



**IN THE NATIONAL COMPANY LAW TRIBUNAL
MUMBAI BENCH - I**

**Comp. Appl. No. 165 (MB) 2025
IN
C.P. No. 3638 (MB) 2018**

Under Rule 11 of NCLT Rules, 2016.

In the matter of

Union of India, Ministry of Corporate
Affairs

... Applicant

Versus

Milind Patel and Ors.

... Respondents

In the matter of

Union of India, Ministry of Corporate
Affairs

...Petitioner

Versus

IL&FS & Ors.

...Respondents

Order pronounced on 04/06/2026

Coram:

Prabhat Kumar

Member (Technical)

Sushil Mahadeorao Kochey

Member (Judicial)

Appearances:


For the Applicant : Mr. Aditya Sikka

For the Respondents : Mr. Harsh Shah for R-1; Ms. Aditi Bhatt for R-3 & R-4; Ms. D. Prachi for R-5; Mr. Raghav Seth for R-6 & R-7; Mr. Kunal Mehta for R-8, R-9 & R-14; Mr. Amir Arsiwala for R-11; Mr. Chirag Naik for R-12; Mr. Prashant Singh for R-20 & Mr. Varun Satiya for R-21

ORDER

Per: Coram

1. The present Application has been filed under Rule 11 of the NCLT Rules, 2016 to amend Company Petition No. 3638 of 2018, specifically seeking to introduce prayer (e) based on the findings of the SFIO Investigation Report on IL&FS Financial Services Ltd. ("IFIN Investigation Report").
2. The Applicant/Original Petitioner (Ministry of Corporate Affairs ("MCA")), *vide* order dated 30.09.2018, directed the Serious Fraud Investigation Office ("SFIO") to investigate the affairs of Infrastructure Leasing and Financial Services Ltd. and its subsidiaries. Accordingly, MCA filed a Company Petition against IL&FS under Sections 241-242 of the Companies Act, 2013 on 01.10.2018. SFIO subsequently submitted its Investigation Report on IFIN to MCA on 28.05.2019, pursuant to which MCA, *vide* order dated 29.05.2019 ("Sanction Order"), directed SFIO to initiate prosecution against the accused named therein and sought interim attachment of their movable and immovable properties.
3. MCA filed "Amendment Application I" (MA No. 2696/2019) on 05.08.2019 seeking this tribunal's permission to amend the Company Petition. In the interregnum, BSR filed W.P.(CrI). 4144-4145 of 2019




before the Hon'ble Bombay High Court challenging the Sanction Order, the initiation of CC No. 20 of 2019, and the constitutionality of Section 140(5) of the Act. The Bombay High Court, *vide* judgment dated 21.04.2020, quashed and set aside the Sanction Order. MCA challenged this before the Hon'ble Supreme Court in Criminal Appeal No. 2305-2307 of 2022, which *vide* judgment dated 03.05.2023 set aside the Bombay High Court judgment.

4. Meanwhile, this Tribunal *vide* order dated 25.11.2019 allowed Amendment Application I, permitting MCA to amend the Company Petition on the basis of the IFIN Investigation Report. MCA carried out the amendments on February, 2024, accordingly and also added prayer (e). The Respondents challenged the tenability of the amendments to the captioned Petition by filing various applications. This Tribunal *vide* order dated 22.07.2024 upheld the inclusion of prayer (e), Deloitte and its partners challenged the same before the Hon'ble NCLAT. *Vide* order dated 15.05.2025, Hon'ble NCLAT directed deletion of prayer (e), and granted liberty to the Applicant to file a fresh amendment application. The relevant extract reads:

"29. We are satisfied that the Appellants have made out a case for allowing the prayers made in CA No.60 of 2024 and direct the Union of India to delete relief (e) incorporated in the amended Company Petition No.3638 of 2018. We, however, make it clear that allowing CA No.60 of 2024 and other applications filed by the Appellants praying similar relief shall not preclude the Union of India to file a fresh application for amendment of prayers in the company petition as per leave, which was granted on 25.11.2019 by the NCLT by allowing the amendment application MA No.2696 of 2019.

