

**BEFORE THE RECOVERY OFFICER
SECURITIES AND EXCHANGE BOARD OF INDIA
MUMBAI
RECOVERY CERTIFICATE NO. 3747 OF 2021**

Senciya Minerals

..... Claimant

Order under Section 28A of Securities and Exchange Board of India Act, 1992 (SEBI Act, 1992) readwith Rule 11 of the Second Schedule to Income-tax Act, 1961 – in Recovery Certificate No. 3747 of 2021.

BACKGROUND

1. Recovery proceedings has been initiated against Chromatic India Ltd. (hereinafter referred to as “**Chromatic**”) under Section 28A of the SEBI Act, 1992 read with relevant provisions of Income –tax Act, 1961 and rules made thereunder, vide Recovery Certificate No. 3747 of 2021 dated 02.06.2021 for failure to pay dues of Rs. 11,63,53,658/- (Rupees Eleven Crore Sixty-Three Lakh Fifty-Three Thousand Six Hundred Fifty-Eight Only) alongwith further, interest, costs, charges, expenses, etc.
2. In furtherance of the aforesaid recovery proceedings, a Notice of Demand (hereinafter referred to as “**NoD**”) dated 02.06.2021 was issued by the Recovery Officer calling upon Chromatic to make payment of the aforesaid dues within 15 days from the date of receipt of the NoD. As no amount was paid by Chromatic, vide order dated 15.11.2021, the Bank Accounts, Demat Accounts and Folios of Mutual Funds of Chromatic were attached by the Recovery Officer.
3. As the amount recovered through these means was not sufficient to clear the entire outstanding dues, therefore, an order dated 28.12.2021 (hereinafter referred to as “**the Prohibitory Order**”) was issued by the Recovery Officer under Section 28A of the SEBI Act, 1992 readwith Rules 16 and 48 of the Second Schedule to the Income-tax Act, 1961 attaching a property of Chromatic, i.e. Office Premises, 501, 5th Floor, Maker Chamber V,

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Plot No. 221, Nariman Point, Mumbai – 400021 (hereinafter referred to as “**the Property**”) and prohibiting Chromatic from disposing, transferring, alienating or charging in respect of the Property. The Prohibitory Order further directed that all persons are prohibited from taking any benefit under such disposal, transfer, alienation or charge in respect of the Property. The Prohibitory Order was served on Chromatic, the Inspector General of Registration of Maharashtra, and other States/Union Territories, the concerned Tehasildars, District Registrar and Sub-Registrar (Revenue) of the respective area where the above mentioned property is located and the Secretary of Maker Chambers-V Premises Co-operative Society Ltd. (Regd. No. BOM/WA/GNL(O) 307 dated 02.07.1985), with a direction to not to act upon any documents purporting to be dealing with transfer, mortgage, charge, lease or creation or alteration of any interest in any of the properties owned/held by Chromatic, including the Property mentioned in the Prohibitory Order, if presented for registration etc.

4. Thereafter, for conducting valuation and assisting in e-auction, Quikr Realty Limited was engaged. Notice of Sale dated 14.08.2024 was issued by the Recovery Officer for conducting e-auction of the Property on 17.09.2024 with a reserve price of Rs. 1,67,96,393/- The Last date of submission of Earnest Money Deposit (EMD) was 11.09.2024.

OBJECTION

5. While the aforesaid auction process was underway, Senciya Minerals (hereinafter referred to as “**the Claimant**”) vide its letter dated 21.08.2024 requested to withdraw the e-auction notice on the ground that it is in use and occupation of the Property and is lawful owner of the Property by virtue of Agreement for Sale dated 02.08.2017 (hereinafter referred to as “**AFS**”) entered between Chromatic and the Claimant with respect to the Property. The Claimant further submitted that the AFS was duly adjudicated and registered with the office of the Collector of Stamps under the Amnesty Scheme, 2023 and necessary stamp duty and penalty charges have been paid to the Government. It has also been submitted that the Claimant has also informed the Society office about the AFS vide its letter dated 26.03.2024 and the said AFS is already on record of the Society. The Claimant also requested not to proceed with the e-auction and to remove the e-auction notification from SEBI’s website. The Claimant forwarded the following documents with its letter dated 21.08.2024:



