IN THE NATIONAL COMPANY LAW TRIBUNAL
DIVISION BENCH (COURT– I) CHENNAI

ATTENDANCE CUM ORDER SHEET OF THE HEARING
HELD ON **07.07.2026** THROUGH VIDEO CONFERENCING

PRESENT: **HON'BLE SHRI. SANJIV JAIN, MEMBER (JUDICIAL)**
HON'BLE SHRI. VENKATARAMAN SUBRAMANIAM, MEMBER (TECHNICAL)

APPLICATION NUMBER	:
PETITION NUMBER	**:** CP(CA)/125(CHE)/2023
NAME OF THE PETITIONER(S)	**:** Electro Trade
NAME OF THE RESPONDENTS	**:** ETA Engineering Pvt Ltd & 8 Others
UNDER SECTION	**:** Sec 213 of CA, 2013

ORDER

Present: None for the Petitioner.

Ld. Counsel Ms. S. Krishna for the R1 to R6.

Vide separate pronounced in Open Court, the petition is **dismissed**.

File be consigned to records.

Sd/-

(VENKATARAMAN SUBRAMANIAM)
MEMBER (TECHNICAL)

Sd/-

(SANJIV JAIN)
MEMBER (JUDICIAL)

MG

Date: 07.07.2026

IN THE NATIONAL COMPANY LAW TRIBUNAL, DIVISION BENCH – I, CHENNAI

CP(IBC)/125(CHE)/2023

(filed under Section 213(b) r/w Section 221 and 447 of the Companies Act, 2013)

In the matter of ***ETA Engineering Private Limited***

M/s. Electro Trade,
Represented by in Proprietor, Ashok Bengani,
54, Ezra Street, 1st Floor, Kolkata 700001 ... *Petitioner*

-Vs-

1. ETA Engineering Private Limited,
No.20/21, Razak Garden Main Road 1st floor Arumhakkam
Cherm-600106
... Respondent No.1

2. Mr. Khalid Buhari,
Director of ETA Engineering Private Limited,
No.26, Old No. 25, Khader Nawaz Khan Road,
Thousand Lights Chennai- 600006.
... Respondent No.2

3. Mr. Abdul Qadir,
Director of ETA Engineering Private Limited,
No.8, Subba Rao Avenue, III Street,
Nungambakkam, Churmai-600006.
... Respondent No.3

4. Mr. Kasim Afzal,
Director of ETA Engineering Private Lummel
No.21/38, Sky Line Pearl, Balaji Nagar, 2nd Street,
Royapettah, Chennai-000014.
... Respondent No.4

5. Ms. M. Kalpana Gupta,
Company Secretary of ETA Engineering Private Limited
Registered Residential Address: Not Available

... Respondent No. 5

6. Mr. Saurabh Chauhan,
CEO of ETA Engineering Private Limited.
Registered Residential Address: Nit Available.

... Respondent No. 6

7. The Registrar of Companies, Chennai,
Block No. 6, B Wing, 2nd Floor,
Shastri Bhawan 26, Haddows Road
Chem-600034.

... Respondent No. 7

8. The Regional Director, Southern Region,
5th Floor, Shastri Bhawan, 26 Haddows Road,
Chennai-600006.

... Respondent No. 8

9. The Department of Income Tax,
No. 121, M.G Road, Nungambakkam,
Chen-600034.

... Respondent No.9

Order pronounced on ***07th July**, **2026***

CORAM :

SANJIV JAIN, MEMBER (JUDICIAL)
VENKATARAMAN SUBRAMANIAM, MEMBER (TECHNICAL)

For Petitioner : K. Gaurav Kumar, M Sree Kumar Advocate
Alpa Jain, PCS
For Respondent No. 1 : Lily Francis, Jose JohnAdvocate
For ROC : Avinash Krishnan Ravi, Advocate

For IT Department : Raj Jhabakh, Advocate

ORDER

1. Under consideration is a petition filed by the proprietorship concern, M/s Electro Trade under Sections 213 of Companies Act, 2013 (hereinafter, the Act, 2013), seeking the following reliefs,

Final Relief(s):

(1) To direct the Registrar of Companies to call for information regarding the company, and conduct an inquiry and inspection of the books of the company.

(ii) To direct the Central Government to investigate into the fraudulent affairs of the R1 Company, as there exist concrete circumstances suggesting that the business of the company is being conducted with the intent to defraud its creditors.

(iii) Take necessary actions against the Respondents 1, 2, 3, 4, 5 & 6 under Section 447 of the Companies Act, 2013 upon further proof of fraud;

(iv) Direct the Respondent No. 9 to conduct relevant investigation into the dubious affairs of the R1 Company for any alleged Income Tax evasions.

(v) That any such further order be passed as the Tribunal deems fit in the circumstances of the case thereby rendering complete Justice."

2. **Submissions of the Petitioner**

2.1. It is stated that ETA Engineering Private Limited (hereinafter referred to as (R1 Company), purchased products from the Petitioner, against the invoices but the dues attributable to such invoices were withheld by R1 Company and its defaulting management.

2.2. It is stated that there exists circumstances, which evidently suggest that the business of R1 Company is being conducted by its management, namely, Respondent No. 2 to 6 with a discernible intention to defraud its creditors, one of whom is the Petitioner.

2.3. It is stated that Respondent No. 1 Company has long pending dues outstanding towards the Petitioner amounting to Rs.1,32,49,817/-, the repayment of which has been fraudulently evaded.

2.4. It is stated that R1 Company and its management lent a deaf ear to every attempt to communicate with the Petitioner. It is stated that the management of Respondent No. 1 is actively avoiding the Petitioner and remains inert to the Petitioner’s attempts at establishing contact and communication. This apathy of Respondent No. 1 Company's management indicates that the management of the Company will take no action unless their mala fide stance is exposed and their fraudulent modus operandi is intervened into by this Tribunal.

2.5. It is stated that the Petitioner by repeated e-mails notified Respondent No. 1 of its long pending outstanding dues towards the Petitioner and informed that appropriate legal proceedings will be initiated on persistent avoidance of the repayment of the same. However, the Respondent No. 1 Company's management, remained comatose and did not respond to the array of mails sent by the Petitioner. Thus, the Petitioner filed this petition to bring to this

Tribunal's attention the plight of such bona fide creditors, of whom the Company has siphoned money and to seek investigation into the affairs of the company under Section 213 of the Companies Act, 2013. It is stated that a complaint has also been lodged with the Registrar of Companies (RoC).

2.6. It is stated that R1 Company is habitual offender actively seeking to defraud every stakeholder and has large number of cases initiated against it. The Petitioner is one among countless creditors and stakeholders, who were defrauded by the mala fide management of the company. The R1 Company was put into CIRP, but the management cunningly settled the dues of the creditor and escaped insolvency. It is only when such aggrieved parties knock at the door of this Tribunal, the Respondent No. 1 Company's management takes steps towards payment of dues. The veracity of this assertion is fortified upon a perusal of the scores of orders, which have been recorded as "settled" and withdrawn. Hence, until the swindled parties approach this forum, the business and the management of Respondent No.1 Company is deliberately conducted in a manner ensuring that every creditor of the company remains unpaid. It is stated that while a patent act of injustice may be penalized for such incessant conduct having its roots deep in the closed doors of R1 Company, it is imperative that the Tribunal be pleased to lift the corporate veil and order a probe into the company and its management.