30. In result, all the appeals are allowed. The impugned order dated 22.07.2024 passed in CA No.60 of 2024 and other Company Applications



is set aside. CA No.60 of 2024 and other applications filed by the Appellants are allowed. It is held that inclusion of clause (e) in the prayers in CP No.3638 of 2018 is unsustainable. We direct the Union of India to delete clause (e) from the prayers of the Company Petition as has been added by the Union of India by filing amended petition on 21.02.2024. We, however, make it clear that this order shall not preclude the Union of India from filing fresh application for amendment of prayers in CP No.3638 of 2019 as it may deem fit and proper and it is for the NCLT to consider any such application, if filed, in accordance with law."


5. In light of the said liberty, the present Application has been filed to introduce prayer (e) in the following terms:

"(e) Declare that the Respondents named in the investigation Report dated May 28, 2019 namely, Respondent Nos. 2, 3, 9, 313, 314, 315, 321 to 334, 340 and 341 were knowingly parties to the fraudulent conduct of IL&FS Financial Services Limited with a view to defraud the creditors of IL&FS Financial Services or any other person and in terms of Section 339 of the Companies Act, 2013 direct the said Respondents to pay such amounts as may be determined by this Hon'ble Tribunal to the creditors and others of IL&FS Financial Services plus interest therein at such rate as this Tribunal may direct."

6. The Ld. Counsel for the Applicant submits that the amendment sought is within the period of limitation since the Investigation Report dated 28.05.2019 and the authorization to proceed were set aside by an order dated 21.04.2020 passed by the Hon'ble Bombay High Court. The said order was subsequently set aside and the Report along with the authorization were restored by an order dated 03.05.2023 passed by the Hon'ble Supreme Court. Accordingly, a fresh cause of action arose on 04.05.2023 and the present Application is therefore within the prescribed period of limitation.




7. The Ld. Counsel for the Applicant further submits that the period between the Hon'ble Bombay High Court order and the Hon'ble Supreme Court order ought to be excluded for the purposes of computing limitation, as the challenge before the Court pertained to the SFIO IFIN Report not being final. Accordingly, the question of filing an amendment application to include a relief on the basis of the said Report did not arise during the said period.
8. The new prayer (e) seeks a relief under Section 339 of the Act to impose liability for fraud. The cause of action for filing a proceeding under Section 339 arose with the acceptance of the SFIO IFIN Report under Section 212(12) of the Act in terms of the Sanction Order dated 29.05.2019. The Hon'ble Bombay High Court, however, set aside the Sanction Order and observed that the findings in the SFIO IFIN Report are inconclusive, thereby extinguishing the cause of action to maintain and prosecute proceedings under Section 339. It was only upon the Hon'ble Supreme Court's order dated 03.05.2023 that the Sanction Order and the SFIO IFIN Report stood restored, reviving the said cause of action.
9. It is further submitted that in a number of cases, various High Courts have upheld that upon extinction of a particular cause of action, the period of limitation founded thereon stands extinguished, and that the revival of such cause of action leads to a fresh start of limitation. The Applicant further relies upon *Midnapore Zamindary Co. Ltd. vs. State of West Bengal & Ors.* (AIR 1961 Cal 353) in this regard. In the present case, the cause of action admittedly stood extinguished with the order dated 21.04.2020 and was revived only on 03.05.2023. The Applicant is thus entitled to a fresh period of limitation of 3 years from 03.05.2023, which expires on 03.05.2026. The present Application is therefore within time.
10. It is further submitted that since Section 339 of the Act seeks to impose liability for fraud, the filing of a proceeding thereunder necessarily requires the existence of definitive findings of fraud and an acceptance of




those findings. Accordingly, the cause of action to seek reliefs under Section 339 arose only upon the acceptance of the SFIO IFIN Report under Section 212(12) of the Act in terms of the Sanction Order dated 29.05.2019.

