Court of King's Bench of Alberta

Citation: Hillsboro Ventures Inc v Ceana Development Sunridge Inc, 2024 ABKB 658

Date: 20241121
Docket: 1801 04745; B201 761125; B201 761126
Registry: Calgary

Between:

Hillsboro Ventures Inc

Plaintiff

- and -

Ceana Development Sunridge Inc, Bahadur (Bob) Gaidhar, Yasmin Gaidhar and Ceana Development Westwinds Inc

Defendants

Ceana Development Sunridge Inc, Bahadur (Bob) Gaidhar and Yasmin Gaidhars

Plaintiffs by Counterclaim

- and -

Hillsboro Ventures Inc, Neotric Enterprises Inc, Keith Ferrel and Borden Ladner Gervais LLP

Defendants by Counterclaim

Docket: 1801 04745

In the Matter of the Bankruptcy of Bahadur (Bob) Gaidhar

Docket: B201 761125

In the Matter of the Bankruptcy of Yasmin Gaidhar

Docket: B201 761126

Reasons for Judgment
of the
Honourable Associate Chief Justice D.B. Nixon

I. INTRODUCTION

[1] The Plaintiff is Hillsboro Ventures Inc ("**HVI**"). It was a mortgage lender to Ceana Development Sunridge Inc ("**Ceana Sunridge**").

[2] Ceana Sunridge was a privately held single-purpose entity. It was engaged in the construction of a multi-phase commercial condominium project in northeast Calgary (the "**Condo Project**").

[3] Hillsboro Enterprises Inc is an assignee and the successor in interest of all rights of indebtedness owed to HVI in this action and it is seeking financial relief. In this action, HVI is the enforcement creditor (the "**Enforcement Creditor**"). HVI and Hillsboro Enterprises Inc are part of the Hillsboro group of companies (collectively, "**Hillsboro**" or "**Hillsboro Group of Companies**").

[4] Mr. Sukhdeep Singh Dhaliwal ("**Mr. Dhaliwal**") and his brother-in-law, Mr. Mandeep Mavi ("**Mr. Mavi**"), are stakeholders in the Condo Project. These individuals took steps to purchase condominium units in the Condo Project. They advanced funds to Ceana Sunridge for the purpose of acquiring those units.

[5] To fund the Condo Project, Ceana Sunridge obtained capital from various sources, including debt financing. HVI alleges that Ceana Sunridge utilized borrowed funds for purposes that are outside the lending parameters associated with its loan agreements. Amongst other claims, HVI alleges that Ceana Sunridge used some of the borrowed funds to assist in the financing of a Bollywood movie in India. The movie was titled "JL50" (the "**JL50 Film**").

[6] The JL50 Film was released and monetized through SonyLIV. Certain proceeds from the sale and distribution of the JL50 Film have been deposited into a trust account in Canada. Additional proceeds are anticipated to be realized, including possible proceeds from a music deal and the potential for a second series (collectively, the "**JL50 Film Proceeds**").

[7] Ceana Sunridge became insolvent during its business pursuit. It was assigned into receivership in July 2019. As a result of the insolvency, the creditors of Ceana Sunridge suffered a significant deficiency.

[8] The Enforcement Creditor applies for an order directing that all current and future JL50 Film Proceeds be paid to Ceana Sunridge for satisfaction of its creditors' claims. The Enforcement Creditor also applies for an order under section 178 of the *Bankruptcy and Insolvency Act*, RSC 1985, c B-3 [***BIA***] (the "**Hillsboro Section 178 Application**"). It makes this application because of the alleged conduct of certain Defendants.

[9] Section 178 of the *BIA* addresses an order of discharge. Subject to the evidence and applicable law, an order of discharge under the *BIA* may not release a bankrupt from a debt or

liability if it: (i) arises out of fraud, embezzlement, misappropriation, or defalcation while acting in a fiduciary capacity; or (ii) results from obtaining property or services by false pretences or fraudulent misrepresentation: *BIA*, ss 178(1)(d)-(e).

II. FACTS AND FINDINGS

A. The Relevant Parties

1. Hillsboro

[10] A member of the Hillsboro Group of Companies is the senior secured creditor of Ceana Sunridge. In or about 2017, it advanced several million dollars to Ceana Sunridge under three mortgage facilities.

[11] The security granted by Ceana Sunridge included mortgages and general security agreements. As mentioned above, a member of the Hillsboro Group of Companies was the assignee of all tangibles and intangibles of Ceana Sunridge, including all choses in action. The mortgage documents and related security documents were filed in an earlier component of this same action (collectively, the "**Hillsboro Mortgage Documents**").

[12] In his submissions, Mr. Gaidhar asserted that I cannot consider the Hillsboro Mortgage Documents. I disagree. I make this determination because in Alberta, in a proceeding in an action, a party may use and refer to any affidavit filed in the action: r 13.25. In effect, this rule permits the use of an affidavit at a later stage provided it has been filed in the same action. The fact that the Affidavit of Mr. Keith Ferrel, filed on June 24, 2019, has the same court file number as one involved in this dispute means that the Applicant was entitled to refer to the Hillsboro Mortgage Documents.

[13] On or about July 3, 2019, the Court granted an order which placed Ceana Sunridge into receivership (the "**Receivership**"). Alvarez and Marsal Canada Inc was appointed as the receiver and manager of Ceana Sunridge (the "**Receiver**"). Hillsboro's security was reviewed and confirmed by the Receiver: ***Hillsboro Ventures Inc v Ceana Development Sunridge Inc***, 2021 ABQB 98 at paras 43, 88 [***Hillsboro Priority Decision***].

[14] On February 17, 2021, HVI, Neotric Enterprises Inc, Keith Ferrel, and Borden Ladner Gervais LLP filed an application seeking, amongst other relief, summary judgment against the guarantors in respect of their unlimited guarantees (the "**Summary Judgment Application**"). Those guarantors are Ceana Development Westwinds Inc, Bahadur (Bob) Gaidhar ("**Mr. Gaidhar**"), and Mr. Gaidhar's wife, Yasmin Gaidhar ("**Ms. Gaidhar**") (collectively, the "**Guarantors**"). By way of order of Justice Eidsvik, pronounced on June 3, 2021, Hillsboro obtained summary judgment against the Guarantors of the Ceana Sunridge loan for more than $9 million, which was the amount of its loan deficiency at that time (the "**Hillsboro Judgment**").

2. The Gaidhars and Related Companies

[15] Ceana Sunridge is part of a related group of companies, all owned and controlled by Mr. Gaidhar, Ms. Gaidhar, or a combination thereof (collectively, the "**Gaidhars**"). The relevant companies that are related to Ceana Sunridge are as follows.

(a) Ceana Development Inc ("**CDICo**") – Mr. Gaidhar is the sole director and shareholder of CDICo.

(b) Ceana Sunridge – For completeness, Ceana Sunridge is a wholly owned subsidiary of CDICo. Mr. Gaidhar is the sole director of Ceana Sunridge.

(c) Ceana Development Westwinds Inc ("**WestwindsCo**") – Mr. Gaidhar is the sole director and shareholder of WestwindsCo.

(d) Ceana Development Evanston Inc ("**EvanstonCo**") – Mr. Gaidhar is the sole director and shareholder of EvanstonCo.

(e) 1117899 Alberta Ltd ("**1117899Co**") – Mr. Gaidhar is the sole director and shareholder of 1117899Co.

(f) Bollywood Entertainment Productions Inc ("**BollywoodCo**") – Ms. Gaidhar is the sole director and shareholder of BollywoodCo.

(g) Visions 20 Entertainment Inc ("**Visions20Co**") – Mr. Gaidhar was a director and Ms. Gaidhar is the majority shareholder (60%) of Visions20Co.

(CDICo, WestwindsCo, EvanstonCo, 1117899Co, BollywoodCo, and Visions20Co are collectively, the "**Related Companies**").

[16] The WestwindsCo property has been foreclosed on and the Gaidhars both filed for bankruptcy. EvanstonCo was not a corporate guarantor to Hillsboro, but it was foreclosed on, and the underlying property sold.

[17] Visions20Co was the primary production vehicle for the JL50 Film. Shailender Vyas ("**Mr. Vyas**") is a director of Visions20Co. He is a minority shareholder in Visions20Co, holding 40% of the shares. Mr. Gaidhar is no longer a director of Visions20Co.

[18] Mr. Vyas was the director of the JL50 Film. Ritika Anand ("**Ms. Anand**") was the JL50 Film producer and played a lead role.

3. Purported Condo Purchasers – Mr. Dhaliwal and Mr. Mavi

[19] In December 2015, Mr. Dhaliwal and Mr. Mavi entered into a purchase and sale agreement with Ceana Sunridge (the "**Initial PSA**"). The Initial PSA was for the purchase of two commercial retail units in the Condo Project (collectively, the "**Condo Units**"). Pursuant to the Initial PSA, Mr. Dhaliwal and Mr. Mavi advanced funds as a deposit on the Condo Units.

[20] After signing the Initial PSA, Mr. Gaidhar provided Mr. Dhaliwal and Mr. Mavi with a copy of a Joint Venture Agreement dated December 9, 2015 (the "**JV Agreement**"). Mr. Gaidhar asked Mr. Dhaliwal and Mr. Mavi to sign the JV Agreement, which they did.

[21] In February 2017, Mr. Dhaliwal and Mr. Mavi signed an updated purchase and sale agreement for the Condo Units (the "**Second PSA**"). Mr. Gaidhar advised Mr. Dhaliwal and Mr. Mavi that the Second PSA was necessary because the date of occupancy on the Initial PSA had expired.

[22] Pursuant to the Second PSA, Mr. Dhaliwal and Mr. Mavi advanced additional funds to Ceana Sunridge, again in the nature of a deposit on the Condo Units. The deposits advanced to Ceana Sunridge under the Initial PSA and the Second PSA jointly amounted to hundreds of thousands of dollars (collectively, the "**Sunridge Condo Advances**").

[23] In or about September 2017, Mr. Gaidhar requested additional funds from Mr. Dhaliwal and Mr. Mavi for the Condo Project. In conjunction with this request, Mr. Gaidhar asked Mr. Dhaliwal to issue a bank draft to CDICo.

[24] In response to the request for additional funds, Mr. Dhaliwal had a CIBC bank draft, dated September 18, 2017, issued from Home World Inc ("**HWI**") and payable to CDICo for $63,754.50 (the "**September 2017 Bank Draft**"). HWI is owned by Mr. Dhaliwal and his wife.

[25] Details as to the nature of the September 2017 Bank Draft are confusing. In a letter dated December 20, 2017, Mr. Gaidhar stated that the "...additional deposit of $63,754.50 [was] towards the purchase of the building. For that amount you will receive interest at the rate of Prime plus 2 percent". Notwithstanding that it was HWI that funded the September 2017 Bank Draft, the letter from Mr. Gaidhar was addressed to the attention of Mr. Dhaliwal, Mr. Mavi, and Rajinder Mavi. There are no further details in evidence as to the nature of the September 2017 Bank Draft advance.

B. Ceana Sunridge Funding

[26] As mentioned above, the financing provided by Hillsboro to Ceana Sunridge was advanced under three mortgage facilities. Each loan contained specific covenants and terms, including that the funds provided by Hillsboro to Ceana Sunridge were to be used to build the Condo Project. The Condo Project was the only business venture of Ceana Sunridge.

[27] The terms of the Hillsboro loan agreements and security contemplated that the funds would be used by Ceana Sunridge for the construction of the Condo Project. The terms of the loan agreements did not contemplate that the Hillsboro funds would be used by Ceana Sunridge for purposes other than the construction of the Condo Project.

[28] In addition to Hillsboro, other lenders provided capital to Ceana Sunridge. Connect First Credit Union loaned more than $4.5 million and was a secured creditor. Various purchasers and joint venture participants contributed millions of dollars in subordinate and unsecured financing. Prior to the Receivership, the aggregate financing provided to Ceana Sunridge for the Condo Project exceeded $12 million.

[29] At the time of the Receiver's appointment, Ceana Sunridge had approximately $1,000 in its bank accounts. The Third Report of the Receiver stated that the Condo Project was substantively incomplete at the time the Receiver was appointed.

[30] The Receiver was not able to locate much in the way of books and records for Ceana Sunridge. That is because Ceana Sunridge did not maintain proper books and records of its financial transactions.

[31] For instance, in the Third Report of the Receiver, filed on September 14, 2020, the Receiver stated that it had requested Ceana Sunridge to provide all books and records from 2015 (the date of Ceana Sunridge's incorporation) to the initial appointment of the Receiver in July 2019. It made the request on multiple occasions to Mr. Gaidhar and Mr. Gaidhar's son. As of September 2020, the Receiver had only received Ceana Sunridge's financial statement and general ledger for the 2018 fiscal year. Because of this deficient disclosure of books and records, the Receiver had to rely on bank statements to get a sense of the funds flowing in and out of the company (the "**Receiver's Sources and Uses Analysis**").