2.7. It is stated that the Ministry of Micro, Small and Medium Enterprises vide notification dated 02.11.2018, directed all the companies receiving goods or services from MSME suppliers and if the payment therewith exceeds 45 days, to submit half yearly return to the MCA stating the amount of payments due to such MSME suppliers and the reason for delay. Thereafter, the MCA passed an Order notified on 22.01.2019, directing every company to file details of all outstanding dues to MSME suppliers existing on the date of notification of the said order in MSME Form-I within thirty days from the date of publication of the notification. It is stated that the Respondent No. 1 Company despite being a receiver of goods supplied by the Petitioner, an MSME, has not filed MSME-I form. The Respondent No. 1 Company deliberately abstained from filing its financial statements for the year 2016-2018. It was only in the year 2019, did Respondent No. 1 Company file the same after substantial fabrications, as the Petitioner's rightful dues were deliberately withheld and cloaked as if it did not exist. Since the R1 Company deliberately not specified the dues payable to MSME with interest, it amounts to an intentional concealment of pertinent information violative of Section 129 of the Act, which prescribes a true and fair view of the company's state of affairs to be visible from its financials.

2.8. It is stated that Respondent No. 1 Company’s mala fide nature of conducting business intending to defraud their creditors and making misrepresentations to the authorities is established. From the financials filed by the Respondent No. 1 Company, it is evident that there was no information at all provided for dues pertaining to MSMEs and the interest, which is mandatory to be disclosed in their financial returns filed with the office of the RoC. It is stated that Respondent No. 1 Company in leaving such pertinent details in the dark, purposefully and fraudulently hid the details from the eyes of law. Hence, a prudent course of action considering the cemented illicit conduct of the Respondent No. 1 Company and its management, be taken and an investigation be carried out by Respondent No. 9 for any alleged evasions from payment. It is stated that a compelling history of overt fraudulent behaviour should not be turned a blind eye, and Respondent No. 1 Company and its management should not be extended the benefit of the doubt and should be looked upon with the level of scrutiny as deemed necessitated by their consistent evasive actions.

2.9. It is stated that Respondent No. 1 may be directed to furnish up to date Statement of Assets and Liabilities and Balance Sheet along with the Tally Backup supplemented by its Bank Statements before this Tribunal in order to bring to light such concealed dues of numerous defrauded creditors.

2.10. It is stated that the Petitioner is of the view that that Respondent No. 1 and its management, Respondent No. 2 to 6 may have other important information kept in dark, with the intention of further defrauding their creditors and other stakeholders. The purpose of investigation pleaded for under Section 213 is to discover which is apparently not visible to the naked eye and is shrouded under the veil, which is clearly the case in the current circumstance.

2.11. It is stated that the intent of the legislature is clearly visible upon seeing how Section 213 is worded specifically to provide a wide ambit of power to the Tribunal so as to ensure that even an ordinary layman is not defrauded by a Company. The portion of the Section is reproduced as under: -

> *"213(b) .... on an application made to it by any other person or otherwise, if it is satisfied that there are circumstances suggesting that."*

2.12. It is stated that it is evident from the statute that the Tribunal needs to satisfy that there exists circumstances, which suggest that the affairs of the company is conducted with an intent to defraud. It is stated that the Tribunal is thus empowered with the armament to render justice by ordering investigation in any company, which is conducting its business in a dubious manner whenever deemed necessary. The Legislature has not provided any threshold for the applicability of the Section for the very reason that this blanket of protection is to be given for the common layman to approach this Tribunal after being defrauded by such Companies.

3. **<u>Reply by the Respondent No. 1:</u>**

3.1. The Respondent No. 1 filed its reply vide SR No. 1300 dated 12.03.2024. A memo is filed by Respondent No. 2 to Respndent No. 6 adopting the reply of Respondent No. 1.

3.2. It is stated that Respondent No. 1 is engaged in the execution of various HVAC and EPC contracts for private parties as well as many public projects including several metro rail projects such as DMRC, BMRC, CMRL among others.

3.3. It is stated that Respondent No. 1Company had a sound financial turnover and promptly honoured all its commitment to its creditors till FY 2015-2016. In 2016, one of the Banks, which had extended credit facilities to the Respondent acted wrongfully and deliberately led the Respondent No. 1 into severe financial constraints. The wrongful acts of the Bank crippled Respondent No. 1 financially and led to delay in payments in certain cases. However, Respondent No. 1 Company despite its financial difficulties, settled all legal claims. It is stated that the Respondent No. 1 Company's grievances against the said Bank are pending adjudication before the Hon'ble Madras High Court and Debt Recovery Tribunal.

3.4. It is stated that despite the aforesaid circumstances, R1 Company scrupulously cleared all outstanding dues to all creditors. However, presently, the Respondent No. 1 Company is constrained to seek leave of the DRT to receive any payments to it from its Contractors/

Garnishees. While such is the financial state of affairs of the Respondent No. 1 Company, hampering the free flow of transactions, many frivolous and unjustified claims had been lodged on the Respondent which claims have been dismissed rightfully.

3.5. It is stated that the Petitioner has filed the petition instead of filing a claim for the very reason that its claims are hopelessly barred by limitation. The Petitioner has long slumbered upon its rights which arose in FY 2012-2013 and has suddenly awakened to remedy its latches in FY 2023-2024. This Petitioner has a history of causing such groundless threats to Respondent No. 1 Company and was reciprocated with suitable responses by the Respondent No. 1. The Petitioner has stooped way too low in addressing to the Company Secretary of R1 Company to her personal emails. It is stated that for invocation of Section 213, a prima facie case must be established that the circumstances exist for ordering the investigation. This petition is nothing but an indirect and arm-twisting tactic of a creditor vindicating its grievances for the claims not lodged in time.

3.6. It is denied that the dues attributable to invoices raised by the Petitioner were deliberately withheld by the Respondent. The Petitioner was well within its rights to agitate its claims in the manner known in law. The claims in **Annexure I** and the alleged communications in **Annexure II,** which were not received by the Respondent are hopelessly barred by limitation. Hence, this as a natural consequence disqualifies the Petitioner as 'creditor'. The

Petitioner slept over its rights for a decade and being unable to legitimately recover the alleged dues, resorted to these ill-advised tactics.

3.7. It is stated that the Respondent No. 1 Company has honoured its commitments to its creditors with bonafide claims. There is no discernible intention to defraud creditors, including the Petitioner. It is noteworthy that the Petitioner is the sole complainant of such an act by the Respondent, while other creditors were graceful in seeking to enforce their claims which the Respondent has duly honoured. It is denied that there is any fraudulent modus operandi that requires intervention by this Tribunal while an enquiry is much necessary on the conduct of the Petitioner and its motivated agenda against the Respondent.

3.8. It is stated that the Petitioner attempted to portray a sympathetic view. However, the Petitioner is the sole complainant complaining on the conduct of affairs of the Respondent. It has not filed an iota of proof to demonstrate that there has been any siphoning of funds except its bald allegations. The Respondent denies that there was any siphoning of funds warranting any action under the provisions of the Companies Act, 2013, which has been wrongfully resorted to. A petition for recovery of claims has been camouflaged by the instant petition.

