been paid through a different method. The objective is to take care of such a scenario so that the State revenue is not affected and the price actually obtainable in a free market should be capable of being stamped. If one may say, it is, in fact, a reflection on the manner in which the transfer of an immovable property takes place as the price obtainable in a transparent manner would be different. An auction of a property is possibly one of the most transparent methods by which the property can be sold. Thus, to say that even in a court monitored auction, the Registering Authority would have a say on what is the market price, would amount to the Registering Authority sitting in appeal over the decision of the court permitting sale at a particular price.

26. It is not as if a public auction is carried out just like that. The necessary prerequisites require fixation of a minimum price and other aspects to be taken care of so that the bidding process is transparent. Even after the bidding process is completed the court has a right to cancel the bid and such bids are subject to confirmation by the court. Once the court is satisfied that the bid price is the

appropriate price on the basis of the material before it and gives its imprimatur to it, any interference by the Registering Authority on the aspect of price of transaction would be wholly unjustified.

[Emphasis Supplied]

48. Indeed, **ASL Vyapar** was a case of dealing with a provision that enabled re-opening of an adjudicated value while in the instant case the State is merely applying the letter of the provisions in the 2017 GR by adopting the Ready Reckoner Value, without conducting any adjudication of its own. However, the principles of price discovery in a Court-approved auction and the inappropriateness of revisiting it, as articulated in the decision would also give a ringing endorsement to why the Auction Purchase Value is the true market value, making it all the more unreasonable to ignore it and adopt the Ready Reckoner Value for computing transfer premium in the very same transaction where Stamp Duty is computed on the basis of the Auction Purchase Price.

Society's Claim – Common Amenity Fund:

49. As regards, the Society's claim, Mr. Khanna would submit that the charges raised by the Society and pursued with the Official Liquidator have been rightly applied. Mr. Khanna would place his core reliance for the common amenity fund on Bye Law D.3.5 of the Society's Bye-laws, which reads thus:

"A member desiring to sell his / her flat shall contribute to the society for common amenity fund sum or sums as may be prescribed by the Managing Committee from time to time for offices/showrooms/godowns etc., according to their area subject to ratification by the general body meeting."

[Emphasis Supplied]

50. Mr. Khanna would submit that a resolution with the rates stipulated has been approved by the general body of the Society on November 11, 1994. Mr. Khanna would also allude to the decisions in **Venkatesh Premises**⁹ and **Mittal Court**¹⁰ (another case of the very same Society) to indicate that the Supreme Court and this Court have considered and upheld the validity of a common amenity fund in the case of societies. Any dispute over the same, Mr. Khanna would submit falls in the jurisdiction of the Maharashtra Co-operative Societies Act, 1960 ("**MCS Act**"), in reliance upon Section 91 and Section 163 of that legislation and exclusively in the forums created under that law. Therefore, he would submit that where there is an inherent positive ouster of jurisdiction, it cannot be conferred even by consent of the parties, and towards this end, he would rely on **Chiranjilal Goenka**¹¹.

51. Mr. Kanade would submit that the Society did not raise the common amenity fund issue at all before the Official Liquidator and has presented the

⁹ *Income Tax Officer, Mumbai Vs. Venkatesh Premises Co-operative Society Ltd.* – (2018) 15 SCC 37 – Paragraphs 19 and 20

¹⁰ *Mittal Court Premises Co-operative Society Ltd. Vs. Income Tax Officer* – 2009 SCC OnLine Bom 2205 – Paragraphs 5 and 8

¹¹ *Chiranjilal Shrilal Goenka (Deceased) through LRs Vs. Jasjit Singh & Ors.* – (1993) 2 SCC 507 – Paragraphs 17 and 18

Auction Purchaser with this demand after confirmation of the sale. Mr. Khanna would counter on the premise that the terms and conditions of the auction clearly stipulate such a devolution of liability for the periods before and after the confirmation of sale.

52. Mr. Kanade would also submit that only transfer charges may be sought by the Society and a specific notification has been made on August 9, 2001 under Section 79-A of the MCS Act (“**2001 Notification**”) and anything falling outside its scope should not be permissible. The common amenity fund is without basis, he would submit and ought not to have been charged.

53. The Interim Order provided that the Auction Purchaser would pay to the Society a sum of Rs. 6,39,920/- towards the Society’s claims, of which Rs. 3,92,515/- was payable towards the common amenity fund, against which the Society would also issue its no-objection certificate. Depending on the outcome in IA 2173, the amount of Rs. 3,92,515/-, attributable to the common amenity fund would have to be refunded or retained by the Society with interest at the rate of 6% per annum.

54. Clause 14 of the Terms and Conditions governing the auction provides that the purchaser shall be liable to pay taxes, charges, fees and outgoings applicable from the date of confirmation of sale in the purchaser’s favour while earlier dues under these heads would be payable from the sale proceeds.

Therefore, Mr. Khanna would submit that the claims for the earlier dues had been raised and have been paid by the Official Liquidator and it is only the common amenity fund that is in issue now. Even if this Court were to arrive at a view that the Auction Purchaser should not be made to pay it, then, the Society would need to be paid the same from the pool with the Official Liquidator, he would submit, without prejudice to his contention that Clause 14 is quite clear in its terms.