[32] Based on my review of the evidence, I find the books and records for Ceana Sunridge were wholly deficient. I make this finding for two reasons. First, by his own admission, Mr. Gaidhar stated that he did not document loans by Ceana Sunridge to related persons because such advances were within the family. Second, the books and records of Ceana Sunridge were so deficient that to understand the use and application of funds, the Receiver had to rely on bank statements to prepare the Receiver's Sources and Uses Analysis. These bank statements could not be verified against Ceana Sunridge's books and records, which were missing for all years except 2018, nor could the underlying nature or business purpose of the transactions be discerned.

C. The JL50 Film – Some Context

[33] The Gaidhars, Mr. Vyas, and Ms. Anand worked together on the JL50 Film (collectively, the "**JL50 Film Parties**"). The JL50 Film was framed as an Alberta production, filmed in India.

[34] The movement of funds, directly and indirectly, by the Gaidhars to and for the benefit of the JL50 Film requires special attention because of the nature of the allegations that underly this application. The initial discussions between the Gaidhars and Mr. Vyas regarding the JL50 Film took place in August 2016. The Gaidhars entered an agreement with Mr. Vyas and Ms. Anand, on or about September 24, 2016, stating that CDICo would provide financing for the JL50 Film. Hillsboro was neither a party to that agreement nor any other arrangement concerning the JL50 Film financing.

[35] Hillsboro was not aware of Ceana Sunridge using funds for anything other than the Condo Project.

[36] As mentioned above, CDICo was the parent company of Ceana Sunridge. Aside from holding shares, CDICo had no business operations of its own. As such, it was just a corporation which held passive assets, such as shareholdings.

[37] By February 2018, the working relationship amongst the JL50 Film Parties broke down. Litigation commenced.

[38] As noted above, Ceana Sunridge was petitioned into Receivership on July 3, 2019. The Receiver retained a general contractor and continued construction. Through these efforts, the Receiver completed the first phase of the Condo Project.

[39] In the context of the Receivership, the Condo Project was sold to Hillsboro. The Receiver was discharged on July 7, 2021.

D. The Evidence – Important Particulars

1. Ceana Sunridge – Sources and Uses of Funds

[40] In cross-examination, Mr. Gaidhar stated that the land for the Condo Project was purchased for approximately $6.5 million and the mortgage financing paid for 50% of that purchase price (the "**Condo Project Land**"). He stated the balance of the funds to acquire the Condo Project Land had to be raised from elsewhere, including from the Related Companies.

[41] Mr. Gaidhar asserted that the millions of dollars transferred out of Ceana Sunridge were repayments by Ceana Sunridge for amounts borrowed from the Related Companies. While I acknowledge that assertion, there is no evidence to support these vague, bald statements. In the absence of evidence, I find his repayment assertions to be without merit.

[42] A review of the financial transactions over the entire period provides context. From 2015 to the date of the Receivership, the aggregate cash paid to Ceana Sunridge from Related Companies was in the amount of approximately $453,000. During that same period, the aggregate outflow of cash from Ceana Sunridge to Related Companies and Mr. Gaidhar exceeded $3.3 million.

[43] Based on my review of the particulars, there is no evidence to support Mr. Gaidhar's assertion that the land acquisition funds came from the Related Companies. Further, notwithstanding his assertions, there is no evidence to support his suggestion that any of the transfers of funds from Ceana Sunridge to Related Companies were loan repayments.

[44] As I found above, the Gaidhars did not keep proper books and records. In questioning, Mr. Gaidhar testified that "Ceana Development" (defined in this decision to be Ceana Sunridge) may have loaned money to Ms. Gaidhar for the "movie production", but he went on to state that such loans may not have been documented "...because it was in the family".

[45] As mentioned, the Receiver's Sources and Uses Analysis was prepared because that was the only way to determine the flow of funds into and out of Ceana Sunridge. The Receiver's Sources and Uses Analysis established that, between September 2015 and the date of the Receivership, Ceana Sunridge transferred: (i) at least $662,000 to Mr. Gaidhar; and (ii) at least $2.65 million to the Related Companies. These aggregate outflows of cash from Ceana Sunridge to the Related Companies and Mr. Gaidhar are the excess disbursements of more than $3.3 million referred to above.

2. Receivership Proceedings – Background and Context

[46] In a letter to Visions20Co dated March 19, 2017, CDICo indicated that it would provide $2 million to Visions20Co to produce the JL50 Film. The evidence establishes, on a balance of probabilities, that CDICo advanced at least $1.7 million for the production of the JL50 Film.

[47] Through the Receivership proceedings, Mr. Dhaliwal and Mr. Mavi learned that the Condo Units, which were the subject of the Initial PSA and the Second PSA, were also sold to an individual named Simon Touchan ("**Mr. Touchan**"). The purported sale to Mr. Touchan occurred on or about March 25, 2019. The Receiver became aware of these double sales when documents produced by Mr. Gaidhar through the Receivership proceedings indicated that Mr. Dhaliwal and Mr. Mavi were the purchasers of the Condo Units, while other documents indicated that Mr. Touchan purchased the same Condo Units.

[48] The Receiver also identified that approximately $2.3 million provided to Ceana Sunridge and required to be held in trust as a deposit pursuant to the *Condominium Property Act*, RSA 2000, c C-22, was missing. These funds could not be accounted for during its investigation. This included the Sunridge Condo Advances.

[49] On October 25, 2020, Justice Woolley ordered that any funds that were to be paid to Visions20Co were to be held in the trust account of Byron W. Nelson of Inns Law. In total, $252,076.52 is being held in trust (the "**Trust Proceeds**").

3. Bankruptcy Particulars

[50] On or about August 24, 2021, Mr. Gaidhar and Ms. Gaidhar each made a petition into bankruptcy. Barry Nykyforuk and Associates Inc ("**BNACo**") was appointed as the Licensed Insolvency Trustee for both of their estates (collectively, the "**Gaidhar Trustee**").

[51] BNACo filed a report with the Court, drawing its attention to assorted items provided by Mr. Gaidhar to BNACo (the "**BNACo Report**").

[52] At some point before March 16, 2023, Mr. Gaidhar provided several documents to the Gaidhar Trustee in his efforts to outline how BollywoodCo and the JL50 FILM were funded. One of these documents included the September 2017 Bank Draft. Other documents demonstrated that on September 18, 2017, a $40,000 CIBC bank draft was issued from BollywoodCo to Mr. Vyas, a producer of the JL50 Film. This transaction occurred on the same day the September 2017 Bank Draft was issued by HWI to CDICo. On September 22, 2017, a $30,000 CIBC bank draft was issued from CDICo to Mr. Vyas. Based on the evidence before me, I infer that approximately 90% of the advances to Mr. Vyas was funded by the September 2017 Bank Draft.

[53] The BNACo Report included a summary worksheet of purported payments made by CDICo on behalf of Ceana Sunridge. Mr. Gaidhar created this worksheet (the "**Gaidhar Worksheet**").

[54] The BNACo Report asserts that the cash outflows from Ceana Sunridge were repayments of the monies expended by CDICo on behalf of Ceana Sunridge. However, the Gaidhar Worksheet provided no supporting documentation, independent review, or verification. Because of his interest in the assertions reflected in the Gaidhar Worksheet, I would have expected Mr. Gaidhar to provide corroborating support.

[55] Given my review of the accounting and testimony provided by Mr. Gaidhar and the lack of corroborating evidence, I give little weight to the assertions he advances through the Gaidhar Worksheet. The combination of Mr. Gaidhar's self interest in the Gaidhar Worksheet and the absence of corroborating support reinforces my determination on this point.

[56] Based on my review of the evidence, I find the minimum shortfall in the Ceana Sunridge estate would be $1,275,078. I make this determination on the basis that the $1,275,078 amount is the aggregate of: (i) $529,293, being the net deficiency that flows from the working papers of Mr. Gaidhar and the Receiver's Sources and Uses Analysis; (ii) the $83,100 advanced by Ceana Sunridge to BollywoodCo, which is not a permitted use; and (iii) the $662,685 advanced by Ceana Sunridge to Mr. Gaidhar, perhaps because he thought he was entitled to a management fee. In these circumstances, I need not go further because the $1,275,078 is substantially more than current JL50 Film Proceeds held in trust.

4. Ceana Sunridge Advances – Lease Payments, Management Fees, and Other Payments

[57] Mr. Gaidhar claimed that the funds were advanced from Ceana Sunridge to himself and the Related Companies for legitimate purposes. He framed some of these advances as being lease payments or reimbursements for project expenses that were incurred. He claimed that such payments were appropriate because CDICo was the project manager.

[58] Mr. Gaidhar also asserted that funds were paid to him for management fees. He stated that while CDICo was the manager of the Condo Project, the management agreement allowed CDICo to direct payments as needed. There is an assertion that CDICo earned a management fee. I turn to address these arguments.

a. Lease Payments

[59] Based on my review of his evidence, I infer that Mr. Gaidhar accepts that WestwindsCo received lease payments from Ceana Sunridge in the aggregate amount of $242,000. I draw this inference because Mr. Gaidhar acknowledged this advance from Ceana Sunridge to WestwindsCo, as it was reported in the Receiver's Sources and Uses Analysis.

[60] The premises leased by Ceana Sunridge was a basement storage area. The evidence of Mr. Gaidhar was that, to the best of his recollection, any money paid from Ceana Sunridge to WestwindsCo "...was earmarked for rent". He went on to state that at no time did he "...recall effecting a transfer with any intention other than that it would be credited to Ceana Sunridge's rent obligations".

[61] I reviewed the relevant evidence concerning the subject lease payments. The lease agreement between Ceana Sunridge and WestwindsCo commenced on June 1, 2016, and terminated on May 31, 2021 (the "**WestwindsCo Lease Agreement**"). The lease payments were $3,250 per month (being $39,000 per year).

[62] Clause 10.6 of the WestwindsCo Lease Agreement stipulated that the rent for a particular month was payable in advance. I interpret this to be a month-to-month payment.

[63] Mr. Gaidhar provided no evidence of either additional rent being paid under the WestwindsCo Lease Agreement or of any payments for operational expenses associated with the lease of the basement storage area. Absent such evidence, I infer no additional rent was paid.

[64] Based on the evidence before me, the monthly rent paid by Ceana Sunridge to WestwindsCo under the terms of the WestwindsCo Lease Agreement would not have been more than $123,500 ($3,250 per month times 38 months). I make this determination because Ceana Sunridge was put into Receivership on July 3, 2019. Common sense informs me that the Receiver would not have paid any further lease payments to WestwindsCo after the date that Ceana Sunridge went into Receivership.

[65] Since Mr. Gaidhar has accepted that $242,000 was paid by Ceana Sunridge to WestwindsCo, I calculate that Ceana Sunridge overpaid WestwindsCo by $118,500 ($242,000 minus $123,500). Absent any additional evidence, I do not accept Mr. Gaidhar's assertion that the incremental $118,500 was attributable to obligations under the WestwindsCo Lease Agreement. For me to accept that argument in these circumstances, Mr. Gaidhar needed to provide me with corroborating evidence. He provided no such evidence.

b. Management Fees

[66] As outlined above, Mr. Gaidhar asserted that funds were paid to him for management fees. He stated that the management agreement allowed CDICo to direct payments as needed. Implicit in this assertion is the suggestion that CDICo earned a management fee. I turn to address this assertion.

[67] CDICo and Ceana Sunridge entered into a Management, Administration and Consulting Services Agreement on April 30, 2015, with an effective date of May 1, 2015 (the "**Management Agreement**"). Paragraph 6.1 of the Management Agreement provides for:

> "a Management Fee of not more than 25% (twenty five percent) of the final sale of the project. The Company [Ceana Sunridge] and Manager [CDICo] agree the

> fee will not exceed the difference between the sale price of the units minus the cost of construction and land."
>
> [Emphasis added.]

[68] The parties to the Management Agreement agreed to these terms. In the context of this hearing, I have not been asked to comment on the propriety of the terms. The only comment that I will make is that since these terms were agreed to by the parties, they must adhere to them.

[69] As is evident from the particulars reviewed above, the Condo Project became insolvent and ended in Receivership. No sales of the properties developed within the Condo Project were ever completed by Ceana Sunridge before the Receivership was ordered. Given these facts, no fee could have been earned by CDICo under the terms of the Management Agreement. Since Mr. Gaidhar drafted these terms in the Management Agreement, I see no reason to override them in these circumstances. He is obligated to live by the terms he negotiated.

[70] The evidence also indicates that Mr. Gaidhar chose not to disclose the Management Agreement to Hillsboro at the time its loans were made. In cross-examination, Mr. Gaidhar stated that he did not disclose the agreement because it was not relevant to Hillsboro. He further implied that the fee terms under the Management Agreement were the way he did business.

[71] Based on the evidence, I find that there is no basis for the terms of the Management Agreement to stand as justification for Mr. Gaidhar's withdrawal of funds from Ceana Sunridge. Indeed, I find it would be opposed to justice to allow the Management Agreement to stand as the justification for the withdrawal of funds from Ceana Sunridge by either CDICo or Mr. Gaidhar. I make this determination because he negotiated the terms of the Management Agreement, and those terms never became operational in the circumstances of this case.