3.9. It is stated that the Respondent has settled all legitimate claims and has disputed unscrupulous claimants like the Petitioner. As on date, there is no single pending case before this Tribunal for enforcement of an operational debt. It is highly condemnable that the Petitioner has remarked the Respondent as a habitual offender. The Respondent No. 1 reserves its right to initiate appropriate proceedings against the Petitioner, including action for defamation. There are several entities like the Respondent that undergo financial strains due to various intervening circumstances that disabled it from honouring timely payments. That by itself does not mean that the Respondent attempts to defraud any creditors. The fact that the Petitioner itself has filed proof of various settlements done by the R1 Company discloses the intent to settle the dues of creditors when they are genuine unlike the Petitioner.

3.10. It is stated that, with respect to the allegations regarding not disclosing information of the sums due to MSMEs, the Petitioner has an alternate remedy to report to the MSME council or other authorities. The alleged notification referred by the Petitioner is of 2018 and the Petitioner registered itself as an MSME in 2021. Under the circumstances, the Respondent fails to comprehend on factoring the 2012 claim of the Petitioner and disclosure of the said debt as that of MSME.

3.11. It is stated that the R1 Company has filed all the returns in respect of the FY 2016-17 and FY 2017-18 and is in compliance with the statutory mandate. With such wrongful and misconceived pleadings, the reliefs predicated are liable to be dismissed.

3.12. It is stated that the ambit of Section 213(b) has been time and again set down by the Courts. It is only available to a creditor who is said to have been defrauded. The Petitioner is not a creditor leave alone being a defrauded creditor having a locus to agitate this petition. The present petition is an attempt to extort money by wrongful threat and intimidation. The Petitioner has to establish that it is a creditor leave alone a defrauded creditor as on date with a live claim to invoke the provisions of Section 213 of Companies Act, 2013.

4. **Rejoinder to the Reply of Respondent No. 1 Company:**

4.1. The Petitioner has filed rejoinder to the Reply of R1 Company vide SR No. 3956 dated 05.08.2024.

4.2. It is stated that the Respondent No. 1 in its reply has submitted that the reason for its financial constraints and non-payment of dues to the creditors was due to fraud by Jammu and Kashmir Bank Limited, whose services were accepted by the Respondent. However, R1 Company had not repaid the loan availed from the aforesaid Bank and such facts are blatantly proved by the auction / sale notice dated 21.05.2022 for recovering the sum of Rs.371,39,93,794/- issued by aforesaid bank against the properties mortgaged by the Respondents.

When the Respondents are not making any payment to creditors and to the bank, then the natural corollary is that such monies have been siphoned off by the Respondents. Since the Respondents are disputing the payment to the bank and the creditors when they approach for repayments, there is a need to conduct inspection and investigation into the affairs of the company. It is stated that, the aforesaid averment is nowhere related to the present petition and such a reply given by the Respondents is merely to foreshadow the fact that they are deliberately doing such activities to deviate the attention from the core issue that the company today is being run in a manner which is prejudicial to the interest of the stakeholders.

4.3. It is stated that if there are amounts to be recovered from the vendors of R1 Company, awaiting realization of their payment from their vendors does not have any form of embargo to settle its other creditors who are knocking at its doors. Such statement also portrays its self-centred mind set and the mala fide conduct of the Respondents towards the stakeholders.

4.4. It is stated that Section 213 b (i) of the Companies Act was introduced with an intent to deal with any violation in law attributable to the conduct of the business propelled by an officer of the Company or persons concerned with the formation and management of such Company. The Respondents No. 1 to 6 have committed multiple violations in law as follows:

(i) Non-filing of MSME FORM-1 documents for the relevant default years (Screen shot of other e-from documents from MCA website is attached as ANNEXURE-05 in the main petition)

(ii) Non-filing of balance sheet from the FY21-22, FY22-23 which violates the Section 137 of the Companies Act, 2013 read with Rule 12 of the Company (Accounts) Rules, 2014 and Annual Return is governed Under Section 92 of the act, read with Rule 11 of the Companies (Management and Administration) Rules, 2014 (MCA Screenshot attached as ANNEXURE-06 in the main petition),

(iii) No Annual General meeting held after 2021 which violates the Section 96 of the Companies Act, 2013 (Master Data of R1 attached in ANNEXURE-06 in the main petition).

4.5. It is stated that the Respondent No. 1 to 6 are trying to turn the table by stating that the present petition has been filed for recovery of claim. It is stated that such groundless stand has been taken to suppress the aforesaid violations committed by the Respondents. The present petition is for inspection and investigation into the affairs of the company which will unearth fraudulent acts done by the Respondents.

4.6. It is stated that the intent of filing the present petition is to expose the fraudulent activities done by the Respondents and as per the legislative intent as enshrined under the Section 213 of the Companies Act, 2013 the creditor has to only show circumstances which suggest such an action to be taken against the company. It is the activity of the investigative agencies upon the production of relevant reports for inspection, from the offices of the government authorities to further the said process. The fact that the company and its personnel are so perturbed by the said process of filing a petition in itself a testimony to the fact as to how the company has been run. It is the responsibility of the officers of the company to show their bona fide as to why these non-compliances, non-payments and continuous litigation exist in this Company.

4.7. It is stated that Limitation Act only bars the remedy and does not extinguish the debt and right of the person. Therefore, law of limitation only bars the Petitioner remedies in court after a certain period of time, whereas it does not take away the Petitioner's underlying right and its nature as a Creditor to the Respondents. The well settled principle was laid down by the Hon'ble Supreme Court of India in the case of ***State of Kerala & Ory Vs. V.R. Kalliyanikutty & Another AIR 1999 Supreme Court 1305***. A similar view, as propounded above, was also adopted by the Hon'ble Supreme Court recently in the matter of ***K. P. Khemka & Anr Vs. Haryana State Industrial and Infrastructure Development Corporation Limited & Ore in Civil Appeal No. 6144 of 2024***. The relevant excerpts of ***Kalliyanikutty (supra)*** are reproduced below: -

> *"It has been submitted before us that the statute of limitation merely bars the remedy without touching the right. Therefore, the right to recover the loan would remain even though the remedy by way of a suit would be time-barred. Reliance was placed on Khadi Gram Udyog Trust v. Ram Chandraji Virajman Mandir, Sarasiya Ghat, Kanpur (Supra) in this connection. The Court there observed that though a debt may be time-*

barred, it would still be a debt due. The right remains untouched and if a creditor has any means of enforcing his right other than by action or set-off, he is not prevented from doing so. In Punjab National Bank and Ors. v. Surendra Prasad Sinha (1993 Supp. (1) SCC 499 at page 503-504), this Court held that the rules of limitation are not meant to destroy the rights of parties. Section 3 of the Limitation Act only bars the remedy but does not destroy the right which the remedy relates to. Excepting cases which are specifically provided for, as for example, under Section 27 of the Limitation Act, the right to which the remedy relates subsists. Though the right to enforce the debt by judicial process is barred, that right can be exercised in any manner other than by means of a suit. For example, a creditor's right to make adjustment against time-barred debts exists.