11. The Ld. Counsel for the Respondents submits that an amendment application is considered keeping in mind, inter alia: (a) whether the amendment sought is imperative for proper and effective adjudication of the case; (b) whether the application for amendment is bona fide or mala fide; (c) whether the amendment causes prejudice to the other side; and (d) whether a fresh suit on the amended claims would be barred by limitation on the date of application.
12. The Ld. Counsel for the Respondents submits that the addition of new prayer (e) sought vide Amendment Application II (present application) is barred by limitation. The limitation period to seek a declaration under Section 339 of the Companies Act, 2013 ("Act") is 3 years from the date of knowledge of the fraud. Applicant's knowledge crystallized no later than 28.05.2019, when the SFIO IFIN Report was submitted, and by MCA's own admission, it sought to invoke Section 339 through its Amendment Application I dated 05.08.2019. The present Amendment Application II, filed on 05.06.2025, is therefore well beyond the prescribed period of 3 years.
13. It is further submitted that the proposed prayer (e) is admittedly founded upon the SFIO IFIN Investigation Report dated 28.05.2019, yet the Applicant has waited more than six years to seek inclusion of a substantive prayer under Section 339 of the Act. This delay has not been justified in the Application and demonstrates a complete lack of diligence.
14. The Applicant's primary justification for the delay is the pendency of "diverse proceedings before different courts/tribunals" between 2019 and 2023. It is submitted that the proceedings cited by the Applicant, particularly the Writ Petition before the Hon'ble Bombay High Court,



predominantly concerned challenges to the proceedings initiated under Section 140(5) of the Act and the related Criminal Complaint. The interim stay granted by the Hon'ble Bombay High Court *vide* order dated 04.09.2019 was limited to the proceedings under Section 140(5) of the Act and the Criminal Complaint, and created no impediment to the Applicant seeking to amend the Company Petition filed under Sections 241 and 242 of the Act.

15. It is further submitted that this Tribunal's amendment order dated 25.11.2019 was passed a month after the Hon'ble Bombay High Court's interim order dated 04.09.2019, which restrained Applicant from continuing any further proceedings under Section 140(5) and from taking any coercive action in the Criminal Complaint. The fact that Applicant itself pursued Amendment Application I and obtained orders during the subsistence of the said interim stay demonstrates that Applicant believed the stay granted by the Hon'ble Bombay High Court did not impact the Company Petition.
16. The Hon'ble Bombay High Court *vide* its order dated 21.04.2020 quashed the Sanction Order and set aside the Criminal Complaint arising therefrom. The said order therefore did not relate to, provide any relief in relation to, or in any manner impact the Company Petition. It is submitted that the Union of India, having filed Amendment Application I in 2019 and having sought prayers in the nature of clauses (c) and (d) therein, could and ought to have, at that stage itself, sought a substantive prayer in the nature of prayer (e) under Section 339 of the Act. It is further submitted that the challenge to the SFIO IFIN Report before the Hon'ble Bombay High Court or the Hon'ble Supreme Court cannot be relied upon for the purposes of computing limitation in initiating civil action.
17. The Ld. Counsel for the respondents submits that the decision in *Midnapore Zamindary Co. Ltd.* (*supra*) relied upon by the Applicant is not applicable to the present case, inasmuch as the cause of action was



never extinguished by the Hon'ble Bombay High Court. Furthermore, the said decision is restricted to suits under the Bengal Tenancy Act, which specifically excludes Section 9 of the Limitation Act.

18. Heard contentions of both the parties. The Applicants/Original Petitioner have filed the Company Petition under Section 241 and 242 of the Companies Act, 2013, seeking reliefs against acts of oppression and mismanagement alleged to be undertaken by the Respondents therein. The present Application seeks to amend the captioned Company Petition by introducing relief under Section 339 of the Act by seeking to amend the prayers on the basis of the findings contained in the SFIO IFIN Investigation Report, in accordance with Schedule annexed to the present Application.
19. The proposed prayer (e) arises directly from the findings of the SFIO IFIN Report dated 28.05.2019, which forms the very basis of the captioned Petition, and the relief sought under Section 339 of the Act is connected and consequential to its subject matter, namely the affairs of IL&FS Financial Services Limited and the alleged fraudulent conduct of its officers. It is noted that CP No. 3638 of 2018 was instituted with the twin objectives of resolving the affairs of the IL&FS Group and ensuring that those responsible for its downfall are made liable to the victims of the fraud. The introduction of prayer (e) therefore constitutes a consequential relief that flows naturally and necessarily from the substratum of the Petition; on the contrary, it would enable this Tribunal to adjudicate upon all issues arising therefrom in a consolidated manner, without necessitating the initiation of a separate proceeding for the same relief. Section 339 relief, being grounded in the same set of facts and the same investigation report, is not alien to the captioned Petition and its introduction does not alter the nature of the proceeding.
20. It is pertinent to note that the provisions of section 339 of the Companies Act, 2013 are extended to the proceedings u/s 241 of the Companies Act,