5. JL50 Film Parties Settlement Agreement

[72] The JL50 Film Proceeds arose from the JL50 Film distribution and sales. The JL50 Film Proceeds were net of various overseas expenses and repayment of a third-party investor in the JL50 Film. The JL50 Film Proceeds were paid into the Alberta trust account of legal counsel for Mr. Vyas and Ms. Anand. As mentioned above, more proceeds are possible from the JL50 Film.

[73] A settlement agreement was made in the context of the litigation amongst Mr. Vyas, Ms. Anand, and the Gaidhars (the "**JL50 Film Parties Settlement Agreement**"). Hillsboro and Ceana Sunridge were not parties to the JL50 Film Parties Settlement Agreement. Further, there is no evidence that the JL50 Film Parties Settlement Agreement was made with the knowledge or agreement of Ceana Sunridge or its creditors.

[74] The Gaidhar Trustee provided a copy of the JL50 Film Parties Settlement Agreement entered into between the Gaidhars and the other JL50 Film Parties. The agreement was dated June 2018 and allegedly recognized that the Gaidhars financed the JL50 Film through the Related Companies, and not just CDICo. In apparent recognition of that fact, the following clause was included in paragraph 16 of the JL50 Film Parties Settlement Agreement:

> the profit distribution from the marketing, sale and distribution of the JL50 Film will be satisfied, as previously agreed, in the following priority order:
>
> > a. First, to repay Gaidhar and [CDICo], and related entities, for any and all financing advanced with regards to [the JL50 Film];

> b. Next, 10% to be paid to Gaidhar and/or [CDICo], as agreed to at the outset of the financing relationship; and
>
> c. Finally, the remainder to be divided per the share allocation in Visions20Co.

[75] Based on my review of the evidence, I find the JL50 Film Parties Settlement Agreement supports the inference that much of the financing for the JL50 Film came from the Gaidhars and the Related Companies.

6. Promissory Notes

[76] The Gaidhar Trustee also provided copies of two promissory notes. I reviewed those promissory notes and noted the following: (i) the first promissory note was dated May 3, 2017, and it was payable by BollywoodCo to Abdulhamid H. Kara in the amount of $50,000; and (ii) the second promissory note was dated July 23, 2017, and it was payable by BollywoodCo and Visions20Co to Suleman Lakhani in the amount of $150,000 (collectively, the "**Promissory Notes**").

[77] Based on my review of the Promissory Notes, I find they have no bearing on the application before me. Further, I find that there is no basis upon which the Promissory Notes defeat the remedial purpose of a constructive trust. As a result, I will not consider them further.

III. ISSUES

[78] This hearing involves three different court files and three applications (collectively, the "**Three Applications**"). The court files are as follows: (i) Court File 1801-04745, in which HVI is the Plaintiff and Enforcement Creditor; (ii) Court File B201-761125, which concerns the bankruptcy of Mr. Gaidhar; and (iii) Court File B201-761126, which concerns the bankruptcy of Ms. Gaidhar.

[79] The issues underlying the Three Applications have been reframed as questions. The questions that I will address are as follows:

a. Should a constructive trust over the JL50 Film Proceeds be established in favor of Ceana Sunridge?
b. Is Mr. Dhaliwal or his corporation owed a debt equal to the amount of the September 2017 Bank Draft plus interest at prime plus 2% per annum from the Trust Proceeds?
c. Should the JL50 Film Proceeds be paid to Ceana Sunridge?
d. Should the Hillsboro Section 178 Application be dismissed?
e. Should Mr. Gaidhar be subject to a conditional discharge or an absolute discharge under the *BIA*?
f. Should Ms. Gaidhar be subject to a conditional discharge or an absolute discharge under the *BIA*?
g. Should Mr. Gaidhar be removed as a director of Visions20Co and CDICo?
h. Should Ms. Gaidhar be removed as a director of BollywoodCo?

IV. THE LAW

A. Constructive Trusts

[80] The Supreme Court has described situations in which a remedial constructive trust may arise or be an appropriate remedy: ***Soulos v Korkontzilas***, 1997 CanLII 346 (SCC). There are four factors that need to be considered: ***Soulos*** at para 45. Those factors have been followed in Alberta: ***Zerbin v Vrbanek***, 2020 ABQB 797 at para 170, aff'd 2021 ABCA 317, leave to appeal ref'd 2022 CanLII 21684 (SCC).

[81] In the ***Vrbanek*** case, DN Developments was providing construction services through its sole director, shareholder, and principal. That was Mr. Vrbanek.

[82] The Zerbin family advanced significant funds to Mr. Vrbanek for the purposes of paying trades and generally advancing the project. For context, the Court in ***Vrbanek*** noted at para 12:

> David Zerbin is himself a trained professional accountant. However, the Zerbins reposed a great deal of trust in Mr. Vrbanek. Mr. Zerbin said he would do spot checks on the Progress Invoices to make sure the math was correct. He did not do a month-by-month comparison. Both the Zerbins trusted Mr. Vrbanek to bill third-party invoices correctly and to pay them promptly.
>
> [Emphasis added.]

[83] Mr. Vrbanek engaged in wrongful conduct. The Zerbin family sought various heads of relief. After a lengthy trial, this Court reviewed the concepts of honest contractual performance, civil fraud, piercing the corporate veil, and constructive trusts. Most germane to the Gaidhars' circumstances is the constructive trust concept.

[84] The Court in ***Vrbanek*** cited ***Soulos*** and stated "the Supreme Court of Canada held that a constructive trust may be granted where 'good conscience so requires'…": ***Vrbanek*** at para 166, citing ***Soulos*** at para 34. As the constructive trust concept is based on "good conscience" and what is "fair," it is necessarily general: ***Vrbanek*** at para 168. Importantly, the categories of actions that can result in a constructive trust are not closed. This judicial view is supported by the following comment.

> Good conscience as a common concept unifying the various instances in which a constructive trust may be found has the disadvantage of being very general. But any concept capable of embracing the diverse circumstances in which a constructive trust may be imposed must, of necessity, be general. Particularity is found in the situations in which judges in the past have found constructive trusts. A judge faced with a claim for a constructive trust will have regard not merely to what might seem "fair" in a general sense, but to other situations where courts have found a constructive trust. The goal is but a reasoned, incremental development of the law on a case-by-case basis: ***Soulos*** at para 35.
>
> [Emphasis added.]

[85] Notwithstanding that ***Lac Minerals Ltd*** was referred to by Justice Sopinka in his dissent in ***Soulos***, the comments in that case reinforce the breadth and utility of a constructive trust as a remedy: see ***Lac Minerals Ltd v International Corona Resources Ltd***, [1989] 2 SCR 574, 1989

CanLII 34 (SCC). The judicial guidance is to the effect that neither a pre-existing special relationship nor a right of property is specifically required for a constructive trust: ***Lac Minerals Ltd*** at 675-676, La Forest J. In making this comment, I acknowledge that no one Justice wrote a majority decision on all the issues in ***Lac Minerals Ltd***.

[86] There is no unanimous agreement concerning the circumstances in which a constructive trust will be imposed. That said, two instructive guidelines are as follows. First, no special relationship between the parties is necessary. Insistence on a special relationship would lead to relationships being created to justify a remedy. Second, a constructive trust application is not reserved for situations where a right of property is recognized. To do so would restrict the constructive trust concept to an institutional function. Such a limitation would limit its status as a remedy, which is its more significant role: ***Lac Minerals Ltd*** at 675-676, La Forest J.

[87] The judicial guidance by the Supreme Court in ***Lac Minerals Ltd*** is to the effect that "a constructive trust should only be awarded if there is reason to grant to the plaintiff the additional rights that flow from recognition of a right of property": ***Lac Minerals Ltd*** at 678, La Forest J. To the extent that any such right of property is warranted, I view it as a right that arises from a common law interest (such as via contract). That said, there is no such need for a right of property if the constructive trust concept is being considered under the law of equity.

[88] Before addressing the equitable elements outlined in ***Soulos***, it is important to acknowledge that "unjust enrichment" is one cause of action that may give rise to a constructive trust. However, unjust enrichment was neither a factor under ***Soulos*** nor a necessity for a constructive trust to arise. In appropriate circumstances, the jurisprudence is clear that wrongful acts like fraud and breach of duty of loyalty can give rise to circumstances where constructive trusts may be appropriate. As stated by this Court in ***Manufacturers Life Insurance Company v Senesouma***, 2016 ABQB 495 at para 27 [***Manufacturers Life***]:

> The Supreme Court in *Soulos v Korkontzilas*, 1997 CanLII 346 (SCC), [1997] 2 SCR 217, [*Soulos*] recognized that <u>some constructive trusts arise to take away wrongful gains, even in the absence of an unjust enrichment claim</u>. McLachlin J (as she was then) wrote at para 43:
>
> > <u>I conclude that in Canada, under the broad umbrella of good conscience, constructive trusts are recognized both for wrongful acts like fraud and breach of duty of loyalty, as well as to remedy unjust enrichment and corresponding deprivation</u>. While cases often involve both a wrongful act and unjust enrichment, constructive trusts may be imposed on either ground: where there is a wrongful act but no unjust enrichment and corresponding deprivation; or where there is an unconscionable unjust enrichment in the absence of a wrongful act, as in *Pettkus v. Becker*, *supra*.
>
> [Emphasis added.]

[89] Focusing on the equitable elements that are required to establish a constructive trust, I note that ***Soulos*** outlined four factors that generally must be satisfied (collectively, the "***Soulos* Factors**"): ***Soulos*** at para 45, as cited in ***Vrbanek*** at para 170. Those factors are paraphrased as follows:

1. The Defendant must have been under an equitable obligation—an obligation of the type that courts of equity have enforced—in relation to the activities giving rise to the assets in the Defendant's hands (the "**First *Soulos* Factor**").
2. The assets in the hands of the Defendant must be shown to have resulted from deemed or actual agency activities of the Defendant in breach of their equitable obligation to the Plaintiff (the "**Second *Soulos* Factor**").
3. The Plaintiff must show a legitimate reason for seeking a proprietary remedy, either personal or related to the need to ensure that others like the Defendant remain faithful to their duties (the "**Third *Soulos* Factor**").
4. There must be no factor which would render the imposition of a constructive trust unjust in all the circumstances of the case (the "**Fourth *Soulos* Factor**"). For example, the interests of intervening creditors must be protected.

[90] Emphasis has been given by this Court to the effect that the ***Soulos*** Factors must "generally" be met. This Court has framed this by allowing for "further discretion": ***Manufacturers Life*** at para 38.

[91] Two closing comments. First, fraud is not a prerequisite to the application of a constructive trust. However, the tests for civil fraud and fraudulent misrepresentation are matters to be kept in mind. Second, the courts must always be mindful of the fact that damages will be the appropriate remedy in the "vast majority of cases", rather than a constructive trust: ***Lac Minerals*** at 678, La Forest J. That said, if there is reason to grant to the plaintiff the additional rights that flow from recognizing a right of property, then a constructive trust may be appropriate.

B. Fiduciary Relationships

[92] A fiduciary relationship is an important concept in law. It is a relationship in which the first party (the "**beneficiary**") places a special trust, confidence, and reliance in (and is influenced by) a second party (the "**subject person**") who has a fiduciary duty to act for the benefit of the first party.

[93] For a person to have a fiduciary relationship, they must possess three general characteristics. First, the subject person must have the scope for the exercise of some discretion or power. Second, the subject person must be able to unilaterally exercise that power or discretion to affect the beneficiary's legal or practical interests. Third, the beneficiary is peculiarly vulnerable to or at the mercy of the subject person (*i.e.*, the alleged fiduciary) holding the discretion or power: ***Korea Data Systems (USA), Inc v Aamazing Technologies Inc***, 2015 ONCA 465 at para 74; ***Hodgkinson v Simms***, [1994] 3 SCR 377 at 408, 1994 CanLII 70 (SCC). Further, what is required is an undertaking by the alleged fiduciary, express or implied, to act in accordance with the duty of loyalty placed on him or her: ***Galambos v Perez***, 2009 SCC 48 at para 75.

C. *BIA* Discharge

1. *BIA* Legislation

[94] With some exceptions, section 172(1) of the *BIA* authorises the Court to grant or refuse an order of discharge. However, a discharge under the *BIA* is not a matter of right: ***Wensley (Re)***, 1985 CanLII 1416 (ABKB) at para 8; ***Junger, Re,*** 1986 CarswellOnt 202 at para 18 (ONSC),

[1986] OJ No 2167. Ultimately, the decision of the Court concerning a discharge is discretionary: ***Bankruptcy of Michael Allan Bodner***, 2008 MBQB 33 at para 11.