4.8. Section 447 of the Companies Act, 2013 is referred which is reproduced as under :

"***<u>Punishment for Fraud</u>***

447. Without prejudice to any liability including repayment of any debt under this Act or any other law for the time being in force, any person who is found to be guilty of fraud involving an amount of at least ten lakh rupees or one per cent. of the turnover of the company, whichever is lower shall be punishable with imprisonment for a term which shall not be less than six months but which may extend to ten years and shall also be liable to fine which shall not be less than the amount involved in the fraud, but which may extend to three times the amount involved in the fraud:

***Provided** that where the fraud in question involves public interest, the term of imprisonment shall not be less than three years.*

Provided further that where the fraud involves an amount less than ten lakh rupees or one per cent of the turnover of the company, whichever is lower, and does not involve public interest, any person guilty of such fraud shall be punishable with imprisonment for a term which may

extend to five years or with fine which may extend to fifty lakh rupees or with both.
Explanation - For the purposes of this section- (i) "fraud" in relation to affairs of a company or any body corporate, includes any act, omission, concealment of any fact or abuse of position committed by any person or any other person with the connivance in any manner, with intent to deceive, to gain undue advantage from, or to injure the interests of, the company or its shareholders or its creditors or any other person, whether or not there is any wrongful gain or wrongful loss:
(ii) "wrongful gain" means the gain by unlawful means of property to which the person gaining is not legally entitled:
(iii) "wrongful loss" means the loss by unlawful means of property to which the person losing is legally entitled."

4.9. It is stated that Section 447 of the Companies Act deals with punishment for fraud. The person who committed such fraud has to be prosecuted under the section. Such a view is highlighted by the Hon'ble Delhi High Court in the matter of ***Vikas Agarwal Vs. Serious Fraud Investigation Office Aironline 2019 DEL 1519.*** The relevant excerpts of the said judgment are reproduced as under :

> *"A bare perusal of Section 212 of the Companies Act, 2013 reveals that there is no bar of limitation to proceed under Sections 212 or 447 of the Companies Act, 2013"*

4.10. It is stated that the Respondents failed to understand the ingredients of Section 213. The said provision was introduced with an intent to deal with any violation in law attributable to the conduct of business propelled by an officer of the Company or persons concerned with the formation and management of such Company. This view was elaborated by the NCLT, Principal Bench in the matter of ***PTC Energy***

Lat. V. R.S India Wind Energy Pvt. Ltd. in CP No. 190 (ND 2015). This dictum was also upheld by the Appellate Tribunal in the matter of R***.S. India Wind Energy Pvt. Ltd. Vs. PTC India Financial Services Ltd. & Ors. CA(AT)/15/2016***. The relevant portion of ***PTC Energy (Supra)*** is extracted hereunder,

> *"The purpose of investigation is to discover something which is apparently not visible to the naked eyes. The petitioner has brought out some apparent malpractices in the working of Respondent 1 Company. The applicant has also made out a good case by showing that there has been prima facie violations of the provisions of the Companies Act in* ***the maintenance of the minutes of various proceedings of the Respondent-1 Company****. Apparent misdeeds and dishonesty in the maintenance of minutes of the Company in contravention of the provisions of the Act cannot be rules out. Law makes the investigation comprehensive of all sorts of illegalities. Sub clause I clause (b) of section 213 is wide enough to include contravention of any law. There has been prima facia existence of* ***malpractices in tampering of records, which cannot be overlooked.*** *In the facts, it appears that deeper probe in the affairs of Respondent No. I company is necessary."*

4.11. In response to the contention that the Petitioner is registered as MSME only in the year 2021, it is stated that non-registration as a MSME entity does not take away the characteristics of the supplier as micro or small enterprises. It is not necessary for the Petitioner to get registered as MSME at the time of supply nor at the time of notification issued by the central government for getting the protection given under the provisions of the MSMED Act. Similar view has its resonance in the Judgment delivered by the Hon'ble Delhi High Court in the case of ***M/s. Ramky Infrastructure Private Limited vs. Micro and Small Enterprises Facilitation Council & Anr AIR 2018 Delhi 180***. The relevant excerpt of the Judgment is reproduced as below

> *"26. As noticed above, there is no dispute that GCIL would fall within the definition of micro/small enterprise even at the material time when it had executed the contract with RIL. GCIL is a company and the services provided by GCIL are clearly services rendered by a micro/small enterprise and, therefore, GCIL-being engaged in supply of services rendered by a micro/small enterprise would fall within the fourth category of entities that are included as a supplier': that is, a company, co-operative society, trust or a body engaged in selling goods produced by micro or small enterprises or rendering services provided by such enterprises. It is not necessary for such entities to have filed the Memorandum under Section 8(1) of the Act."*

4.12. It is stated that the Respondent is obliged to file Form MSME 1 for the delay in making payment to the Petitioner and the same is not complied as visible from the screenshot of the MCA portal. When such dues are not disclosed by filing MSME Form-1, there is no true or fair view in the financials of the company and the inspection of the books of accounts of the company is necessitated based on the above said facts.

4.13. It is stated that as per the MCA Master data, date of the last AGM is 11.04.2022 and the date of balance sheet is 31.03.2021. Hence, at the time of filing the petition (16.09.2023), the Respondents had not conducted the AGM or filed financial statements for FY 2021-2022. The financial statement for Financial Year 2021-2022 and Financial Year

2022-2023 were filed only after the service of the present petition. The service receipts date 20.09.2023 and 05.04.2024 for filing the annual statements evidence the delayed filing of financial statements.

4.14. It is stated that although the belated filing fees has been paid under Section 403 of Companies Act, 2013, the Company but its directors are liable for prosecution under relevant provisions of Companies Act, 2013 for such-non-compliances. It is thus clear that the Respondents don't want to project any true and fair view of the company. Further the, Respondents had committed various statutory violations during the Financial Year 2021-2022 and Financial Year 2022-2023 (Extracts of the same are attached as Annexure-10 and Annexure-11) and the same are as follows:

Sl. No	Financial Year	Violations
1.	Financial Year 2021 – 2022	1. The filing of FY2021 – 2022 shows the date of signing of the financial statements and board report as **06.06.2023** and the date of AGM as **07.07.2023**. Whereas as per proviso to Section 96(1) of CA 2013 AGM for financial year shall be held within 6 months from close of financial year i.e., **30.9.2022**. **Delay in conducting of AGM, audit of financials reporting to the stakeholders**. **(Pg No. 136)** 2. As per Section 137(1) of CA 2013 the due date for filing the financial statement is within 30 days from due date of AGM i.e., **29.10.2022** 3. Lack of adequate control system put in place for Creditors management **(Pg No.142)** The company is not regular in depositing the statutory dues **(Pg No.142)** 4. Company has not maintained adequate and effective internal financial control over financial reporting. Non-compliance of audit standards as reported under section 143 of Companies Act 2013. **(Pg No.143)** 5. Non-maintenance of Fixed Asset Register **(Pg No.143)** 6. Internal Audit is not carried by the company as required under section 138 of Companies Act 2013 **(Pg No.144)** 7. Violation under Foreign Exchange management act 1999 in respect of amounts/ share allotted to Non-resident shareholders which is not in compliance of the FEMA guidelines. **(Pg No.146)**
2.	Financial Year 2022 – 2023	8. The filing of FY2022 – 2023 shows the date of signing of the financial statements and board report as **20.12.2023** and the date of AGM as **23.02.2024**. Whereas as per proviso to Section 96(1) of CA 2013 AGM for financial year shall be held within 6 months from close of financial year i.e., **30.9.2023**. **(Pg No.147)**