- a. Copy of AFS;
 - b. Copy of bill of Society dated 15.09.2017 towards the dues of Society in the name of Chromatic;
 - c. Copy of bill or demand dated 01/10/2022 issued by BMC issued in the name of Society;
 - d. Copy of challans dated 06.03.2024 of Stamp Duty and penalty paid to Inspector General of Registration; and
 - e. Copy of letter dated 26.03.2024 written by the Claimant to the Society furnishing copy of AFS for information and record.
6. Before dealing with the objection of the Claimant, it would be appropriate to refer to the provisions of Rule 11 of the Second Schedule to the Income-tax Act, 1961 (hereinafter referred to as “**the IT Rules**”) which by virtue of provisions of Section 28A of the SEBI Act, 1992, is applicable to the present recovery proceedings against Chromatic. Rule 11 provides as under:

“Investigation by Tax Recovery Officer.

11. (1) Where any claim is preferred to, or any objection is made to the attachment or sale of, any property in execution of a certificate, on the ground that such property is not liable to such attachment or sale, the Tax Recovery Officer shall proceed to investigate the claim or objection:

Provided that no such investigation shall be made where the Tax Recovery Officer considers that the claim or objection was designedly or unnecessarily delayed.

(2) Where the property to which the claim or objection applies has been advertised for sale, the Tax Recovery Officer ordering the sale may postpone it pending the investigation of the claim or objection, upon such terms as to security or otherwise as the Tax Recovery Officer shall deem fit.

(3) The claimant or objector must adduce evidence to show that—

(a) (in the case of immovable property) at the date of the service of the notice issued under this Schedule to pay the arrears, or

(b) (in the case of movable property) at the date of the attachment, he had some interest in, or was possessed of, the property in question.

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(4) Where, upon the said investigation, the Tax Recovery Officer is satisfied that, for the reason stated in the claim or objection, such property was not, at the said date, in the possession of the defaulter or of some person in trust for him or in the occupancy of a tenant or other person paying rent to him, or that, being in the possession of the defaulter at the said date, it was so in his possession, not on his own account or as his own property, but on account of or in trust for some other person, or partly on his own account and partly on account of some other person, the Tax Recovery Officer shall make an order releasing the property, wholly or to such extent as he thinks fit, from attachment or sale.

(5) Where the Tax Recovery Officer is satisfied that the property was, at the said date, in the possession of the defaulter as his own property and not on account of any other person, or was in the possession of some other person in trust for him, or in the occupancy of a tenant or other person paying rent to him, the Tax Recovery Officer shall disallow the claim.

(6) Where a claim or an objection is preferred, the party against whom an order is made may institute a suit in a civil court to establish the right which he claims to the property in dispute; but, subject to the result of such suit (if any), the order of the Tax Recovery Officer shall be conclusive."

7. As can be noted from Rule 11, upon filing of a claim against the attached Property, the Recovery Officer can investigate such claim. For this purpose, vide email dated 29.08.2024, the Claimant was provided an opportunity of hearing before the Recovery Officer on 05.09.2024 and was also asked to furnish certain documents, as under:

- a. Originals and a copy of registered Agreement for Sale, Sale Deed, Challan/receipt of stamp duty/registration charges, etc. effecting the transfer of legal title;
- b. Adjudication Order issued under Amnesty Scheme 2023 by the Collector of Stamps or any other appropriate/concerned authority in this regard;
- c. Evidence of payment of maintenance charges (such as receipt, challan, bank statement, etc.) to Maker Chambers V Premises Co-operative Society Ltd. from the date of Agreement for Sale;