[95] HVI pleads that the following paragraphs of section 173 of the *BIA* are relevant:

> **Facts for which discharge may be refused, suspended or granted conditionally**
>
> 173 (1) The facts referred to in section 172 are:
>
> (a) the assets of the bankrupt are not of a value equal to fifty cents on the dollar on the amount of the bankrupt's unsecured liabilities, unless the bankrupt satisfies the court that the fact that the assets are not of a value equal to fifty cents on the dollar on the amount of the bankrupt's unsecured liabilities has arisen from circumstances for which the bankrupt cannot justly be held responsible;
>
> (b) the bankrupt has omitted to keep such books of account as are usual and proper in the business carried on by the bankrupt and as sufficiently disclose the business transactions and financial position of the bankrupt within the period beginning on the day that is three years before the date of the initial bankruptcy event and ending on the date of the bankruptcy, both dates included;
>
> (c) the bankrupt has continued to trade after becoming aware of being insolvent;
>
> (d) the bankrupt has failed to account satisfactorily for any loss of assets or for any deficiency of assets to meet the bankrupt's liabilities;
>
> (e) the bankrupt has brought on, or contributed to, the bankruptcy by rash and hazardous speculations, by unjustifiable extravagance in living, by gambling or by culpable neglect of the bankrupt's business affairs;
>
> (f) the bankrupt has put any of the bankrupt's creditors to unnecessary expense by a frivolous or vexatious defence to any action properly brought against the bankrupt;
>
> [...]
>
> (k) the bankrupt has been guilty of any fraud or fraudulent breach of trust;
>
> [...]
>
> [Emphasis added.]

[96] The relevant components of section 178 of the *BIA* provide as follows:

> **Debts not released by order of discharge**
>
> 178 (1) An order of discharge does not release the bankrupt from
>
> [...]
>
> (d) any debt or liability arising out of fraud, embezzlement, misappropriation or defalcation while acting in a fiduciary capacity or, in

> the Province of Quebec, as a trustee or administrator of the property of others;
>
> (e) any debt or liability resulting from obtaining property or services by false pretences or fraudulent misrepresentation, other than a debt or liability that arises from an equity claim; [...]
>
> [Emphasis added.]

2. Jurisprudence

[97] The principle underlying a filing of an assignment in bankruptcy is to provide the honest but unlucky debtor with a path to a "fresh start": ***Poonian v British Columbia (Securities Commission)***, 2024 SCC 28 at para 21 [***Poonian* SCC**]. When considering the "fresh start" concept, it is reasonable to assume that all the debtor's unsecured liabilities would be discharged as part of the insolvency process.

[98] The concept of a "fresh start" upon a discharge in bankruptcy, however, is not an absolute right: ***Wensley (Re)*** at para 8; ***Schreyer v Schreyer***, 2011 SCC 35 at para 20. The lawmakers who framed the *BIA* determined that certain debts would survive the discharge. The debts that survive bankruptcy fall into one of two baskets. One basket focuses on the nature of the debt. The other basket focuses on the fault or wrongful conduct of the debtor in having incurred that debt.

a. Section 173 Decisions

[99] As mentioned above, section 172 of the *BIA* affords the Court broad discretion to grant, refuse, suspend, or grant conditionally a bankrupt's discharge. If any of the facts referred to in section 173 are proven, then the Court must refuse an absolute discharge: *BIA*, s 172(2). Many of the facts listed in section 173 are actions considered unethical breaches of commercial standards: ***Poonian* SCC** at para 23.

i. Section 173(1)(a) – Assets are not of a value equal to fifty cents on the dollar of the unsecured liabilities

[100] Section 173(1)(a) of the *BIA* directs that if the assets of the bankrupt are not of a value equal to fifty cents on the dollar on the amount of the bankrupt's unsecured liabilities, and the bankrupt cannot satisfy the Court that such a situation has arisen from circumstances for which the bankrupt cannot justly be held responsible, then the Court cannot grant an absolute discharge. The onus of providing some reasonable explanation as to why the bankrupt cannot be held responsible for such a situation lies with the bankrupt: ***Montalban (Re)***, 2013 BCSC 683 at para 39. The bankrupt's conduct before and after the bankruptcy may be considered: ***Montalban (Re)*** at para 123.

[101] In ***Poonian (Re)***, 2020 BCSC 547 [***Poonian (Re)***], aff'd 2021 BCSC 222, aff'd 2021 BCCA 417, the Poonians applied for discharge under section 172 of the *BIA*. Their application was opposed by the British Columbia Securities Commission and the Minister of National Revenue on the basis that the fact referred to in section 173(1)(a) was proven. The proven liabilities of the Poonians exceeded $25 million, whereas their assets totalled approximately $3,200. The Poonians' monthly income on the date of bankruptcy was $3,280 and, as they were both in their 50s, they had limited abilities to embark on new careers: ***Poonian (Re)*** at paras 26-35.

[102] The Court found that the greatest part of the Poonians' liabilities was their payment obligations to the British Columbia Securities Commission, incurred by having manipulated share prices of a publicly traded company to take advantage of unsophisticated investors. Their tax liability was also not attributable to factors beyond their control, as it resulted from the Poonians' failure to report certain income. Thus, the Court held that it could not "conclude on the facts that the vast disparity between the Poonians' assets and liabilities arose from circumstances for which they cannot justly be held responsible": ***Poonian (Re)*** at paras 49-53. Because of the Poonians' egregious pre-bankruptcy behaviour, the Applications Judge refused to discharge their bankruptcy: ***Poonian (Re)*** at para 71.

[103] The Ontario Supreme Court held a bankrupt, who had given personal guarantees for his company, responsible for his assets not being of a value equal to fifty cents on the dollar on the amount of his unsecured liabilities: ***Gafni, Re***, 1978 CarswellOnt 151 (ONSC) at para 4, 26 CBR (NS) 22. After the creditor bank called upon Mr. Gafni to implement his personal guarantee, which he could not do, the bank obtained judgement against him for the debt. There was no evidence that when Mr. Gafni personally guaranteed the debts of the company, he was in any position to fulfill such a guarantee, should he be called on to do so. The Court also found that he was involved in several business ventures, all of which failed. Therefore, the Court held that Mr. Gafni failed to prove that he could not justly be held responsible for his lack of assets under section 143(1)(a) of the *Bankruptcy Act*, RSC 1970, c B-3 (the precursor to section 173(1)(a) of the *BIA*): ***Gafni, Re*** at para 4; see also ***Kirk, Re***, 1980 CarswellOnt 182 (ONSC) at paras 3-4, 36 CBR (NS) 10; ***Buceta, Re***, 1981 CarswellOnt 226 (ONSC) at para 12, [1981] OJ No 2372; ***Dziedziuch (Re)***, 2004 BCSC 315 at paras 13-20; ***Rodgers (re),*** 2022 NSSC 312 at paras 42-49.

[104] More recently, the Ontario Superior Court of Justice found that a bankrupt who personally guaranteed $6 million in liabilities, knowing he did not have the personal tangible assets necessary to fulfill the guarantee, did not discharge the onus of proving that he could not justly be held responsible for the circumstances set out in section 173(1)(a): ***Saskin, Re***, 2024 ONSC 3488 at paras 387-394.

[105] The "could not pay guarantee" line of cases demonstrates that the issue is not whether the creditors were misled about the bankrupt's ability to pay a personal guarantee, but rather the bankrupt's knowledge of whether his or her assets would cover the amount guaranteed: ***Saskin, Re*** at para 380.

[106] While the "could not pay guarantee" line of cases has not been expressly followed in Alberta, this Court has held bankrupts responsible for the disparity outlined in section 173(1)(a) when those bankrupts overextended themselves and personally guaranteed the debts of their condominium project: ***Munro (Re)***, 2016 ABQB 274 at paras 10-14 [***Munro (Re)***], aff'd 2016 ABQB 541. In other words, experienced bankrupts in the real estate market that voluntarily increase their risk and creditor exposure, and then encounter events outside of their control, can be justly held responsible for their assets not being of a value equal to fifty cents on the dollar on the amount of their unsecured liabilities: ***Munro (Re)*** at para 14.

ii. Section 173(1)(b) – Failure to keep proper books and records

[107] Another breach of commercial standards is a bankrupt's failure to keep proper books and records: *BIA*, s 173(1)(b). Proper books and records are necessary in any context where money is in play and accountability may need to be tested. The need for proper books and records exists in

business, but also extends to government, not-for-profit operations, municipalities, universities, school boards, and hospitals. This is so because the absence of such books and records leads to confusion and chaos and helps the commission of fraudulent transactions. Indeed, the failure to keep proper books is one of the most serious offences that can be committed by a bankrupt: ***Reddy v Saroya***, 2024 ABKB 478 at para 51; ***Ex parte Campbell, in Re Wallace*** (1885), 15 QBD 213 (CA) [***Re Wallace***]; ***Re Davidson*** (1937), 18 CBR 154, 1937 CarswellOnt 74 (ONSC); Lloyd W Houlden, Geoffrey B Morawetz & Janis P Sarra, *Bankruptcy and Insolvency Law of Canada*, 4th ed (Toronto: Thomson Reuters, 2024) (loose-leaf updated August 2024, release 8) at §7:154.

iii. Section 173(1)(e) – Rash and hazardous speculation, unjustifiable extravagance in living, gambling or culpable neglect of the bankrupt's business affairs

[108] In ***Keays, Re*** (1891), 9 Morr 18 (Eng CA), the English Court of Appeal held that "a speculation that no reasonably careful person would enter into, having regard to all the circumstances, is a rash and hazardous speculation." The British Columbia Supreme Court found that a bankrupt who borrowed funds from friends and family, and then loaned the funds to business borrowers without securing the loans against the business borrowers' assets, engaged in "rash and hazardous speculation" under section 173(1)(e) of the *BIA*: ***Friedland (Re)***, 2011 BCSC 1769 at paras 1-9, 21-23.

[109] Failure to keep proper books and records has also been held to constitute "culpable neglect of business affairs" under section 173(1)(e): ***McLeod, Re,*** 1995 CanLII 16217 at para 18 (MBKB); ***Peter Robert Brawn (In Bankruptcy)***, 2004 BCSC 923 at paras 35-50.

b. Section 178(1) Decisions – Fraud

[110] An effective insolvency framework includes a legislative structure that prevents perpetrators of fraud from being able to shield themselves from liability: ***Jerrard v Peacock,*** 1985 CanLII 1148 (ABQB) at paras 41, 44; ***Martin v Martin***, 2005 NBCA 32 at para 11. Such safeguards are included in the framework of the *BIA*: ss 178(1)(d)-(e).

[111] The starting point for an analysis of section 178 of the *BIA* is to understand that all claims against a bankrupt are captured by the bankruptcy and are then released upon the bankrupt's discharge, unless this result is clearly excluded or exempted by law: see ***Schreyer*** at para 20; ***Korea Data*** at para 59. The creditor who seeks to have the debt or liability survive the discharge has the onus to establish that it falls within the exception: ***Gray (Re)***, 2014 ONCA 236 at para 24; ***Montréal (City) v Deloitte Restructuring Inc***, 2021 SCC 53 at para 25.

[112] The sections 178(1)(a)-(h) exceptions must be interpreted narrowly, as courts have no discretion regarding their application: ***Poonian*** **SCC** at para 26. Regarding sections 178(1)(d) or 178(1)(e) in particular, bare allegations of fraud in a claim will not suffice to allow the claim to survive a bankruptcy discharge. There must be a consideration of the merits of such allegations by the Court: ***Covey (Re)***, 2012 ABQB 565 at paras 41-43.

[113] Hillsboro asserts that a judgment "in fraud" or based upon fraud is not a prerequisite to seeking an order under section 178 of the *BIA*. Such allegations may be first alleged at the bankruptcy discharge hearing and may be capable of determination in a summary manner: ***Canada (Attorney General) v Bourassa (Trustees of)***, 2002 ABCA 205 at para 6; ***Herdman***

(Re), 1992 CanLII 6295 (ABQB) at para 16; ***Matthews (Bankruptcy of)***, 2003 ABQB 116 at para 18.

[114] In their review of the law, the Gaidhars focused on boundaries established by ***Johansen v Wallgren***, 2021 ABCA 234 [***Wallgren***]. The appellant in ***Wallgren,*** Mr. Johansen, sought and obtained partial summary judgement for liquidated damages based on contract, *i.e.*, Mr. Wallgren's promissory note and guarantee. After Mr. Wallgren declared bankruptcy, Mr. Johansen sought a declaration that the partial summary judgement would survive Mr. Wallgren's bankruptcy discharge pursuant to section 178(1)(e) of the *BIA*. The summary trial judge who heard the application dismissed it on the basis that the summary judgment created *res judicata* and that Mr. Johansen could not recharacterize the judgement as one based on fraudulent misrepresentation. Mr. Johansen appealed that decision: ***Wallgren*** at paras 1-12.