		1. As per Section 137(1) of CA 2013 the due date for filing the financial statement is within 30 days from due date of AGM i.e., **29.10.2023**. 2. Lack of adequate control system put in place for Creditors management **(Pg No.161)** 3. Lack of adequate control system for accounting of purchases, GST, VAT and service tax input credits **(Pg No.161)** 4. The company is not regular in depositing the statutory dues **(Pg No.161)** 5. Non-maintenance of Fixed Asset Register **(Pg No.161)** 6. Internal Audit is not carried by the company as required under section 138 of Companies Act 2013. **(Pg No.161 &)** 7. Company has not maintained adequate and effective internal financial control over financial reporting. Non-compliance of audit standards as reported under section 143 of Companies Act 2013. **(Pg No.161 & 168)** 8. Violation under Foreign Exchange management act 1999 in respect of amounts/ share allotted to Non-resident shareholders which is not in compliance of the FEMA guidelines. **(Pg No.161)** 9. As per section 134(3)(m), the company is required to report foreign exchange earnings and outgo in its board report and the same is not done. **(Pg No.161, 167 R/w 177)** 10. Non-reporting of related party transaction under section 188(1) of CA, 2013 although such transactions were existing during the year. **(Pg No.183 – 184 R/w 159)**

5. **<u>Report Filed by the 7th & 8th Respondents</u>**

5.1. During the hearing held on 25.09.2024, directions were issued for notice to be served upon Respondent No. 7, 8 and 9 for filing reply. Respondent No. 7 and 8 entered appearance and filed the report vide S.R. No. 6017 dated 11.12.2024.

5.2. It is stated that as per the records on MCA21 database, the signatory details are as follows:

SL. No	DIN	Name	Designation	Date of Appointment	Date of Cessation
1.	00249574	Abdul Qadir	Director	31.12.2015	----
2.	00078094	Khalid Buhari	Director	30.08.2004	----
3.	00959633	Kasim Afzal	Director	07.07.2023	----
4.	ADOPC5358C	Saurabh Chauhan	CEO KMP	12/09/2022	----

5.3. It is stated that as per the records on MCA21 portal, the subject company has filed Annual Return and Balance Sheet up to the Financial Year 2022-23.

5.4. It is stated that as per Form MGT-7 filed for financial year 2022-23, the share-holding pattern as on 31st March 2023 of the subject company is as follows:

SL. No.	Names of Shareholders	No. of. Shares Held
1.	Electro Mechanical Technical Associates Ltd.	1,39,90,364
2.	Emirates Trading Agency LLC	54,53,110
3.	ETA Star Holding Limited	5,17,742
4.	Kitchen House Appliances Private Limited	3,00,000
5.	Mir Mahmood Mohiuddin	7,78,416
6.	Ashok Kumar Agarwal	6,22,832
7.	S M Salahuddin	5,36,401
8.	Abdul Cader Junaid Yaseen Mohamed	3,71,100
9.	Abdul Khader Anwar Basha	3,11,292

10.	Arif B Rahman	1,000
11.	Hameed S Salahuddin	1,000
12.	Ahmed S Salahuddin	1,000
13.	Maricar Estates Pvt. Ltd.	1,96,00,000
14.	Afzal Hussain	1,00,000
	TOTAL	4,25,84,257

5.5. It is stated that the main objects of the subject company as per Memorandum of Association (MOA) are hereunder:

"a. To carry on the business of construction engineers, mechanical engineers, iron gounders, public works and general contractors, constructors, builders, Steel and Iron structures of all kinds, Iron and steel converters, smiths, wood workers, Electrical Engineers and Electricians.

b. To manufacture, buy, sell, exchange and deal in all kinds of high voltage and low voltage bus duets, motor control centers, switch boards, control panels, control desks, mimic panels and other process control equipment's, navigational aids for both sea and air and navigational lanterns, signaling equipment's, navigational buoys and wave actuated generators for buoys and other marine ancillary equipment's.

c. To manufacture, buy, sell, exchange, alter, improve, manipulate, prepare for market and otherwise deal in all kinds of transmission line equipments, hard wares, transformers, low medium and high voltage switchgears, electrical panels, distribution boards and electrical equipments required for Power

Houses, Power Distribution System, Industries, Commercial Complexes, Housing Buildings and Public Utility Services……"

5.6. It is stated that following particulars are submitted as per the information disclosed in the Balance Sheet for the financial year 2022-23:

All monetary values are in INR

Particulars	31.03.2023	31.03.2022
Equity and Liabilities		
Shareholders'Funds		
Share capital	42,58,42,570	42,58,42,570
Reserves and surplus	-32,53,73,721	-32,93,85,617
Money received against share warrants	0	0
Total shareholders' funds	10,04,68,849	9,64,56,953
Share application money pending allotment	0	0
Deferred Government grants	0	0
Minority Interest	0	0
Non-current liabilities		
Long-term borrowings	65,36,88,648	1,94,79,05,386
Deferred tax liabilities (net)	0	59,04,636
Foreign currency monetary item translation difference liability account	0	0
Other long-term liabilities	3,38,26,413	4,35,47,528
Long-term provisions	1,99,88,455	2,23,34,476
Total non-current liabilities	70,75,03,516	201,96,92,026
Current Liabilities		

Short-term borrowings	1,48,27,610	60,78,610
Trade payables	80,76,27,297	84,24,05,710
Other current liabilities	134,26,06,880	85,78,55,808
Short-term provisions	10,08,26,015	2,08,49,897
Total current liabilities	226,58,87,802	172,71,90,025
Assets		
Non-current assets		
Fixed assets		
Tangible assets	16,57,82,149	17,27,30,959
Producing properties	0	0
Intangible assets	8,30,030	10,73,412
Preproducing properties	0	0
Tangible assets capital work-in-progress	0	0
Intangible assets under development of work-in-progress	0	0
Total fixed assets	16,66,12,179	17,38,04,371
Non-current investments	2,92,74,486	2,92,74,486
Deferred tax assets (net)	68,17,069	0
Foreign currency monetary item translation difference asset account	0	0
Long-term loans and advances	5,36,22,195	5,89,44,858
Other non-current assets	26,53,97,478	28,99,21,649
Total non-current assets	52,17,23,407	55,19,45,364
Current assets		
Current investments	0	0
Inventories	49,65,009	50,33,849
Trade receivables	61,31,10,293	157,52,88,949
Cash and bank balances	2,76,88,532	4,90,13,598

Short-term loans and advances	89,82,67,760	67,81,51,405
Other current assets	100,81,05,166	98,39,05,839
Total current assets	255,21,36,760	329,13,93,640
Total assets	**307,38,60,167**	**384,33,39,004**

5.7. It is stated that as per last filed Annual Return (MGT-7) for F.Y 2022-23, the turnover and net worth of the Subject Company are as follows:

SL. No.	Particulars	Amount (in INR)
1.	Turnover	1,80,54,69,439
2.	Net Worth	10,04,68,849

5.8. It is stated that the Respondent No. 1 Company and its directors ought to have filed statutory returns in compliance with the provisions of the Companies Act 2013. However, the Company has not filed Financial Statements for the Financial Year 2023-24. Hence, the Company failed to follow the statutory compliance as provided under Sections 92(4), 137 of the Companies Act, 2013 for which necessary adjudication procedure is being initiated.