2013 by Section 246 of the Companies Act, 2013, and this Tribunal is vested powers to pass an order generally to bring to an end the mismanagement complained in the company petition in terms of section 242(1) and specifically for the purpose(s) enumerated in Section 242(2) of the Companies Act, 2013. Section 339 requires this Tribunal to declare that a person found to be have been knowingly parties to the carrying on the business with an intent to defraud creditors of the company or any other person or for any fraudulent purposes. Such declaration can be made by this Tribunal on an application filed by the liquidator, which in the present, is to be read as Central Government, who had initiated the proceedings u/s 241 of the Companies Act, 2013. It can not be denied that such declaration can only be sought on the basis of findings, which in the present case are stated to be available in the SFIO Report requiring this tribunal to adjudicate whether the persons, against whom the declaration is being sought in the terms of prayer (e) sought to be inserted vide present application.


21. In the case of *Life Insurance Corporation of India Limited vs. Sanjeev Builders Private Limited & Anr. (Civil Appeal No. 5909 of 2022)*, the Hon'ble Supreme Court held that in dealing with a prayer for amendment of pleadings, the court should avoid a hyper technical approach, and is ordinarily required to be liberal especially where the opposite party can be compensated by costs. Where the amendment would enable the court to pin-pointedly consider the dispute and would aid in rendering a more satisfactory decision, the prayer for amendment should be allowed.
22. With regard to the issue of limitation, the Central Government filed the Company Petition CP 3638 of 2018 on 30.9.2018 under section 241 of the Companies Act, 2013 alleging mismanagement in the affairs of the IL&FS and the IFIN is subsidiary of IL&FS. Further, the Central Government also ordered investigation in the affairs of IL&FS and its subsidiaries by Serious Fraud Investigation Officer vide order dated 30.09.2018, the SFIO



submitted its Investigation Report on 28.05.2019. Pursuant to such investigation, the Central Government filed an application (Applicant's Amendment Application I for amending the Company Petition) seeking amendment in the company petition, which was allowed by this Tribunal *vide* Order dated 25.11.2019. Indubitably, the said amendment application didn't contain a prayer for insertion of prayer (e) at that time, though, the Central Government while carrying out amendment to the captioned Petition in or around February 2024 also included the addition of prayer (e) in the company petition. The insertion of prayer (e) was opposed by the Respondents stating that it could have been made by a fresh application, however, the said insertion was held permissible by this Tribunal even in the absence of fresh application *vide* order dated 22.07.2024. The said order was challenged by the some of the Respondents, and Hon'ble NCLAT *vide* order dated 15.05.2025 directed the Applicant to delete prayer (e) from the captioned Petition, while expressly granting liberty to file a fresh application for amendment. Accordingly, the Central Government has filed the present application on 06.06.2025.


23. It is argued that the factum of fraud having taken place in the affairs of IL&FS was in knowledge of the Central Government at the time of filing of present petition as on 30.9.2018, accordingly, the limitation would run from the said date. It is further argued that, alternatively, the particulars of the fraud as well as role of Respondents, against whom declaration is being sought in terms of prayer clause (e), became known to the Central Government on 28.5.2019, accordingly, the limitation would also commence from the said date.

24. It is noted that prayer clause (e) seeks declaration u/s 339 against the Respondents in the affairs of IFIN, and the role of such Respondents in the commission of alleged fraud could be known only upon receipt of SFIO Interim Investigation Report in the affairs of IFIN, accordingly, the



declaration contemplated in section 339 in relation to such respondents being knowing party to such commission of fraud could not have been contemplated at the time of filing of present petition, because such knowledge cannot be presumed merely because of their connection or dealing with the company solely and there has to be material for seeking such declaration, which in our considered view, came in possession of Central Government pursuant to SFIO Report on 28.5.2019. Accordingly, the limitation, if any, would run from said date, and not from the date of filing of CP 3638 of 2018.