- d. No Objection Certificate (NOC) and/or any other intimation given to or obtained from Maker Chambers V Premises Co-operative Society Ltd. for purchase of the subject property from Chromatic;
- e. Evidence of payment of purchase consideration to Chromatic, such as bank statement, e-payment transaction details- such as UTR No., date, etc.;
- f. Details of deduction of tax at source under section 194IA of Income-tax Act, 1961 and certificate issued to Chromatic in this regard;
- g. Registered Lease or Rent Agreement/Leave and License Agreement, as the case may be, if the subject property was ever rented or leased to any person anytime on or after the execution of the Agreement for Sale, Sale Deed, etc.;
- h. The scan of PAN and Aadhar and constitution documents of the incorporation of Senciya Mineral under any law for the time being in force;
- i. The scan of PAN and Aadhar of the directors, proprietors, partners, etc., as the case may be, of Senciya Minerals;
- j. Income tax returns (ITRs) of Senciya for Assessment Year 2017-18 onwards;
- k. Financial Statements (Balance Sheet, Profit & Loss, etc.) of Senciya Minerals from FY 2016-17 onwards; and
- l. Any other document(s) and/or submission in writing, as an evidence proving your claim regarding the occupation or legal transfer of the subject property to Senciya Minerals by Chromatic.

8. The hearing fixed for 05.09.2024 could not be conducted due to unforeseen circumstances. However, the Claimant vide its letter dated 05.09.2024, sent vide email dated 05.09.2024, submitted the following documents:

- a. Copy of notice COSM/AMN-2023/1972/2023/834/2024 dated 28.02.2024 for payment of stamp duty and penalty and Copy of AFS;
- b. Copy of challans dated 06.03.2024 of Stamp Duty and penalty paid to Inspector General of Registration;
- c. Copy of AFS;
- d. Copy of letter dated 26.03.2024 written by the Claimant to the Society furnishing copy of AFS for information and record;
- e. Copy of receipt dated 25.06.2024 issued in the name of Chromatic for payment of maintenance charges of Rs. 37,744/- to the society;



- f. Copy of receipt dated 29.08.2024 of Postal Department (India Post) claiming to be proof of dispatch of letter dated 26.03.2024, i.e. letter written by the Claimant to the Society applying for the transfer of office premises in its name; and
 - g. Copy of letter dated 26.03.2024 written by the Claimant to the Society applying for the transfer of office premises in its name.
9. Vide email dated 05.09.2024, another opportunity of hearing was provided to the claimant on 09.09.2024. Further, as the Claimant had not furnished all the documents as sought in the email dated 29.08.2024, therefore, in the said email dated 05.09.2024, the Claimant was once again advised to provide the copies of those documents. The Claimant vide its email dated 06.09.2024, *inter alia*, contended as under:

"We shall be available for the hearing called by you on 09/09/2024 at 12.00 noon at SEBI office. Further we are making specific & clear that the original agreement for sale dated 02/08/2017 will not be submitted to you. However, the photocopy of the same has already been attached with our aforesaid written submission submitted at your office.

We also make it clear that photocopies of the documents pertaining to our office at Maker Chamber V will only be produced & submitted to you, the rest of the documents of Senciya Minerals will not be produced / submitted to your office as Senciya Minerals are neither the defaulter of SEBI nor Senciya Minerals has violated any of the provision of SEBI.

In the aforesaid facts and circumstances, we once again make it clear & specific that the documents pertaining to our office at Maker Chamber V alongwith necessary stamp duty payment has already been submitted to your office.

Hence we understand that our documents & information has made you clear that Senciya Minerals are the bonafide purchaser & also the owner of 501, Maker Chamber V & we once again urge & request u that the auction sale notice be immediately withdrawn."