55. The resolution adopting the rates are part of the record and there is no dispute between the parties on the computation of the amount involved. The key issue to be determined is whether the payment sought by the Society is payable by the Auction Purchaser.

56. I have examined the judgement in ***Venkatesh Premises*** and indeed as contended by Mr. Khanna, the Supreme Court has in the context of examining whether receipt of amounts towards a common amenity fund is a capital receipt or a revenue receipt, noted the purposes for which such a fund is collected – for meeting sudden and regular heavy repairs to ensure continuous hazard-free maintenance of properties and common infrastructure which would lead to the benefit the members. The Supreme Court noted that such charges are based on the bye-laws read with resolutions passed by the Society. As regards the 2001 Notification, the Supreme Court has held that it

applies to housing societies and not to premises societies and no fault can be found with charging and collecting amounts towards a common amenity fund.

57. The dispensation implemented by the Society is consistent with such position, and there can be no quarrel about the legality of the demand for the common amenity fund. Such a position in law coupled with the valid creation of a framework by the Society, read with Clause 14 of the Terms and Conditions governing the auction sale by the Official Liquidator makes it clear to me that no fault can be found with the Society's contentions.

58. Indeed, the Auction Purchaser was put to terms that payment of outgoing to the Society after confirmation of the sale would have to be borne by the Auction Purchaser. This cannot be foisted on the sale proceeds. The past dues have been adjudicated and paid. To the extent the Auction Purchaser has paid anything in excess of the common amenity fund towards past dues that may still have been retained with the Society, such amount must be returned to the Auction Purchaser with interest at 6% per annum. Should the Society have received such amount from the Official Liquidator upon adjudication of its claims leading to a refund of such amount to the Official Liquidator, the latter shall pay such component over to the Auction Purchaser with interest at 6% per annum. It is made clear that there shall be no refund of the amount of Rs. 3,92,515/- towards the common amenity fund by the Society to the Auction Purchaser.

59. In the facts of this case, it is not necessary to decide how to reconcile the Company Court's specific power to answer questions of law in the course of liquidation with the ouster of jurisdiction as contended by Mr. Khanna. Suffice it to say that IA 2173 seeks answers to questions of law that arise in the course of liquidation proceedings and is not some independent dispute resolution proceedings calling for adjudication of a private or bilateral dispute. The manner of payment from the liquidation has *in rem* implications. Without further comment on the question, the answering of which is unnecessary in the factual matrix of this case, IA 2173 insofar as it relates to the amounts deposited with the Society under the Interim Order is disposed of as above.

Summary of Conclusions and Directions:

60. In the premises, the conclusions and directions in this judgement may be summarised thus:

A] The State is entitled to charge transfer premium for the transfer of the Office Unit, which is transfer of an interest in Government land. The law declared in ***Bulchandani*** concludes the issue and ***Aspi Chinoy*** no longer holds the field;

B] Where the price has been discovered in an auction conducted under the oversight of the Company Court and approved by it, the value

on which the 6% element of the 2017 GR is to be applied is the Auction Purchase Value (in this case, Rs. 2,65,00,000/-) and not the Ready Reckoner Value (in this case, Rs. 5,93,26,567/-);

C] The silence in the 2017 GR as to an equivalent of the proviso to Rule 4(6) of the Market Value Rules, must be filled by the commonsensical adoption of the policy underlying the proviso to Rule 4(6) since the Stamp Duty valuation framework is what the 2017 GR has itself adopted;

D] The transfer premium shall be recomputed on that basis, applying the formula in the 2017 GR – the higher of Rs. 2,000 per square foot and 6% of the Auction Purchase Value. The amount deposited by the Auction Purchaser in excess (if any) of the transfer premium so computed shall be refunded by the State with interest at the rate of 6% per annum from the date of deposit until the date of actual payment. Such payment shall be made within eight weeks from the upload of this judgement on this Court's website;

E] The Society's claim towards the common amenity fund of Rs. 3,92,515/- is legitimate and is payable by the Auction Purchaser, being an outgoing falling after the date of confirmation of sale under Clause 14 of the Terms and Conditions of the auction, read with Bye Law D.3.5

and the resolution of the general body dated November 11, 1994. There shall be no refund of that amount; and

F] Any amount paid by the Auction Purchaser in excess, towards past dues of the Society already discharged out of the sale proceeds, shall be refunded with interest at the rate of 6% per annum by the Society, or as the case may be, by the Official Liquidator within a period of eight weeks from the upload of this judgement on the Court's website.

61. IA 2173 is ***disposed of*** in the aforesaid terms. No costs.

62. The Official Liquidator's adjudication of February 17, 2023, which admitted Rs. 3,69,100/- for the past charges for transfer and mortgage and rejected the charge of Rs. 35,59,600/- for the transfer pursuant to the auction, is subject matter of Interim Application (L) No. 38937 and Interim Application (L) No. 39608 of 2024 filed by the State. Since those Interim Applications have not been listed, only IA 2173 is disposed of by this judgement. The aforesaid Interim Applications are listed under the caption '***For Directions***' on ***October 8, 2026***.

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

[SOMASEKHAR SUNDARESAN, J.]