5.9. It is stated that as per MGT-7 filed vide SRN: F95969200 for the Financial Year 2022-23, Electro Mechanical Technical Associates Limited and Emirates Trading Agency LLC are foreign body corporates who hold 32.85% and 12.8% of the shares respectively. In compliance with Clause (i) of Explanation III to Rule 2(1)(h) of the

Companies (Significant Beneficial Owners), Rules, 2018, such foreign shareholders fall within the description of Significant Beneficial Owners. However, Respondent No. 1 has not filed BEN-2 regarding Significant Beneficial Owners (SBOs) and MGT-6 regarding Declaration of beneficial interest in shares as required under section 89 of the Companies Act, 2013 r/w Companies (Management and Administration), Rules, 2014. Hence, Respondent No. 1 Company has violated the provisions of Section 89 and 90 of the Companies Act, 2013 for which necessary adjudication procedure is being initiated.

5.10. It is stated that in the certificate filed vide Form MGT-8 by Shri. Prachi Bansal, Company Secretary pursuant to Section 92(2) of the Companies Act, 2013 and Rule 11(2) of Companies (Management and Administration Rules, 2014, it is observed in Para 14 that *"The Company has failed to hold the Annual General Meeting within due date under the Companies Act, 2013 and the company has not filled any application with ROC and/or Central Government and/or Regional Director for extension of Annual General Meeting. Hence the Company advised to make the application for condonation of delay to hold the Annual General Meeting under Companies Act 2013".*

5.11. It is stated that for the Financial Year 2022-23, Respondent No. 1 has trade payables under current liabilities to the tune of Rs. 80,76,27,297/-, however, the Company has not disclosed the details of the parties involved and nature of the transactions.

5.12. It is stated that in para 3 of the petition, that Respondent No. 1 has not filed any MSME-1 e-form with respect to outstanding dues pending with MSME's.

5.13. It is stated that as per the records of the Registrar of Companies, Chennai, the following are the details with respect to the Respondent No. 1:

i. No Inspection/Inquiry/Investigation Follow-up is pending against the company.

ii. No Complaint is pending as per records of MCA21 Portal.

iii. No Prosecution is pending against the company.

iv. No Compounding/ Adjudication is pending against the company.

v. There are 3 charges pending against the R1 Company as per the MCA 21 Portal, the details are as follows

SI. No	Charge ID	Charge Holder Name	Amount	Date of Creation	Date of Satisfaction
1.	10176115	Punjab National Bank	3,25,00,00,000	07.07.2009	---
2.	10129579	IDBI Bank Limited	1,35,00,00,000	22.10.2008	---
3.	90295028	Jammu and Kashmir Bank Ltd	3,21,00,00,000	29.10.2003	---

5.14. It is stated that the Tribunal may dispose the application under Section 213(b) (i) of the Companies Act 2013 on its merits or direct the Central Government (MCA) for Inspection or Investigation as the case may be under the provisions of the Companies Act, 2013 as deems fit and proper.

6. **Response of Respondent No. 1 to the Report of the RoC:**

6.1. It is stated that the invocation of Section 213 for matters of statutory non-compliances such as filing of Financial Statements for FY 2023-2024 is an abuse of process. It has initiated steps to comply with all statutory requirements such as AGM, filing of financial statements, etc., with necessary applications and approvals.

6.2. It is stated that the alleged violation of Significant Beneficial Owners Rules, 2018 is misconceived. The said regulations are applicable only in cases where the name of the person is entered in the register of members of a company as the holder of shares in that company. By their own admission, the shareholders Emirates Trading Agency LLC and Electro Mechanical Technical Associates Limited hold 32.85% and 12.81%, respectively. The shareholders are holding the shares in their respective names and not for or on behalf of any other beneficiaries. The situation at hand does not qualify under Section 89- "Declaration in respect of Beneficial interest in shares". It is further submitted that the regulations (Significant Beneficial Owners Rules, 2018) do not even apply in the instant case.

6.3. It is stated that the Respondent No. 1 has filed true and correct statements with the RoC. The trade payables and current liabilities have been disclosed in the financial statement. Without prejudice to the foregoing, the Respondent No. 1 submits that for any irregularity if it notices in its records, it will take necessary steps to remedy it expeditiously. Since the Petitioner's debt is not reflected in the financial statement as observed by the Respondent authorities, the Petitioner's case has to be rejected.

6.4. It is stated that Respondents No. 7 & 8 have noted that there are no other complaint/prosecution or adjudication pending before them. In view of the same, Respondent No. 7 & 8 have recommended disposal of the matter on merits or causing investigation, leaving it to this Tribunal to decide on the necessary course.

6.5. It is stated that this petition itself is a fishing expedition to recover long barred dues of the Petitioner of the year 2012. The Respondent No. 1 emphatically affirms that it has not operated its affairs to the detriment of any creditors and certainly not with an intent to defraud any of them. It is in the process of complying with all statutory filings and other observations contained in the report of Respondents 7 & 8.

7. Despite time and opportunity granted, Respondent No. 9 did not file its reply, hence, the right of Respondent No. 9 to file reply was closed vide order of this Tribunal dated 12.12.2024.

8. Written Synopsis on behalf of Respondent No. 2 to 6 were filed vide S.R. NO. 1679 dated 15.04.2026 and that of Petitioner vide S.R. No.

1701 dated 17.04.2026. The submissions made by the parties therein have also been taken on record.

FINDINGS OF THIS TRIBUNAL

9. The present Petition has been filed under Section 213(b) of the Companies Act, 2013 (hereinafter referred to as 'Act') seeking directions to Respondent No. 7 and 8 to conduct inquiry and inspection of the books of the Company, ETA Engineering Private Limited (hereinafter, 'Respondent No. 1'); to investigate into the fraudulent affairs of Respondent No 1, to take necessary actions against the Respondents No. 1, 2, 3, 4, 5 and 6 under Section 447 of the Companies Act, 2013 and to conduct investigation on any alleged Income Tax violations by Respondent No. 1.

10. Before delving into the facts of the case, we refer to Section 213 of the Act, which reads as follows:

> "***213. Investigation into company's affairs in other cases.***
>
> *The Tribunal may,--*
>
> *(a) on an application made by--*
>
> *(i) not less than one hundred members or members holding not less than one-tenth of the total voting power, in the case of a company having a share capital; or*
>
> *(ii) not less than one-fifth of the persons on the companys register of members, in the case of a company having no share capital,*

and ***supported by such evidence as may be necessary for the purpose of showing that the applicants have good reasons for seeking an order for conducting an investigation into the affairs of the company;*** *or*

(b) on an application made to it by any other person or otherwise, if it is satisfied that there are circumstances suggesting that--

(i) the business of the company is being conducted with ***intent to defraud*** *its creditors, members or any other person* ***or otherwise for a fraudulent or unlawful purpose****, or in a manner* ***oppressive to any of its members*** *or that the company was* ***formed for any fraudulent or unlawful purpose;***

(ii) persons concerned in the formation of the company or the management of its affairs have in connection therewith been ***guilty of fraud, misfeasance or other misconduct*** *towards the company or towards any of its members; or*

(iii) the members of the company have not been given all the information with respect to its affairs which they might reasonably expect, including information relating to the calculation of the commission payable to a managing or other director, or the manager, of the company,

order, after giving a reasonable opportunity of being heard to the parties concerned, that the affairs of the company ought to be investigated by an inspector or inspectors appointed by the Central Government and where such an order is passed, the Central Government shall appoint one or more competent persons as inspectors to investigate into the affairs of the company in respect of such matters and to report thereupon to it in such manner as the Central Government may direct:

Provided that if after investigation it is proved that--

(i) the business of the company is being conducted with intent to defraud its creditors, members or any other persons or otherwise for a fraudulent or unlawful purpose, or that the company was formed for any fraudulent or unlawful purpose; or

(ii) any person concerned in the formation of the company or the management of its affairs have in connection therewith been guilty of fraud,

then, every officer of the company who is in default and the person or persons concerned in the formation of the company or the management of its affairs shall be punishable for fraud in the manner as provided in section 447."