10. On 09.09.2024, authorized representative of the Claimant (hereinafter referred to as "**the AR**") appeared before the Recovery Officer and made submission on the lines of submission made in the Claimant's earlier letters dated 21.08.2024 and 05.09.2024 and email dated 06.06.2024. During the hearing it was informed to the AR that in terms of provision of Rule 11 of the IT Rules, an auction of an immovable property can be put on hold till disposal of the objection/claim subject to deposit of security, as may be decided by the Recovery Officer, by the Claimant. Accordingly, the AR was advised to deposit fifty per cent (50%) of the value of



the Property, for staying the auction. The AR sought time to seek instructions from the Claimant. The AR was also advised to send the authority letter authorizing him to appear for hearing as the earlier authority letter furnished by the AR was for the hearing which was scheduled on 05.09.2024. Vide its email dated 09.09.2024, the claimant forwarded the authority letter dated 09.09.2024.

11. Thereafter, an email dated 11.09.2024 was received from one, Mr. Shivam Dube, Advocate, *inter alia*, informing that a Writ Petition (Lodging) No. 28183 of 2024 has been filed before Hon'ble High Court of Judicature at Bombay on 10.09.2024 and a copy of the same has been served at SEBI office on 11.09.2024. In this email, SEBI was also requested to remain present for the hearing on 11.09.2024. Thereafter, vide an another email of the same date, the said advocate forwarded a scanned copy of the aforesaid Writ Petition. A perusal of the Writ Petition revealed that it has been filed by the Claimant seeking quashing and setting aside of the e-auction notice dated 14.08.2024. Vide its email dated 16.09.2024, the Claimant (petitioner) has forwarded an email dated 13.09.2024 written by it stating that by an order dated 11.09.2024 passed by the Hon'ble High Court, the auction of the Property, scheduled on 17.09.2024, has been stayed. Though, it was mentioned in the said email that the copy of the order dated 11.09.2024 is attached with the email, however, no such copy of the order was found to be attached with the email. Accordingly, the website of the Hon'ble High Court was visited on 16.09.2024, and copy of the order dated 11.09.2024 was downloaded from the website. From the order, it was noted that Hon'ble High Court, *inter alia*, directed that till the adjourned date of hearing (i.e.30.09.2024), the petitioner's property be not auctioned. In view of the order dated 11.09.2024 passed by the Hon'ble High Court, vide notice dated 16.09.2024, the e-auction pursuant to notice of sale dated 14.08.2024 was put on hold till further notice.

CONSIDERATION OF OBJECTION

12. The contention of the Claimant is that it is the owner of the Property by virtue of unregistered AFS entered into by it with Chromatic on 02.08.2017 and is also in possession of the Property since then, therefore, the Property does not belong to Chromatic. The Claimant is basing his claim on the AFS entered on 02.08.2024 between the Claimant and Chromatic. In this regard,



it is noted that regarding the agreement for sale, the Hon'ble Supreme Court in *Suraj Lamp and Industries Pvt. Ltd. Vs. State of Haryana and Ors. AIR2012SC 206*, held as under:

“ ...

Scope of an Agreement of sale

11. Section 54 of Transfer of Property Act makes it clear that a contract of sale, that is, an agreement of sale does not, of itself, create any interest in or charge on such property. This Court in *Narandas Karsondas v. S.A. Kamtam and Anr. MANU/SC/0363/1976: (1977) 3 SCC 247* observed:

A contract of sale does not of itself create any interest in, or charge on, the property. This is expressly declared in Section 54 of the Transfer of Property Act. See Rambaran Prosad v. Ram Mohit Hazra MANU/SC/0212/1966: 19671 SCR 293. The fiduciary character of the personal obligation created by a contract for sale is recognized in Section 3 of the Specific Relief Act, 1963, and in Section 91 of the Trusts Act. The personal obligation created by a contract of sale is described in Section 40 of the Transfer of Property Act as an obligation arising out of contract and annexed to the ownership of property, but not amounting to an interest or easement therein.

In India, the word 'transfer' is defined with reference to the word 'convey'. The word 'conveys' in Section 5 of Transfer of Property Act is used in the wider sense of conveying ownership.... that only on execution of conveyance ownership passes from one party to another....