[115] The Court of Appeal confirmed that while it is open to a court to analyze a judgment to determine if it is one based on fraud, it is not open to a court to recharacterize a judgment after the fact: ***Wallgren*** at paras 15, 23. The appellate court noted the following:

> Evidence of the alleged fraudulent misrepresentations was not before Master Mason, nor was such evidence required to prove the debt. On the face of Master Mason's judgment, her reasons, and the evidence and submissions before her, the partial summary judgment was not granted on the basis of fraudulent misrepresentation. She found liability for debt based in contract, consistent with the grounds raised in the summary judgment application: ***Wallgren*** at para 22.

[116] Moreover, the Court found that at the time of Mr. Johansen's application for summary judgment, he had all the information that he subsequently relied on when seeking the exemption declaration. Mr. Johansen chose to obtain summary judgment based on the promissory note and guarantee, not on fraudulent misrepresentation or fraudulent preference allegations. Allegations of fraudulent conduct were not before the summary trial judge and her judgement was not grounded in fraud. As Mr. Johansen obtained summary judgment for his debt claim without relying on allegations of fraudulent misrepresentation and fraudulent preference, the Court held that he was "estopped from relitigating the debt claim": ***Wallgren*** at paras 25-26, 30.

[117] ***Wallgren*** was distinguished in ***Kitchenham v Koster***, 2023 ABKB 501. In ***Kitchenham***, this Court held that in circumstances where the judgment creditor does not know of the debtor's conduct that engaged section 178(1) of the *BIA*, and had no reasonable means of discovering it before obtaining judgement for the debt, then ***Wallgren*** does not apply and the Court can make its own findings of fact in applying section 178(1): ***Kitchenham*** at paras 38-40.

[118] I turn now to the key exemptions, for the purposes of this hearing, that are set out in section 178(1): (i) section 178(1)(d), which concerns a debt arising out of fraud while acting in a fiduciary capacity; and (ii) section 178(1)(e), which concerns a debt or liability resulting from obtaining property by false pretences or fraudulent misrepresentation. I turn to outline these two exemptions.

i. Section 178(1)(d): Fraud while acting as a fiduciary

[119] When considering the application of section 178(1)(d) of the *BIA*, the Court deliberates over the nature and substance of the subject debt. An application under section 178(1)(d) of the *BIA* must be supported by a finding of some dishonesty, wrongful act, moral turpitude, or reprehensible conduct, in connection with defalcation while acting in a fiduciary capacity: ***Musat***

(Re), 2020 ABQB 215 at para 20. The court may review the material filed in support of the judgment, the facts pleaded in the judgment action, evidence presented in support of the action, and any reasons given: ***Lawyers' Professional Indemnity Company v Rodriguez***, 2018 ONCA 171 at paras 5-6.

[120] For a debt to survive bankruptcy pursuant to subsection 178(1)(d) of the *BIA*, the creditor must establish that the bankrupt was in a fiduciary relationship with the creditor seeking relief: ***Korea Data*** at paras 3-5. Beyond this, there are two approaches to the interpretation of "misappropriation or defalcation while acting in a fiduciary capacity". One approach requires an element of dishonesty, misconduct, or wrongdoing, while the other approach takes a broader interpretation that does not specifically require such conduct: ***Simone v Daley***, 1999 CarswellOnt 551 at paras 36-37, 1999 CanLII 3208 (ONCA).

ii. Section 178(1)(e): Civil fraud and fraudulent misrepresentation

[121] The essence of the analysis under section 178(1)(e) of the *BIA* is whether the debtor was deceitful, either by a positive act or by failing to disclose material facts: ***McKee (Re)***, 1997 CanLII 14966 (ABQB) at para 35; ***Alberta Securities Commission v Hennig***, 2021 ABCA 411 at para 112; ***Re Nagy (Bankrupt)***, 2003 ABQB 74 at para 16.

[122] The recent decision of ***Poonian* SCC** provides guidance on the three broad requirements that satisfy section 178(1)(e): (i) a fraudulent misrepresentation or false pretences; (ii) a causal link between the debt and the fraud; and (iii) a passing of property because of the fraud: at paras 53-95; ***Hennig*** at para 57.

[123] These three elements form the basis of the Supreme Court of Canada's four-part test, first articulated in ***Montréal (City)***, and recently clarified in ***Poonian* SCC**. When considering the application of section 178(1)(e) of the *BIA*, the test requires a determination, on a balance of probabilities, that: (i) the debtor made a representation to the creditor; (ii) the representation was false; (iii) the debtor knew the representation was false; and (iv) the false representation was made to obtain property or a service: ***Montréal (City)*** at paras 24-25; ***Poonian* SCC** at paras 54, 58-59; see also ***Derry v Peek*** (1889), 14 App Cas 337 at 374, 58 LJ Ch 864 (UKHL) (Lord Herschell), which outlined the elements required to establish fraudulent misrepresentation.

c. "Fifty Percent" Orders

[124] If a bankrupt is ineligible for an absolute discharge, there is precedent for a "fifty percent" order. Such orders require the bankrupt to pay their trustee, as a condition of discharge, 50% of their proven, unsecured debt, upon proof of the bankrupt's reprehensible conduct: ***Re Dykes***, 2014 ABQB 323. The decision to impose a conditional order of discharge is a discretionary one: ***Re Dykes*** at paras 47-50.

[125] When determining an appropriate condition, the Court balances the principles of rehabilitation of the bankrupt, deterrence and punishment, preservation of the integrity of the bankruptcy system, and the interests of creditors: ***Munro (Re)*** at para 29.

d. Corporations – Director Removal

[126] There are circumstances where the Court may remove or displace a director from office. The relevant legislative framework depends on the circumstances, as discussed below.

i. Receivership

[127] Concerning the Alberta *Business Corporations Act*, that statute stipulates that if a receiver-manager is appointed by the Court (or under an instrument), the powers of the directors of the corporation may not be exercised by the directors until the receiver-manager is discharged: *Business Corporations Act*, RSA 2000, c B-9, s 95 [***BCA***]. This *BCA* provision displaces a former director from that office while the receiver-manager is in office.

ii. Bankruptcy

[128] A person who has the status of bankrupt is disqualified from being a director of a corporation: *BCA*, s 105(1)(d). Further, a director of a corporation ceases to hold office once assigned into bankruptcy: *BCA*, s 108(c).

[129] Concerning the *BIA*, that statute stipulates that on the application of any person interested in the matter, the Court may, for circumstances occurring during restructuring, remove from office a director: (i) who is unreasonably impairing or is likely to unreasonably impair the possibility of a viable proposal being made in respect of the debtor; or (ii) who is likely to act inappropriately in that capacity in the circumstances: *BIA*, s 64.

V. APPLICATION OF THE LAW TO THE FACTS

[130] As mentioned above, the business of Ceana Sunridge was to build the Condo Project. While Ceana Sunridge borrowed millions of dollars for the express purpose of building the Condo Project, certain stakeholders assert that a material component of the funds was directed to supporting other business ventures of the Gaidhars.

[131] The Hillsboro group lent funds to Ceana Sunridge to fund the construction of the Condo Project. The construction project faltered. Hillsboro demanded repayment in March 2018. It filed its Statement of Claim in April 2018. By that time, Ceana Sunridge was insolvent. To put matters in context, the Condo Project was substantively incomplete and had no revenue streams when it was put into Receivership.

[132] The Hillsboro demand for repayment, the acceleration of debt due to it, and the lawsuit accumulated to impose significant repayment obligations upon Mr. Gaidhar in his capacity as the sole director of Ceana Sunridge. Notwithstanding the prevailing issues, Mr. Gaidhar negotiated the May 2018 Forbearance Agreement with Hillsboro. Hillsboro entered that forbearance arrangement in good faith.

[133] Despite the challenging financial circumstance in which Ceana Sunridge was situated, Mr. Gaidhar continued transferring funds to CDICo and BollywoodCo after the May 2018 Forbearance Agreement was implemented. Based on my review of the evidence and analysis of the law, these transfers were in complete disregard of Mr. Gaidhar's fiduciary obligations to his own companies and to Ceana Sunridge's broader stakeholders. Given these circumstances, Ceana Sunridge was unable to repay its obligations to Hillsboro. Similarly, it could not repay its obligations to several other parties.

[134] Given this context, I turn to the issues in this application. As I indicated above, I have framed these issues as questions.

A. Should a constructive trust over the JL50 Film Proceeds be established in favor of Ceana Sunridge?

[135] Mr. Dhaliwal and Mr. Mavi seek to establish a constructive trust in favour of their individual capacities. For reasons that I will touch on below, I do not agree with their assertions because it is too narrow an approach.

[136] If a constructive trust over the JL50 Film Proceeds is warranted, perhaps it should be for the benefit of Ceana Sunridge. If that determination is made, then someone will need to consider how the JL50 Film Proceeds are to be allocated by Ceana Sunridge to the various stakeholders. In that case, I will consider the competing rights of those parties with a claim on the property that is within Ceana Sunridge. That said, I have not been asked to address that additional step in the context of this hearing. That is for another day.

[137] At this junction, I am simply considering the issue of whether a constructive trust over the JL50 Film Proceeds should be established in favor of Ceana Sunridge.

1. *Soulos* Factors – Applied

a. The First *Soulos* Factor – An Equitable Obligation

[138] The First *Soulos* Factor refers to an equitable obligation which envelops a defendant. That is, an obligation of the type that courts of equity would have enforced in relation to the activities giving rise to the assets in the hands of a defendant.

[139] Ceana Sunridge was loaned funds by Hillsboro. It also had been advanced funds by Mr. Dhaliwal and Mr. Mavi in the nature of deposits for the purchase of the Condo Units. During these financial transactions, Mr. Gaidhar was the sole director of Ceana Sunridge.

[140] In the context of the financing for the Condo Project, Ceana Sunridge received funds from Hillsboro for the express purpose of completing the construction. This was set out in commitment letters issued by Hillsboro and accepted by Ceana Sunridge.

[141] Notwithstanding that the advance of funds by Hillsboro is covered by contractual agreements, both Ceana Sunridge and Mr. Gaidhar also had ongoing fiduciary obligations to Hillsboro. In my review of the law above, I touched on the importance of a fiduciary relationship and its elements. Fiduciary obligations are an inherent and implied covenant of any construction financing arrangement.

[142] I reiterate that Ceana Sunridge borrowed and raised funds with specific representations that it would use those monies for a stated purpose. The stated purpose was for the construction of the Condo Project. Ceana Sunridge breached those representations. As stated by this Court in ***Easy Loan Corporation v Base Mortgage & Investments Ltd***, 2016 ABQB 77 at para 51, aff'd 2017 ABCA 58:

> [The Applicants] provided their investments to Base Finance based on representations that Base Finance made through Mr. Breitkreutz, that their investments would be used to fund mortgages and that their investments would be protected through security in the form of first mortgages on the properties that their investments were funding. Base Finance was not only under a legal obligation, but it was under an equitable obligation, to use (and secure) those funds in that manner. This meets condition 1 of the ***Soulos*** test.

[Emphasis added.]

[143] The finding made in ***Easy Loan*** applies to this case. That is, the finding in ***Easy Loan*** is consistent with the underlying principle that contractual dealings must be carried out in good faith. This is an equitable obligation.

[144] Such a finding is also consistent with ***Quistclose*** principles, originating in the English courts: see ***Barclay's Bank Limited v Quistclose Investments Limited***, [1970] AC 567 (UKHL). The ***Quistclose*** trust principles are described in some detail by the British Columbia Court of Appeal in ***Cliffs Over Maple Bay (Re)***, 2011 BCCA 180 at para 18.

[145] Given these circumstances, I find that the First *Soulos* Factor is established because the Defendants were under an equitable obligation to use the subject funds in a particular manner.

b. Second *Soulos* Factor – Breach of the Equitable Obligation

[146] The Second *Soulos* Factor requires that assets in the hands of the Defendant be shown to have resulted from deemed or actual agency activities in breach of their equitable obligation to the Plaintiff. That is, the essence of the Second *Soulos* Factor is to confirm the existence of a breach of an equitable obligation where one party has been entrusted with property of another in a manner that requires the entrusted party to act with propriety on behalf of the other.

[147] In ***Easy Loan*** at para 51, cited with approval in ***Vrbanek*** at para 171, this Court found that the Second *Soulos* Factor should not be viewed in an unnecessarily restrictive manner, particularly concerning the words "agent" or "agency":

> The Receiver argues that nowhere in the Irrevocable Assignment of Mortgage Interest document is the word "agent" or "agency" used. That is not the test. The Court can look at the surrounding circumstances to determine whether such a "relationship" exists between the parties in the manner that Professor Fridman describes. This Court finds that Base Finance held itself out as the investors' agent in using their invested funds for loans that were to be secured by a mortgage for their benefit. In this way, Base was representing them in such a way as to be able to affect their legal position in respect of the various mortgagors. This meets condition 2 of the ***Soulos*** test.
>
> [Emphasis added.]

[148] Both Hillsboro, as a lender, and Mr. Dhaliwal and Mr. Mavi, as Condo Purchasers, were at the sole whim and mercy of Ceana Sunridge. Further, Ceana Sunridge was controlled by the resolve of Mr. Gaidhar because he was the sole director of Ceana Sunridge at all relevant times.