25. It is further noted that the Hon'ble Bombay High Court *vide* order dated 21.04.2020 quashed and set aside, inter-alia, MCA's direction under Section 212(14) dt. 29.05.2019 on a Writ Petition filed by Shri N. Sampat Ganesh, M/s BSR and Associates LLP and Anr., Deloitte Haskins and Sells LLP, Shri Kalpesh Mehta, Shri Udayansen, Shri Harishankaran. The said Order passed by the Hon'ble Bombay High Court was set aside by Hon'ble Supreme Court *vide* order dated 03.05.2023, thereby upholding the validity of the Sanction Order and restoring the SFIO IFIN Report. The said Order passed by the Hon'ble Bombay High Court had questioned the completeness of the Report holding that the said Report was interim in nature, accordingly, in view of an Order from the Constitutional Court holding SFIO Investigation Report, which was to form basis of adjudication for making a declaration by this Tribunal, could not have been proceeded by the Central Government till the time said Order was in force. The Ld. Counsel appearing for Deloitte had fairly conceded that they cannot oppose the exclusion of said period for the purpose of Limitation as they were parties to those proceedings in Writ. In our considered view the same proposal would also estop the other Petitioners in the Writ to contend for non-exclusion of said Period. Even otherwise, the period from 29.05.2019 to 03.05.2023 is required to be excluded for determination of the Limitation for the reasons stated by us before.

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26. Further, this Tribunal had allowed the insertion of prayer clause (e) as valid pursuant to insertion thereof vide amendments carried out by the Central Government in terms of the Order dt. 22.07.2024, thereby not requiring the Central Government to seek an amendment by way of fresh Application. The said Order dt. 22.07.2024, was set aside by the Hon'ble NCLAT vide Order dt. 15.05.2025 holding that the Central Government could have inserted the prayer clause (e) only pursuant to a fresh Order passed by this Tribunal on an Application for amendment, and could not have been done pursuant to Order dt. 25.11.2019. In view of this, we are of the considered view that the period from 22.07.2024 to 15.05.2025 is also to be excluded for the purpose of Limitation.
27. The Applicant has filed the present Application for insertion of prayer (e) in the captioned Petition on 06.06.2025. Upon excluding the aforesaid periods, the present Application is well within the prescribed limitation period, whether computed from 28.05.2019, being the date of submission of the SFIO Investigation Report, or even from 30.09.2018, being the date on which MCA directed the SFIO to investigate the affairs of IL&FS, and is accordingly not barred by limitation.
28. It was argued that Hon'ble Delhi High court in *Shriraj Investment and Finance Ltd. and others vs Union of India and Anr.* held that, “*Even otherwise, a bare perusal of Sections 241, 242, 246 r/w Section 339 would reveal they are not dependent upon even filing of a SFIO report under Section 212 (2) of the Act. The Central Government, at any stage, on basis of any material before it, formed an opinion to file petition under Sections 241, 242, 246 r/w 339 of the Companies Act, in the present case, though the Central Government have decided to file the same after receipt of SFIO report, however, the Act puts no fetters upon the Central Government to await a SFIO report, to form its opinion that the affairs of the Company are being conducted in a manner prejudicial to the public interest and of the Company.*” There is no quarrel with this proposition, however, it is to



be noted that a declaration under Section 339 can only be made after imputing the knowledge and participation or collusion of abetment on the part of persons involved in the commission of Fraud, and it cannot be said that the particulars in relation to the role of persons to whom such knowledge can be attributed were available prior to the receipt of the interim SFIO Report.

29. In view of the above, the present Application is allowed. The Applicant is directed to carry out the amendments in terms of the Schedule annexed within the time prescribed under NCLT Rules, and serve a copy of amended Petition to the Respondents, who shall be at liberty to file additional reply to the amended Petition within four weeks after receipt of copy of amended Petition.

Sd/-

Prabhat Kumar
Member (Technical)

Sd/-

Sushil Mahadeorao Kochey
Member (Judicial)

/A/