In Rambhau Namdeo Gajre v. Narayan Bapuji Dhotra MANU/SC/0680/2004: 2004 (8) SCC 614 this Court held:

Protection provided under Section 53A of the Act to the proposed transferee is a shield only against the transferor. It disentitles the transferor from disturbing the possession of the proposed transferee who is put in possession in pursuance to such an agreement. It has nothing to do with the ownership of the proposed transferor who remains full owner of the property till it is legally conveyed by executing a registered sale deed in favor of the transferee. Such a right to protect possession against the proposed vendor cannot be pressed in service against a third party.



It is thus clear that a transfer of immoveable property by way of sale can only be by a deed of conveyance (sale deed). In the absence of a deed of conveyance (duly stamped and registered as required by law), no right, title or interest in an immoveable property can be transferred.

12. Any contract of sale (agreement to sell) which is not a registered deed of conveyance (deed of sale) would fall short of the requirements of Sections 54 and 55 of Transfer of Property Act and will not confer any title nor transfer any interest in an immovable property (except to the limited right granted under Section 53A of Transfer of Property Act). According to Transfer of Property Act, an agreement of sale, whether with possession or without possession, is not a conveyance. Section 54 of Transfer of Property Act enacts that sale of immoveable property can be made only by a registered instrument and an agreement of sale does not create any interest or charge on its subject matter."

13. It is the case of the Claimant that it had entered into AFS with Chromatic. Clearly, it is not a deed of sale of the Property. This is also clear from the copy of the AFS where it is titled as "AGREEMENT FOR SALE" and also from para 2 of the AFS which states as under:

"2. After the full and final sale consideration, it hereby mutually agreed and confirmed that the vendor shall execute all papers, forms, declarations and documents as may be required by the Purchaser for effective transfer their respective, shares, right, title and interest in respect of the said premises in favour of the purchaser, subject to full and final consideration as stipulated hereinabove."

14. Thus, the document relied upon the Claimant being an Agreement for Sale only and in view of the judgement of the Hon'ble Supreme Court in Suraj Lamp case (Supra), it did not create any interest or charge on the property in favour of the Claimant. As a result, at the time of issue of Notice of Demand by the Recovery Officer of SEBI on 02.06.2021, the Property belonged to Chromatic and the Claimant did not have any right or interest in the Property by virtue of the AFS.

15. Viewed from another angle, *prima facie*, it can be said that though at present AFS is mere an agreement to sell the Property, however, on the basis of this AFS, the Claimant is entitled to seek specific performance of the AFS against Chromatic. In this regard, it is noted that Rule 16(1) of the Rules provides that where a notice of demand is served, the defaulter or his

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representative in interest shall not be competent to mortgage, charge, lease or otherwise deal with any property belonging to him except with the permission of the Recovery Officer, nor shall any civil court issue any process against such property in execution of a decree for the payment of money. Further, Rule 16(2) of the Rules provides that where an attachment has been made under this Schedule, any private transfer or delivery of the property attached or of any interest therein and any payment to the defaulter of any debt, dividend or other moneys contrary to such attachment, shall be void as against all claims enforceable under the attachment. In the present recovery proceeding notice of demand dated 02.06.2021 was served through affixture on 28.10.2021 and order attaching the Property was passed on 28.12.2021.

16. Thus, from 28.10.2021 i.e. the date of service of notice of demand, onwards, Chromatic has become incompetent to deal with the Property in any way except with the permission of the recovery officer and from 28.12.2021 i.e. the date of the order attaching the Property, onwards, any private transfer or delivery of property attached or of any interest therein shall be void. In this regard, it is relevant to refer to the provisions of the Section 56 of the Indian Contract Act, 1872 which provides as under:

“56. Agreement to do impossible act. —An agreement to do an act impossible in itself is void.

Contract to do an act afterwards becoming impossible or unlawful. —A contract to do an act which, after the contract is made, becomes impossible, or, by reason of some event which the promisor could not prevent, unlawful, becomes void when the act becomes impossible or unlawful.