[149] Once monetary advances had been made by Hillsboro, Mr. Dhaliwal, and Mr. Mavi to Ceana Sunridge, none of these parties could control the use of the funds that were contributed. That is, none of these three parties could control whether the funds were put into trust (for the benefit of the condominium purchasers) or for the payment of trades, acquisition of materials, progress of work and so forth. The overriding obligation was for Ceana Sunridge to use those funds on, or for the benefit of, the Condo Project.

[150] Given his control over Ceana Sunridge, Mr. Gaidhar was able to directly, and adversely, affect the legal and equitable rights of Hillsboro, Mr. Dhaliwal, and Mr. Mavi. By his actions, he did so.

[151] Based on the evidence, I find that there has been a misuse and misappropriation of funds out of the Ceana Sunridge estate. A material amount of the cash outflow was from the Ceana Sunridge estate to Mr. Gaidhar and the Related Companies without any apparent justification. The lack of proper documentation reinforces this determination. In my view, Ceana Sunridge was not only under a legal obligation, but also an equitable obligation, to use the subject funds for the Condo Project. Regrettably, that equitable obligation was breached.

[152] I further find that a portion of the misappropriated funds were used, directly or indirectly, to finance the JL50 Film. That misappropriation gave rise to the JL50 Film Proceeds. I reiterate that this misappropriation reflects a breach of both legal and equitable obligations.

[153] I also find that there has been a misappropriation of Ceana Sunridge property by Mr. Gaidhar for his personal use. I make that determination because there is no documentation supporting a legitimate basis for the extraction of the subject funds. I am bolstered in this finding because there is neither documentation to suggest that the subject funds were loaned by Ceana Sunridge for a legitimate purpose nor any basis to pay Mr. Gaidhar remuneration. Concerning remuneration, I saw neither evidence that he earned the amounts he was advanced nor any supporting documentation that he paid income tax on the amounts he extracted from Ceana Sunridge. I do not accept that he was entitled to the alleged management fee that he asserts. I make that determination because he negotiated the Management Fee Agreement, and the terms of that agreement never became operational. I infer that no amount was payable from Ceana Sunridge as a dividend because that corporation would not have met the liquidity tests or the solvency tests during the construction project. Further, I saw no evidence of a dividend declared by Ceana Sunridge or of a documented loan to its parent corporation or an employee.

[154] In summary, the conduct of Mr. Gaidhar is a breach of his legal and equitable obligations to Ceana Sunridge. I make that determination because the evidence is that Mr. Gaidhar used the Ceana Sunridge funds indiscriminately and for improper purposes. It was from that improper distribution by Mr. Gaidhar to himself and related persons (including to the Related Companies), that the JL50 Film Proceeds issue has now arisen. By extension, there has also been a breach of Ceana Sunridge's legal and equitable obligations to its direct stakeholders, including Hillsboro, Mr. Dhaliwal, and Mr. Mavi.

[155] Given these circumstances, I find that the Second *Soulos* Factor is established because there is evidence of a breach of an equitable obligation. I make that determination because Ceana Sunridge was entrusted with property of Hillsboro, Mr. Dhaliwal, and Mr. Mavi in a manner that requires the entrusted party to act with propriety on behalf of the others. In this case, that trust was breached.

c. Third *Soulos* Factor – Legitimate Reason for a Proprietary Remedy

[156] The Third *Soulos* Factor requires the plaintiff to show a legitimate reason for seeking a proprietary remedy, either personal or related to the need to ensure that others like the defendant remain faithful to their duties: ***Soulos*** at para 45, cited in ***Vrbanek*** at para 170.

[157] Based on my review of the evidence, funds were transferred out of Ceana Sunridge for non-permitted purposes. This was not a trivial matter, or an isolated instance of misappropriation. To the contrary, this removal of funds from Ceana Sunridge for non-permitted purposes was a course of conduct that occurred over several years.

[158] The magnitude of the collective misappropriation was also troublesome. It involved millions of dollars. As a result of the misuse of funds, the Condo Project was woefully underdeveloped at the time the Receivership order was granted.

[159] The economic calamity is further complicated here by the failure of Ceana Sunridge to keep proper books and records. This failure to keep adequate books and records is one of the most serious offences that can be committed by an insolvent person: ***Re Wallace***; ***Re Davidson***. This conduct of poor record keeping has injured multiple creditors, including Hillsboro, Mr. Dhaliwal, and Mr. Mavi.

[160] Given these circumstances, I find that the Third *Soulos* Factor is established. I make this determination because the above evidence and analysis provides a legitimate reason for me to consider granting a proprietary remedy. Further, the granting of a constructive trust remedy in these circumstances is supported by both the personal and policy objectives underlying the Third *Soulos* Factor, including the need to ensure that others like the Defendants remain faithful to their duties and responsibilities to keep proper records and to use funds for the purpose for which they were provided.

d. Fourth *Soulos* Factor – No Factors Render a Constructive Trust Unjust

[161] The Fourth *Soulos* Factor requires me to consider the impact on third parties. The judicial guideline is that there must be no factor which would render the imposition of a constructive trust unjust in all circumstances of the case. Even the interests of intervening creditors must be protected.

[162] A constructive trust is remedial in nature. As such, there should not be a categorical analysis, restricted to unjust enrichment or other predefined circumstances. The remedy is appropriate where "good conscience" requires it: ***Soulos*** at para 43.

[163] If I order a constructive trust in favour of Ceana Sunridge, I infer this will reduce funds that may otherwise flow to either: (i) CDICo; and (ii) Mr. Dhaliwal and Mr. Mavi. Notwithstanding that it is primarily a holding company, I expect that CDICo has its own creditors because it will have to pay, for example, its accountants and lawyers to deal with at least the annual bookkeeping and filing requirements of the corporation.

[164] When I consider matters in context, the application of a constructive trust to effect the return of funds to Ceana Sunridge is not an unjust result. To the contrary, if I allowed the JL50 Film Proceeds to flow to CDICo rather than back to Ceana Sunridge, that would create an unjust result because the subject funds were advanced as a loan or a deposit to Ceana Sunridge in the first instance. Further, I make this determination because the evidence is that Ceana Sunridge was the source of the financing that gave rise to the JL50 Film.

[165] Based on my review of the evidence, I infer that neither Hillsboro nor any other arm's-length party loaned funds to CDICo. I draw this inference because there is no evidence that CDICo has any business, operations, or revenues of its own. It was simply a holding company which held the shares of Ceana Sunridge. I also note that there is no evidence that CDICo had its own funds to invest into BollywoodCo. Instead, CDICo was a flow-through vehicle for funds withdrawn in some manner from Ceana Sunridge and then invested into BollywoodCo and elsewhere.

[166] If the JL50 Film Proceeds are paid to CDICo, the effect would not be remedial because it was not CDICo that lost its own property. In those circumstances, the creditors of CDICo, if such exist, would realize a windfall, and would do so to the detriment of the creditors of Ceana Sunridge. That being the case, the application of a remedial constructive trust in favour of Ceana Sunridge best approximates restitution for the initial wrongdoing. Further, I find that no factors render a constructive trust for the benefit of Ceana Sunridge unjust in these circumstances. I make this determination notwithstanding the assertions of Mr. Dhaliwal and Mr. Mavi to the contrary.

[167] Mr. Dhaliwal and Mr. Mavi argue that a constructive trust for the benefit of Ceana Sunridge is unjust because they would be prejudiced by the fact that the JL50 Film Proceeds would not be flowing directly to them. In advancing this argument, Mr. Dhaliwal and Mr. Mavi infer that all the JL50 Film Proceeds should flow to and for their benefit, apparently without regard to other stakeholders.

[168] I disagree with the proposal advanced by Mr. Dhaliwal and Mr. Mavi. In an effort to consider all the stakeholders appropriately, the JL50 Film Proceeds must flow to and for the benefit of Ceana Sunridge. Once the funds are in that entity, the rights and entitlements of the Ceana Sunridge creditors can be considered.

[169] As a final comment, I acknowledge that the broad definition of "JL50 Film Proceeds" above could create an issue concerning the Fourth *Soulos* Factor. I touch on this issue because there could be third-party investors in related ventures whose entitlement to some of the proceeds may be impacted. Conceptually, this could include third-party stakeholders in music and film merchandising. While this could be an issue, I have no evidence on any such third-party investors who might have an interest. Absence such evidence, I will not consider the matter further.

[170] Given these circumstances, I find that the Fourth *Soulos* Factor is established. I make this determination because no element renders a constructive trust unjust to Ceana Sunridge. To the contrary, the payment of the JL50 Film Proceeds to any party other than Ceana Sunridge would create an unjust and unfair result. As noted above, the argument advanced by Mr. Dhaliwal and Mr. Mavi that a constructive trust over the JL50 Film Proceeds should be directed solely in their favour is inappropriate because it is too narrow. Like others, Mr. Dhaliwal, and Mr. Mavi advanced funds to and for the benefit of Ceana Sunridge in respect of the Condo Project. Their rights and entitlements should be considered in the context of all creditors of Ceana Sunridge. In my view, that is the just approach.

2. *Soulos* Factors – Conclusion

[171] Based on my review of the evidence and my analysis of the law, I direct that a constructive trust over the JL50 Film Proceeds be established in favor of Ceana Sunridge. I make this determination because all the *Soulos* Factors have been met. Moreover, a constructive trust is justified in these circumstances because I am entitled to exercise "further discretion": ***Manufacturers Life*** at para 38. That is what I did in this case.

B. Is Mr. Dhaliwal or his corporation owed a debt equal to the amount of the September 2017 Bank Draft plus interest at prime plus 2% per annum from the Trust Proceeds?

[172] I address this question because the Court received a brief and heard arguments from Mr. Dhaliwal and Mr. Mavi concerning funds that they advanced to Ceana Sunridge (the "**Dhaliwal Brief**"). The funds advanced directly and indirectly by these two individuals related to an alleged purchase of the Condo Units in the Condo Project.

[173] As framed in the Dhaliwal Brief, the sole issue was how the JL50 Film Proceeds were to be divided. Notwithstanding how the issue was framed in the Dhaliwal Brief, the requested remedy in that document was for: (i) a constructive trust in favour of Mr. Dhaliwal and Mr. Mavi (apparently to the exclusion of any other stakeholder); and (ii) in the alternative: (a) a debt owed to Mr. Dhaliwal and Mr. Mavi in the amount of the September 2017 Bank Draft with interest due at prime plus 2%; and (b) a constructive trust over the balance (again, apparently to the exclusion of any other stakeholder). I infer that Mr. Dhaliwal and Mr. Mavi advanced this expanded claim because of the alleged fraud underlying this matter.

[174] Based on my review of the Three Applications, the evidence, and the law, I dismiss the relief that Mr. Dhaliwal and Mr. Mavi seek on an individual basis. I make this determination for two reasons. First, the relief referenced in the Dhaliwal Brief in respect of the constructive trust for their benefit is outside the boundaries of the Three Applications. While the Enforcement Creditor requested relief in the form of a constructive trust for the benefit of Ceana Sunridge, neither Mr. Dhaliwal nor Mr. Mavi filed an application seeking such relief. Absent such an application, it would be an error of law for me to grant them the relief they seek. Second, the relief requested in the form of a debt due to Mr. Dhaliwal (and perhaps Mr. Mavi or HWI) also fails because it too was not sought by way of a proper application. The alleged debt also fails for the following reasons.

a. Mr. Gaidhar asked Mr. Dhaliwal to issue a bank draft payable to CDICo. In response to this request, Mr. Dhaliwal had the September 2017 Bank Draft issued. The September 2017 Bank Draft was drawn by the CIBC from the bank account of HWI and was payable to CDICo.

b. Mr. Gaidhar executed a document on behalf of Ceana Sunridge confirming that the September 2017 Bank Draft had been paid as an additional deposit for the purchase of the Condo Units and that Mr. Dhaliwal and Mr. Mavi would receive interest on the September 2017 Bank Draft at prime plus 2% per annum. However, there is no additional evidence of the nature of the relationship. Concerning Mr. Dhaliwal and Mr. Mavi, there is no evidence of a promissory note or other *indicia* of a loan with interest.

c. Notwithstanding that Mr. Dhaliwal and Mr. Mavi assert that they are owed a debt, I note that the September 2017 Bank Draft was drawn on HWI. That corporation is owned and controlled by Mr. Dhaliwal and his wife. I see no evidence that Mr. Mavi has any rights or entitlements to HWI. Further, there is no evidence that he is owed any amount in respect of the September 2017 Bank Draft. At best, the arguments that Mr. Mavi is owed anything in respect of the funds advanced by way of the September 2017 Bank Draft are hollow.

d. In the absence of any connecting documentation, I cannot conceive how Mr. Mavi is owed any principal or interest associated with the September 2017 Bank Draft. Given the evidence before me, I find that there is no support for an indebtedness owed to Mr. Mavi in respect of the September 2017 Bank Draft.

e. Mr. Dhaliwal's rights associated with the amount advanced in respect of the September 2017 Bank Draft are also not clear. As noted above, the September 2017 Bank Draft was drawn on HWI. While Mr. Dhaliwal and his wife own HWI, the advance of $63,754.50 to CDICo by way of the September 2017 Bank Draft does not establish a debt owed to Mr. Dhaliwal. More supporting *indicia* would be needed to establish that anything is due to Mr. Dhaliwal in his personal capacity. There maybe something owed by Ceana Sunridge to HWI, but no one argued that point. Further, no evidence was provided on that matter.