11. This petition has been filed by the Petitioner in the capacity of creditor of Respondent No. 1 under the ambit of '***any other person***' prescribed under Section 213(b) of the Act.

12. With regard to the maintainability of the present petition, the Petitioner has submitted that it continues to remain a creditor of Respondent No. 1. In support of its locus, the Petitioner has placed the ledger account of Respondent No. 1 maintained in its books of account. The ledger account for the period from 01.04.2012 to 22.06.2014 reflects an outstanding principal amount of Rs. 22,59,280.40 and, after addition of interest at 18% per annum compounded, a total outstanding amount of Rs. 1,32,49,816.75. Respondent No. 1, however, contends that the Petitioner's claim pertains to the financial year 2012-13 and is barred by limitation. According to Respondent No. 1, the Petitioner, having lost

the remedy to recover the alleged dues, cannot be treated as creditor so as to maintain the present petition under Section 213 of the Companies Act, 2013.

13. We are unable to accept the said contention. It is not in dispute that the Petitioner had supplied goods to Respondent No. 1 and was, at the relevant point of time, a creditor of the Company. The defence of Respondent No. 1 rests solely on the contention that the monetary claim has become barred by limitation. It is well settled that the law of limitation bars the remedy for enforcement of a claim but does not extinguish the underlying right or debt, unless the governing statute expressly provides otherwise. In this regard, reliance is placed on the judgment of the Hon'ble Supreme Court in the case of ***Bombay Dyeing and Manufacturing Co. Ltd. v. State of Bombay (AIR 1958 SC 328)***, where it was held that the expiry of the period of limitation bars the remedy but does not extinguish the right itself.

14. Accordingly, merely because the Petitioner's claim may be barred by limitation for the purposes of instituting recovery proceedings, it cannot be said that the Petitioner ceases to be a creditor of Respondent No. 1. The Petitioner's status as a creditor is therefore sufficient to maintain the present petition, subject, of course, to satisfying the substantive requirements under Section 213 of the Companies Act, 2013.

15. Section 213(b) of the Companies Act, 2013, provides that the Tribunal is empowered to pass an order of investigation only after being 'satisfied' that the circumstances suggesting at least one of three grounds i.e., (i) the company's business is being conducted with intent to defraud its creditors, members, or any other person, or for any other fraudulent, unlawful, or oppressive purpose; (ii) those involved in formation or management of the affairs of the Company have been guilty of fraud, misfeasance, or other misconduct toward the company or its members; or (iii) the members have not been given information about the company's affairs that they could reasonably expect.

16. Reference is made to the judgment of the Hon'ble Supreme Court of India in the case of ***Barium Chemicals Ltd. v. Company Law Board ([1966] 36 COMP CASE 639 (SC)),*** wherein the Court considered and upheld the validity of Section 237(b) of the Companies Act, 1956 (hereinafter, Act, 1956). Section 237(b) of the Act, 1956, which is the analogous provision to Section 213(b) of the Act, 2013, employed similar language by requiring the Central Government to form an opinion that there existed circumstances suggesting the statutory grounds for investigation. This power vested in the Central Government, was delegated to the Company Law Board following the Companies (Amendment) Act, 1963. The Hon'ble Supreme Court in ***Barium Chemicals (Supra),*** explained the scope of the phrase *"circumstances suggesting"* used in Section 237(b) of the Act, 1956. Justice Hidayatullah, in his concurring opinion, observed that the authority must have before it objective circumstances capable of

reasonably giving rise to the statutory inferences. The existence of such circumstances constitutes a jurisdictional fact and cannot be substituted by mere suspicion or an unsubstantiated assertion that they exist. Consequently, the statutory power cannot be exercised as a means of conducting a "fishing expedition" to discover evidence of wrongdoing; rather, there must already be prima facie material from which an inference of fraud, misconduct, oppression, or withholding of information can reasonably be drawn. The relevant paragraphs of the judgment are extracted hereunder,

> *"The next requirement is that "there are circumstances suggesting, etc." These words indicate that before the Central Government forms its opinion it must have before it circumstances suggesting certain inferences. These inferences are of many kinds and it will be useful to make a mention of them here in a tabular form:*

(*a*) that the business is being conducted with intent to defraud—	(*i*) creditors of the company or
	(*ii*) members, or
	(*iii*) any other person ;
(*b*) that the business is being conducted	(*i*) for a fraudulent purpose, or
	(*ii*) for an unlawful purpose ;
(*c*) that persons who formed the company or manage its affairs have been guilty of—	(*i*) fraud, or
	(*ii*) misfeasance or other misconduct—
	towards the company or
	towards any of its members;
(*d*) that information has been withheld from the members about its affairs which might reasonably be expected, including calculation of commission payable to--	(*i*) managing or other director.
	(*ii*) managing agent
	(*iii*) the secretaries and treasurers,
	(*iv*) the manager.

These grounds limit the jurisdiction of the Central Government. No jurisdiction, outside the section which empowers the initiation of investigation can be exercised. An action, not based on circumstances suggesting an inference of the enumerated kind, will not be valid. In other words, the enumeration of the inferences, which may be drawn from the circumstances, postulates the absence of a general discretion to go on a fishing expedition to find evidence. ***No doubt the formation of opinion is subjective but the existence of circumstances relevant to the inference as the sine qua non for action must be demonstrable. If the action is questioned on the ground that no circumstances leading to an inference of the kind contemplated by the section exists, the action might be exposed to interference unless the existence of the circumstances is made out.*** *As my brother Shelat has put it trenchantly: "It is not reasonable to say that the clause permitted the Government to say that it has formed the opinion on circumstances which it thinks exist..." Since the existence of "circumstances" is a condition fundamental to the making of an opinion, the existence of the circumstances, if questioned, has to be proved at least prima facie, it is not sufficient to assert that the circumstances exist and give no clue to what they are because the circumstances must be such as to lead to conclusions of certain definiteness. The conclusions must relate to an intent to defraud, a fraudulent or unlawful purpose, fraud or misconduct or the withholding of information of a particular kind "*

17. However, Section 213(b) of the Act departs from the provision under Section 237(b) of 1956 Act in one significant respect in the word. 'Opinion' is replaced with the word 'Satisfied.' Under the present framework, the Tribunal is not required to form its own opinion on whether fraud or misconduct has occurred since the same is the function of the investigating authority, if investigation is ordered. The