Compensation for loss through non-performance of act known to be impossible or unlawful. —

Where one person has promised to do something which he knew, or, with reasonable diligence, might have known, and which the promisee did not know, to be impossible or unlawful, such promisor must make compensation to such promisee for any loss which such promisee sustains through the nonperformance of the promise.”

17. When the notice of demand was served on Chromatic and attachment order was issued in respect of the Property, the AFS entered between Chromatic and the Claimant had become impossible of performance and unlawful because of Rule 16(1) and 16(2) of the Rules and thus, void. In view of this, under the AFS, the Claimant is not even entitled to seek specific performance of execution of sale deed.



18. The Claimant is contending that AFS was duly registered before the Collector of Stamps, Mumbai under Amnesty Scheme, 2023 called as Mudrank Shulakh Abhay Yojana dated 07.12.2023, and accordingly, was adjudicated and registered under the Amnesty Scheme 2023 on 15.03.2024 on payment of Stamp Duty and Penalty and therefore, it is a registered agreement to sell. I note that the terms “registered document” as understood in the common parlance and “registration of documents” as used under the various Acts like Indian Contract Act, 1872, Transfer of Property Act, 1882, etc. refers to registration as required and made under the provisions of the Registration Act, 1908. Any registration of the document under the Amnesty Scheme 2023 does not make any document registered as is referred under the various laws as well as understood in the ordinary parlance. The order passed under the Amnesty Scheme 2023, as relied upon by the Claimant merely entitles the Claimant to get the AFS registered under the provisions of the Registration Act, 1908 before sub-registrar. The said order in itself does not have the effect of registration as required under the Registration Act, 1908.

19. Regarding the contention of the Claimant to the effect that he has been in possession of the Property since the execution of the AFS, it is noted from the record that Recovery Officer vide its letter dated 18.11.2021 asked Maker Chamber V Cooperative Society Limited (hereinafter referred to as “**the Society**”) to confirm as to whether the property was owned by Chromatic or not, alongwith proof thereof. The Society vide its letter dated 25.11.2021 provided the information and in the said letter Chromatic’s possession of the Property has not been denied. Further, the Notice of Demand issued to Chromatic in the present recovery proceedings matter was also sought to be served by the Recovery Officer on one its addresses, i.e. the address of the Property, by way of affixture on the Property on 28.09.2021. The Photographs of the Property taken at that time shows that the name Chromatic was displayed on the Property, and it nowhere mentioned the name of the Claimant. Also, no objection to such affixture of the notice on its claimed premises was ever received from the Claimant. Subsequently, photographs taken by the valuer, engaged by SEBI, at the time of one of the site visit conducted for the purpose of the valuation of the Property, i.e. on 20.12.2023, also show that the name of Chromatic was displayed on the main door of the Property. The valuation report dated 20.03.2024 submitted by the valuer to the Recovery Officer, in respect of the Property also mentions that the Property is in the occupation of Chromatic. Thus, the assertion of the Claimant that it has been in possession of the Property, is not correct.