[175] I acknowledge that Mr. Gaidhar executed a document on behalf of Ceana Sunridge indicating that the September 2017 Bank Draft was paid as an additional deposit for the purchase of the Condo Units and that Mr. Dhaliwal and Mr. Mavi would receive interest on the September 2017 Bank Draft. In my view, the documentation executed by Mr. Gaidhar creates uncertainty because he refers to both a deposit and, by inference, a debt. Typically, these are inconsistent relationships. I make that determination because a loan typically has an interest component, whereas a deposit does not.

[176] There is no additional documentation that clarifies the nature of the relationship between Ceana Sunridge and Mr. Dhaliwal concerning the September 2017 Bank Draft. This lack of documentation is consistent with Mr. Gaidhar's poor record-keeping practices throughout the subject business endeavours.

[177] Based on the evidence and my analysis of the law, I find that neither Mr. Dhaliwal nor Mr. Mavi is owed a debt equal to the amount of the September 2017 Bank Draft plus interest at prime plus 2% per annum from the Trust Proceeds.

C. Should the JL50 Film Proceeds be paid to Ceana Sunridge?

[178] For reasons outlined above, I directed that a constructive trust over the JL50 Film Proceeds be established in favor of Ceana Sunridge. I made this determination because all the *Soulos* Factors had been satisfied. Given this determination, I further direct that the JL50 Film Proceeds be paid to Ceana Sunridge. Those funds can then be distributed according to the priorities associated with the creditors of Ceana Sunridge.

D. Should the Hillsboro Section 178 Application be dismissed?

[179] As I noted above in my review of the law, a judgment in fraud or based upon fraud is not a prerequisite to seeking an order under sections 173 or 178 of the *BIA*. Such allegations may be first alleged at the bankruptcy discharge hearing and are capable of determination in a summary manner: ***Bourassa*** at paras 44-46; ***Matthews (Bankruptcy of)*** at para 18. However, once a final judgment for the debt has been obtained on grounds other than fraudulent conduct, the Court cannot recharacterize the judgement if the evidence, the submissions, and the summary judgement application or pleadings do not refer to fraud, and if the judgment was not granted on the basis of fraud: ***Wallgren*** at para 22.

[180] In their submissions, the Gaidhars assert that the boundaries established by ***Wallgren*** preclude the application of section 178 of the *BIA* to them in this circumstance. I agree with the Gaidhars' assertions on this point for the reasons set out in the following paragraphs.

[181] As discussed above, HVI filed the Summary Judgment Application on February 17, 2021. The grounds for seeking summary judgment were the valid, unlimited guarantees provided by the Gaidhars and WestwindsCo to HVI in support of the mortgage indebtedness. No allegations of fraud were made against the Gaidhars in the application.

[182] On June 3, 2021, Justice Eidsvik granted the Hillsboro Judgment to Hillsboro Enterprises Inc, as assignee of HVI, against Mr. Gaidhar for $9,106,539.24, against Ms. Gaidhar for $3,182,178.16, and against WestwindsCo for $9,106,539.24. There is no indication that this Hillsboro Judgment was based on fraud. Instead, the judgement was obtained on the basis of contract, *i.e.* the personal guarantees given by the Guarantors.

[183] Like the appellant in ***Wallgren***, Hillsboro had all the information it now relies upon to assert fraudulent misrepresentation and fraud while acting as a fiduciary at the time of its Summary Judgment Application. In February 2021, Hillsboro had the Receiver's Sources and Uses Analysis, which was attached as Appendix F of the Third Report of the Receiver, filed on September 14, 2020, in relation to the Receivership proceedings. The Receiver's Sources and Uses Analysis was also referred to in the ***Hillsboro Priority Decision***, which was heard in December 2020 and January 2021. Hillsboro relied on the Receiver's Sources and Uses Analysis for its claim that the Gaidhars acted fraudulently in using the Condo Project funding for the improper purposes of financing the JL50 film and funding other personal endeavours. As Hillsboro had the information it now relies upon to assert that the Gaidhars acted fraudulently at the time of its Summary Judgment Application, namely the Third Report of the Receiver, this is not a situation like ***Kitchenham***, where the judgment creditor did not discover the debtor's conduct engaging section 178(1) of the *BIA* until after judgement for the debt had been obtained.

[184] Based on my review of the evidence and analysis of the law, I have determined that ***Wallgren*** applies. As a result, the Hillsboro Section 178 Application must be dismissed. *Res judicata* applies to the Hillsboro Judgment. I make this determination because Hillsboro did not pursue a summary disposition of the debt on the basis of fraudulent misrepresentation or fraud while acting in a fiduciary capacity. Given that context, it is estopped from recharacterizing the claim as one that merits an exemption under sections 178(1)(d) or (e) of the *BIA*.

[185] While, in my view, the conduct of Mr. Gaidhar had no possible ethical or business explanation, Hillsboro could have pursued its claims of fraudulent misrepresentation and fraud while acting as a fiduciary in the Summary Judgment Application heard by Justice Eidsvik. It chose not to do so and cannot revive that cause of action now that it appears that other claims would have been more successful than its contract-based debt claim.

E. Should Mr. Gaidhar be subject to a conditional discharge or an absolute discharge under the *BIA*?

[186] After finding that the Hillsboro Judgment cannot be recharacterized as falling within the scope of the sections 178(1)(d)-(e) exemptions, I must now consider whether Mr. Gaidhar is prohibited from receiving an absolute discharge by virtue of section 172(2) of the *BIA*. This section prohibits the granting of an absolute discharge when any of the circumstances listed in section 173 of the *BIA* are present.

[187] The Gaidhar Trustee asserts that facts referred to in sections 173(1)(a), (b), and (d) apply to Mr. Gaidhar. Thus, the Gaidhar Trustee recommends a significant conditional discharge order, plus a further sum of $100,000 to compensate the Gaidhar Trustee for its efforts and to provide a dividend to the unsecured creditors.

[188] In addition to sections 173(1)(a), (b), and (d), Hillsboro argues that sections 173(1)(c), (e), (f), and (k) also apply. It asks that this Court impose a "fifty percent" conditional discharge order requiring Mr. Gaidhar to pay the Gaidhar Trustee fifty percent of his proven, unsecured debt. Proof of any one of the facts referred to in section 173 is sufficient to preclude the granting of an absolute discharge: ***Bankruptcy of Verne Milton Percival***, 2024 MBKB 45 [***Percival, Re***] at para 97.

[189] I have considered sections 173(1)(a)–(f), and (k). I have found that the facts in sections 173(1)(a), (b), and (e) have been proven, which means that Mr. Gaidhar is ineligible for an absolute discharge. While it is likely that badges of fraud may be established on the evidence, a finding that section 173(1)(k) has been proven would not affect the outcome. Therefore, I need not consider that section further. I am satisfied that a conditional discharge, rather than a refusal or suspension, is appropriate in these circumstances.

[190] First, Mr. Gaidhar's assets are not of a value equal to fifty cents on the dollar on the amount of his unsecured liabilities, based on the information contained in the section 170 report of the Gaidhar Trustee, which I can rely on: *BIA*, s 170(5); ***Dziedziuch, Re***, 2004 BCSC 315 at para 15. According to the section 170 report, the Gaidhar Trustee was able to realize $8,765.77 of Mr. Gaidhar's assets. Mr. Gaidhar's proven, unsecured liabilities amounted to approximately $16.5 million. Once a fact is established within section 173(1)(a) of the *BIA*, the onus shifts to the bankrupt to satisfy the Court that such a situation has arisen from circumstances for which he cannot justly be held responsible: *BIA*, s 173(1)(a).

[191] As discussed above, there is a line of case law that holds that a bankrupt who gives a personal guarantee for his business' debts, knowing that his assets are not sufficient to cover the guarantee amount, cannot satisfy the Court that the section 173(1)(a) situation has arisen from circumstances for which he cannot be held responsible. In 2017, Mr. Gaidhar gave personal guarantees with respect to the three Hillsboro mortgage loan facilities, which had a combined principal of $6.5 million and an interest rate of 18% per annum. When Hillsboro attempted to enforce the Hillsboro Judgment against Mr. Gaidhar based on this personal guarantee, Mr. Gaidhar declared bankruptcy.

[192] The Gaidhar Trustee's section 170 report indicates Mr. Gaidhar has very little in tangible assets. His house, which was heavily mortgaged and ultimately foreclosed on, was valued at $1.2 million, as per his Statement of Affairs. He has a Registered Retirement Income Fund valued at $95,000, as per his Statement of Affairs. The Trustee was able to realize approximately $6,000 from a Tax-Free Savings Account. At the time of his bankruptcy, his monthly income was $1,150.08. As the Gaidhar Trustee noted in its supplemental report, Mr. Gaidhar's business ventures, *i.e.* the Related Companies, all ended up in foreclosure or receivership, with projects being sold at losses. The Gaidhar Trustee also observed that "there is no clear evidence of substantial personal funds being invested into the projects but rather financed by institutions, investors, joint venture partners etc. which has culminated in the amounts being claimed by creditors as illustrated n [sic] the claims register." Nothing in the evidence indicates that at the

time Mr. Gaidhar personally guaranteed the Hillsboro mortgage loan facilities, he had $6.5 million in assets.

[193] Moreover, Mr. Gaidhar's evidence is that he has been involved in the land development business in Alberta for over twenty-three years. Like the bankrupts in ***Munro (Re)***, Mr. Gaidhar could not have been oblivious to the risks involved in a commercial condominium project. While some of the problems with the Condo Project may have been largely outside of his control, such as problems with the general contractor, his exposure to risk was well within his control. Mr. Gaidhar, an experienced land developer, "chose this playing field, went long and lost": ***Munro (Re)*** at para 14.

[194] As a result, Mr. Gaidhar has not satisfied the onus of proving that the fact that his assets are not of a value equal to fifty cents on the dollar on the amount of his unsecured liabilities has arisen from circumstances beyond his control. Mr. Gaidhar can justly be held responsible for this state of affairs and, thus, section 173(1)(a) supports a conditional discharge.

[195] Second, section 173(1)(b) of the *BIA* applies in this instance because Mr. Gaidhar did not adequately maintain books or records relating to Ceana Sunridge for more than three years prior to his assignment in bankruptcy. In relation to the funds transferred from Ceana Sunridge to the Related Companies, Mr. Gaidhar admitted in the evidence filed in his bankruptcy action that he did not have Visa statements or records of Project expenses incurred by CDICo, which could have shown that the amounts transferred to CDICo were reimbursements of Ceana Sunridge expenses. He also conceded that he was "too casual" in preparing the proper paperwork and invoicing for the rent payments made from Ceana Sunridge to WestwindsCo. Additionally, he admitted that he did a "poor job of keeping track of exact hours spent and papering formal invoices" for the work that he did as project manager. Furthermore, he acknowledged that he "did not do a great job of maintaining proper business records in relation to certain aspects of the business." Finally, the Receiver's Sources and Uses Analysis, which also forms part of the record in Mr. Gaidhar's bankruptcy proceeding, was compiled using bank statements because Ceana Sunridge failed to provide the Receiver with its books and records, excepting a financial statement and general ledger for 2018.

[196] While Mr. Gaidhar asserted that a flood in the WestwindsCo building in February 2021 destroyed Ceana Sunridge's records, his brief acknowledges that the financial statements for Ceana Sunridge were not completed after 2018. There is also proof that prior to 2018, Mr. Gaidhar omitted to keep usual and proper books and records that sufficiently disclosed Ceana Sunridge's business transactions and financial position since the incorporation of that entity in April 2015. Thus, I am satisfied that the section 173(1)(b) fact has been proven.

[197] Third, Mr. Gaidhar contributed to the bankruptcy by a rash and hazardous speculation and culpable neglect of his business affairs, facts listed under section 173(1)(e) of the *BIA*. In or around June 5, 2018, the Gaidhars and WestwindsCo (as the Guarantors), Ceana Sunridge, and HVI signed the Forbearance Agreement by which HVI would forbear from taking any further steps to enforce its security in exchange for Ceana Sunridge agreeing to inject into the Condo Project an additional $1 million in equity before July 30, 2018, in addition to other obligations. During this critical period, Ceana Sunridge instead transferred $83,100 to BollywoodCo between July 5, 2018, and September 10, 2018. Mr. Gaidhar's evidence is that he was expecting to turn a large profit by investing in the JL50 Film. As discussed above, the working relationship between the JL50 Film Parties had already broken down by February 2018. Thus, sinking further funds

into the JL50 Film in the summer of 2018 on the misguided belief that it would generate a large profit was both rash and hazardous in the context of the obligations owing by Ceana Sunridge to HVI under the Forbearance Agreement. This was "a speculation that no reasonably careful person would enter into, having regard to all the circumstances": ***Keays, Re***.