20. I note certain facts pertaining to the matter which raise doubt genuineness of the claim made by the claimant:

- a. Generally, whenever any agreement for sale of an immovable property is executed, the stamp paper is purchased by the buyer in its name. In the present case, the stamp papers of Rs. 100 is purchased by Chromatic (i.e. the Seller) that too in March 2017 whereas AFS was executed on 02.08.2017.
- b. Further, any stamp paper on the back of it mentions the purpose for which a particular stamp paper is bought. In the present case, the purpose mentioned on the back of the stamp paper which is used in the AFS, is "BG", which indicates that the said stamp paper was purchased by Chromatic for the purpose of Bank Guarantee and not for the purpose of any agreement for sale.
- c. With respect to receipt of payment by Chromatic, AFS contains a receipt which mentions a UTR number of HDFC Bank through which an amount of Rs. 1,70,73,367/- was transferred to Chromatic. The Claimant was asked to provide the details of payment made to Chromatic, to SEBI. However, the Claimant has refused to provide the same. It is noted that in the Writ petition filed before Hon'ble High Court, a bank statement has been attached by the Claimant, which is of the Bank account of Chromatic, and not of the Claimant itself. It is strange that instead of providing its own bank statement, the Claimant has provided the bank statement of Chromatic. Since, the bank statement of Chromatic shows only the amount received through the UTR and does not mention the name of the person sending the money, therefore, it cannot be ascertained whether said payment was indeed made by the Claimant.
- d. AFS states that total consideration of the Property is Rs. 1,75,73,367/- and Rs. 1,70,73,367.92/- were agreed to be paid on or before the execution of the AFS and the balance amount of Rs. 5,00,000/- was payable after the registration of AFS. The agreement does not mention about TDS of 1% which was required to be deducted by the Claimant in terms of Section 194IA of the Income-tax Act, 1961.



- e. Refusal by the Claimant to produce copies of ITRs which would have shown the Property as its asset, as disclosed to the Income Tax Department, as part of its balance sheet, gives rise to an inference that had these documents been produced in these proceedings they would have gone against the Claimant. All these facts give rise to an inference that the said payment of Rs. 1,70,73,367.92/- which is being claimed as consideration for purchase of the Property in terms of AFS, is not the consideration amount rather it was in respect of some other dealing between Chromatic and the Claimant or between Chromatic and some other entity which is now being claimed as made towards purchase of the Property.
- f. In order to ascertain whether AFS was actually executed and was executed at the time when it is being claimed (i.e. 02.08.2017), the claimant was asked to provide the proof of 1% of TDS deducted on the consideration payable/paid to Chromatic, as required under Section 194IA of Income-tax Act, 1961 for sale of immovable of property above Rs. 50 lakh. However, the Claimant has refused to provide this document.
- g. As noted above, as per the information available on record, all along, from the date of issue of Notice of Demand and till 20.12.2023 (i.e. the date of one of the site visit by the valuer), Chromatic has been in possession of the Property with its name displayed on the entrance. Nowhere the name of the Claimant was displayed, particularly, when the Claimant is claiming to have been conducting its business from the said premises.
- h. For transferring of the property by Chromatic to the Claimant, a No Objection Certificate (NOC) would have been required, however, when the Claimant was asked to provide the copy of the said NOC, it refused to provide the same.
- i. As the Claimant is claiming to be in possession of the property since 2017, it would have paid maintenance charges to the Society in respect of the said Property. It is understandable that the receipts would have been issued in the name of Chromatic, however, the Claimant could have shown its bank statement



showing the payment of maintenance charges, which despite being directed to produce, has not been produced.

21. In this regard, principle enshrined in Section 105 of Bharatiya Sakshya Adhiniyam, 2023 (“BSA, 2023”), is that the burden of proof lies on that person who would fail if no evidence at all were given on either side. Further, principle enshrined in illustration (g) to Section 119(1) of BSA, 2023, is that it can be presumed that evidence which could be and is not produced would, if produced, be unfavourable to the person who withholds it. These principles are fully attracted in this case. The conduct of the Claimant in raising the objection with selective documents and refusing to provide relevant documents which could have substantiated its claim, give rise to an inference that the objection has been filed to frustrate the auction of the Property of Chromatic and to defeat the present recovery proceedings.
22. In view of the aforesaid discussions, I find that the claim/objection made by the Claimant are untenable. Accordingly, the claim made by the Claimant is disallowed.

Date: September 27, 2024
Place: Mumbai



ANUBHAV ROY
DEPUTY GENERAL MANAGER &
RECOVERY OFFICER

ANUBHAV ROY
अनुभव रॉय
Dy. General Manager & Recovery Officer
उप. महाप्रबंधक और वसूली अधिकारी
Securities and Exchange Board of India
भारतीय प्रतिभूती और विनियम बोर्ड
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