[198] Additionally, Mr. Gaidhar's failure to keep proper books and records, as discussed above, constitutes "culpable neglect of the bankrupt's business affairs" under section 173(1)(e). Therefore, I am satisfied that section 173(1)(e) has been proven in this instance.

[199] As I have found that facts pursuant to sections 173(1)(a), (b), and (e) have been proven, which support the granting of a conditional discharge, I turn to consider the appropriate quantum.

1. What quantum of condition is appropriate?

[200] Mr. Gaidhar submits that a reasonable condition, given his advanced age, limited means, poor career prospects, and caregiver obligations, would be in the range of $10,000 to $20,000. Hillsboro seeks a fifty-percent condition, as well as a declaration that the Hillsboro Judgment against the Gaidhars survives their discharge from bankruptcy. This condition would amount to over $8 million. The Gaidhar Trustee is seeking a "significant" condition amount and an additional $100,000 to compensate the estate for its efforts and to provide a dividend to the unsecured creditors.

[201] Determining the appropriate amount of a bankrupt's payment obligation when conditionally discharged is an exercise of discretion: ***Munro (Re)***, 2016 ABQB 541 at para 38 [***Munro (Re)* Appeal**], aff'ing ***Munro (Re)***. This discretionary exercise requires the Court to balance the potential for rehabilitating the bankrupt, the interests of creditors, and the integrity of the bankruptcy system: ***Pemberton (Re),*** 2024 ABKB 119 at para 54, citing ***Cronenfeld, Re,*** 2011 ONSC 6882 at para 14; ***Percival, Re*** at para 114.

[202] In ***Dykes, Re*** at para 47, citing ***Lok, Re,*** 2010 SKQB 327 at 6-153, this Court provided guidance on determining an appropriate condition:

> Perhaps the best tha[t][sic] can be done is: if the conduct is extremely bad, then the discharge should either be refused or a conditional order should be made without regard to the bankrupt's income; if the conduct is not so extreme, then a conditional order should not be made if the bankrupt's income and future prospects clearly will not permit payments to be made without inflicting hardship on the bankrupt and his or her dependents.
>
> [Emphasis added.]

[203] Other factors that a court may consider are as follows: the attitude of the bankrupt throughout the process; whether the bankrupt has treated his or her creditors with disdain; and the age and ability of the bankrupt to pay a condition of discharge: ***Elford (Re)***, 2017 ABQB 433 at paras 75-80.

[204] In ***Pemberton (Re)***, this Court upheld a bankruptcy registrar's imposition of a $2.655 million condition, plus a three-year suspension of the bankrupt's discharge, on a 68-year-old bankrupt with limited employment opportunities: at paras 2, 55, 61-62. The bankrupt had transferred $2.655 million in assets overseas two days prior to his assignment into bankruptcy to prevent his creditors from obtaining the funds: at para 56. Applying the framework in ***Dykes***, the Court held that the case fell into the category of "extremely bad conduct," which directs that a

conditional order should be made without regard to the bankrupt's ability to pay. At the same time, the bankrupt was able to pay the condition, as he had access to the $2.655 million of funds that he had transferred to his brother overseas: at paras 58-60.

[205] I find that the principles of deterrence and denunciation support the imposition of a more substantial payment obligation on Mr. Gaidhar. The facts discussed above indicate that Mr. Gaidhar's conduct was so bad that the Court may impose financial conditions of discharge even in the absence of evidence that the bankrupt has the assets needed to pay the condition amount: ***Pemberton (Re)*** at para 53, aff'd 2024 ABKB 119; ***Re Dykes*** at para 47.

[206] I acknowledge that Mr. Gaidhar has given evidence that he cannot pay a fifty-percent condition, which would amount to over $8 million. The Gaidhars subsist on Old Age Security ("**OAS**"), Canadian Pension Plan ("**CPP**"), and Registered Retirement Income Fund payments totaling about $2,300/month. While Mr. Gaidhar hopes to earn additional income by working as a realtor, his earning potential is limited by his age (late 70s) and his caregiver obligations to Ms. Gaidhar, who suffers from a degenerative disease.

[207] While Mr. Gaidhar's ability to pay any condition of discharge is limited, a penalty for his egregious conduct is warranted. The question is what quantum is appropriate in the circumstances. While a penalty is warranted in the circumstances of this case, a penalty amount equal to fifty percent of Mr. Gaidhar's proven unsecured liabilities is outside the bounds of reasonableness. Given the factors set out above, I am requiring, as a condition of Mr. Gaidhar's discharge, that he pay to the Gaidhar Trustee an amount of $90,000. Notwithstanding this amount is far below fifty percent of Mr. Gaidhar's proven, unsecured debt, I make this determination on the premise that I am required to balance the principles of rehabilitation of Mr. Gaidhar, deterrence and punishment, preservation of the integrity of the bankruptcy system, and the interests of creditors. Imposing a "crushing" financial condition on Mr. Gaidhar would not align with the rehabilitative purpose of the *BIA*: ***Kuczera (Re)***, 2018 ONCA 322 at para 22.

2. What length of time for payment into the estate is appropriate?

[208] Three years has been found to be an acceptable outside limit for the period during which a bankrupt is expected to pay his or her condition into the estate: ***Munro (Re)*** at para 31. Other cases that emphasise punishment or deterrence have imposed longer periods or larger amounts: ***Munro (Re)*** at para 31.

[209] Seven years was found to be an appropriate period in a recent decision of the Manitoba Court of King's Bench involving a bankrupt in his mid-70s who had limited employment prospects, like Mr. Gaidhar: ***Percival, Re*** at para 143. The bankrupt in that case had liabilities, mostly credit card and tax, totalling approximately $389,000. As of the date of bankruptcy, the bankrupt's month income was $5,810.00, and was comprised of pension, CPP, and OAS income. Shortly before the bankruptcy, he transferred his interest in the family home and in two lake cottages to his ex-wife for negligible consideration. The bankrupt was unable or unwilling to explain to the trustee how he managed to max out eight credit cards in the span of months, nor why significant cash advances were necessary: at paras 8-22, 32-34.

[210] The Court found that the following section 173(1) paragraphs applied to support a conditional discharge: (a), the bankrupt's recoverable assets totaled less than $10,000, whereas the proven claims of his unsecured creditors were approximately $390,000; (e), rash speculation in the form of amassing so much credit debt in a short period, without explanation; and (o),

failing to perform the duties imposed on the bankrupt pursuant to the *BIA*: ***Percival, Re*** at paras 67-99. The Court found that the transfers of the properties to the ex-wife shortly before declaring bankruptcy deprived the creditors of approximately $100,000 of assets: ***Percival, Re*** at para 132. For these reasons, the Court ordered that the Bankrupt be discharged, conditional upon payment of $95,000 within a period of seven years. The bankrupt was ordered to make a minimum $500/month payment and then to satisfy any balance owing with lump sum payments: ***Percival, Re*** at para 144.

[211] The principles of punishment and deterrence support the imposition of a period longer than three years during which Mr. Gaidhar is expected to pay his condition. As Mr. Gaidhar's personal circumstances are similar to that of the bankrupt in ***Percival, Re***, I find that a seven-year repayment period is appropriate. As Mr. Gaidhar's monthly income is more limited than the bankrupt in ***Percival, Re***, I order that Mr. Gaidhar make a minimum monthly payment of $250 for seven years. Mr. Gaidhar will be required to make up the additional amount to reach $90,000 with extra lump-sum payments.

F. Should Ms. Gaidhar be subject to a conditional discharge or an absolute discharge under the *BIA*?

[212] Hillsboro seeks an order granting a "fifty percent" condition on the discharge of Ms. Gaidhar and a declaration that the Hillsboro Judgment against her will survive her eventual discharge from bankruptcy.

[213] Notwithstanding that I have found Mr. Gaidhar to be subject to a conditional discharge under the *BIA*, I do not so find in respect of Ms. Gaidhar. I make that determination because I am not satisfied, on a balance of probabilities, that the actions with which I am concerned were associated with her. While Ms. Gaidhar did provide a personal guarantee for one of the Hillsboro mortgages, Mr. Gaidhar's evidence is that she signed what he asked her to, as "in [his] culture [...] the husband makes all financial and business decisions for the household". Moreover, due to Ms. Gaidhar's degenerative illness and lack of experience in land development projects, she may not have appreciated the risk which she was undertaking by signing the guarantee. Thus, I do not find that she had the knowledge aspect necessary to prove the existence of section 173(1)(a). Further, I did not see sufficient evidence to conclude that Ms. Gaidhar was acting in concert with Mr. Gaidhar, or that she was a directing mind behind the inappropriate conduct that he carried out.

[214] While Ms. Gaidhar might be characterized as a passive participant in the concerning activities, that is not sufficient to have the debt survive the discharge: ***Re Gray***, 2014 ONCA 236 at para 24; ***Montréal (City)*** at para 25. In my view, Ms. Gaidhar is entitled to a "fresh start". As a result, all claims against her are captured by the bankruptcy and are then released when she is discharged from bankruptcy.

G. Should Mr. Gaidhar be removed as a director of Visions20Co and CDICo?

[215] Notwithstanding that he is a bankrupt, Mr. Gaidhar is referred to in the underlying Application as a director of Visions20Co and CDICo. His entitlement to be listed as, and hold the office of, a director of any corporation violates the *BCA* because he was assigned into bankruptcy: *BCA*, s 108(c).

[216] I noted above that Mr. Gaidhar was no longer a director of Visions20Co. However, the underlying Application indicates that he is a director of that corporation. For completeness, I address the issue directly.

[217] Based on my review of the evidence and analysis of the law, I direct that Mr. Gaidhar be removed as a director of CDICo and, if he is still listed as a director, of Visions20Co. As noted above, this determination is based on the fact that section 108(c) of the *BCA* applies to him.

[218] While I limited my above comments to the corporations identified in the Application filed on August 11, 2022 by Inns Law, the same implications apply to Mr. Gaidhar if he is still listed as a director of any other corporation. This issue may be relevant to Ceana Sunridge, WestwindsCo, EvanstonCo, and 1117899Co.

H. Should Ms. Gaidhar be removed as a director of BollywoodCo?

[219] Notwithstanding that she was a bankrupt, Ms. Gaidhar remained listed as a director of BollywoodCo throughout the bankruptcy proceedings. Her entitlement to be listed as, and hold the office of, a director of any corporation ceased when she became a bankrupt: *BCA*, s 108(c).

[220] Based on my review of the evidence and analysis of the law, I direct that Ms. Gaidhar be removed as a director of BollywoodCo. As noted above, this determination is based on the fact that section 108(c) of the *BCA* applied to her on the date of her assignment in bankruptcy.

VI. SUMMARY AND CONCLUSION

[221] In summary, the circumstances of this case consist of a tangled web of facts and law. Based on my review of the evidence and analysis of the law, for the reasons mentioned above my findings are as follows.

a. Should a constructive trust over the JL50 Film Proceeds be established in favor of Ceana Sunridge? Yes.
b. Is Mr. Dhaliwal or his corporation owed a debt equal to the amount of the September 2017 Bank Draft plus interest at prime plus 2% per annum from the Trust Proceeds? No.
c. Should the JL50 Film Proceeds be paid to Ceana Sunridge? Yes.
d. Should the Hillsboro Section 178 Application be dismissed? Yes.
e. Should Mr. Gaidhar be subject to a conditional discharge or an absolute discharge under the *BIA*? Mr. Gaidhar is granted a conditional discharge with an obligation to pay $90,000 to the Gaidhar Trustee over a period of seven years, with an obligation to make a minimum monthly payment of $250.
f. Should Ms. Gaidhar be subject to a conditional discharge or an absolute discharge under the *BIA*? Ms. Gaidhar is granted an absolute discharge.
g. Should Mr. Gaidhar be removed as a director of Visions20Co and CDICo? Yes.
h. Should Ms. Gaidhar be removed as a director of BollywoodCo? Yes.

VII. COSTS

[222] Costs may be spoken to if the parties cannot otherwise agree.

Heard on the 21st day of March 2023.

Further Submissions by Counsel on August 14th, 2024, and September 13th, 2024.
Dated at the City of Calgary, Alberta this 21st day of November 2024.

D.B. Nixon
A.C.J.C.K.B.A.

Appearances:

Derek M. Pontin
for Hillsboro Enterprises Inc.

Daniel Jukes
for Bob Gaidhar and Yasmin Gaidhar

William Katz and Angad Bedi
for Sukhdeep Dhaliwal and Mandeep Mavi

Chuck Russell, K.C. and Graem White
for Canadian Western Bank

Byron W. Nelson
for Visions 20 Entertainment Inc.