Tribunal's role is to satisfy that circumstances exist warranting an investigation into the company's affairs. The extent to jurisdiction exercised by the Tribunal under Section 213(b) has been explained by the Hon'ble NCLAT in the case of ***Exclusive Capital Ltd. and Others v. Kanta Agarwala and Another (Company Appeal (AT) No. 166 of 2025).*** In the said case, proceedings relating to oppression and mismanagement before NCLT, Delhi had culminated in the appointment of a former Judge of the Delhi High Court as an Administrator and subsequently as an Observer to oversee the affairs of the company. The Observer submitted status reports, including reports dated 01.07.2024 and 02.12.2024, recording instances of non-cooperation, gaps in information, and several questionable financial transactions. These reports highlighted, inter alia, unsecured related-party loans granted at concessional rates of interest without adequate documentation or board approval, absence of due diligence or credit assessment, inconsistencies in loan documentation and interest computation, failure to initiate recovery proceedings, and concerns regarding the acquisition and utilisation of luxury vehicles. Based on these reports, NCLT, Delhi directed an investigation under Section 213 of the Companies Act, 2013, against which an appeal was filed by the Respondent Company. While affirming the order, the Hon'ble NCLAT rejected the contention that the Observer's reports could not be relied upon merely because they did not conclusively establish fraud or misconduct. The Appellate Tribunal held that the reports constituted sufficient material to satisfy the Tribunal that circumstances existed warranting an investigation. The Hon'ble NCLAT clarified that the phrase *"satisfaction"* under Section 213 cannot be reduced to a rigid or straitjacket formula. Whether the material placed before the Tribunal is sufficient to justify an investigation necessarily depends upon the facts and circumstances of each case. Thus, while conclusive proof of fraud is not required at the stage of directing an investigation, there must nevertheless exist objective material capable of reasonably suggesting the statutory circumstances contemplated under Section 213. The relevant paragraphs are extracted as under:

> *"95. We are afraid that appellants may not get any benefit from both the cases relied upon by them and mentioned herein before. It is to be recalled that to take a decision under Section 213 of the Companies Act the tribunal is required to take into account all the relevant material presented by the parties and to consider the material/evidence produced by the parties only for ascertaining good reasons and sufficient cause for directing such investigation and this satisfaction is only for the purpose of ordering an investigation and thus at that stage the Ld. NCLT is not required to arrive at a conclusive proof of such allegations**. It would be sufficient if the satisfaction as required under Section 213 coupled with the good reasons is arrived at by pursuing the material/evidence available on record and the impugned order passed by the Ld. tribunal is also reflecting the material which has been considered by him and also the satisfaction on the three reports of Ld. observer and also the contents of these reports. Ld. tribunal has in fact quoted the relevant parts of the reports submitted by the Ld. observer where in various allegations have been levelled against appellants. In our considered opinion satisfaction and good reasons as required under section 213 of the Companies Act may not be***

bind in any straight jacket formula and it will depend on the facts and circumstances of each case as to whether the case is fit to be investigated. *Thus there has to be a prima facie case which would be sufficient. After all, only an order of investigation is being passed by Ld. Tribunal and these allegations which have been levelled are yet to be investigated by inspector or inspectors, which may be appointed by the Central government. To put it otherwise if the requirement would be of drawing a finding of conclusive nature then there will not be requirement of any investigation. The investigation is to be done to investigate the truthfulness or otherwise of the allegations. Therefore, in every such case having regard to the allegations levelled, a question is to be asked by the tribunal to itself as to why the investigation is necessary and if the answer to this query is in affirmative the tribunal may pass the order of investigation into the affairs of the company. However, answer to the query must also reflect in its order. Thus in our considered opinion above placed submission of Ld. Sr. Counsel appearing for the appellant that the reports of the observer could not be taken into consideration by the tribunal, in our considered opinion, is not sustainable.*

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118. No doubt reply with regard to these reports have been filed by the appellants but we prima facie do not find any element of bias in these reports submitted by Ld. Observer, who is a former judge of the High Court. There are also allegations of siphoning of funds from the Company. It is to be recalled that to order an investigation under 213 of the Companies Act conclusive proof with regard to the allegations is not required. ***It would be sufficient if the Tribunal, on the basis of taking into consideration the material/evidence produced on record, may form an opinion subjectively to satisfy itself that***

there are good grounds and reasons and prima facie case to order such investigation and such satisfaction must also be reflected in the order. We are of the considered view that in the impugned order sufficient satisfaction and reasons are shown by the tribunal with regard to the material/evidence considered by it and the same in our opinion was sufficient to order the investigation as contemplated under section 213 of the Companies Act. *After all the allegations are yet to be investigated by the Inspector(s) and the truthfulness of the same could only be verified/surfaced during the investigation. we clarify that we have consciously not discussed the material/evidence relied on by the Tribunal with regard to its evidentiary value, as our satisfaction or dissatisfaction with regard to the same may tilt the investigation either way, but we are of the firm view that it is a fit case where the investigation, into the affairs of Appellant no.1, should have been directed. Thus, we do not find any good grounds to interfere in the impugned Judgment."*

18. In the case of ***Exclusive Capital (supra),*** the Hon'ble NCLAT not only considered the phrase 'satisfy itself' under sub-clause (b) of Section 213, but also held satisfaction coupled with good reasons arrived at by the Tribunal by pursuing the material/evidence available on record. Section 213 (a) of the Act provides that when an application is filed by members of a Company, the same must be 'supported by such evidence as may be necessary for showing that the applicants have good reasons for seeking an order for conducting an investigation'. The Hon'ble NCLAT, in the case of ***R.S. India Wind Energy Pvt. Ltd. v. PTC India Financial Services Ltd. & Ors. (Company Appeal (AT) No. 15 of 2016),*** considered the evidentiary standard under Section 213 and held that although Section 213(b) does

not expressly incorporate the requirement of evidence, an applicant invoking clause (b) must likewise place before the Tribunal sufficient material to justify the allegations and demonstrate good reasons for directing an investigation. Accordingly, irrespective of whether the application is made under clause (a) or clause (b), the Tribunal must be satisfied that the evidence placed before it discloses prima facie circumstances warranting an investigation. The relevant paragraphs of the judgments are extracted hereunder:

> *"48. The basic principle of justice delivery system involving offence resulting punishment is that if any allegation is made by any person before a court of law or Tribunal such person is required to support the allegation by bringing on record some evidence to suggest that a prima facie case is made out and there are good reasons for seeking an order.* ***Therefore, the sentence "supported by such evidence as may be necessary for the purpose of showing that applicants have good reasons for seeking an order for conducting an investigation into the affairs of the company", as mentioned below clause (a) of Section 213 is applicable in all cases and the applicant(s), whoever prefers application under Section 213, whether they belong to category as mentioned in clause (a) or clause (b), such evidérice is required to be relied upon not only to justify the allegations, but also to show that there is a good reason for seeking an order, to enable the Tribunal to form its opinion.***
>
> .
>
> .
>
> *51. The provision requires the Tribunal to form opinion in regard to Ingredients as mentioned in sub clause (i), (ii) and (iii) of clause (b) of*

Section 213. But the Tribunal is not required to form opinion objectively, and is. only required to satisfy itself on the basis of materials/evidence on record that there are good grounds to order investigation. The material/evidence taken on consideration should reflect the satisfaction of the Tribunal to order investigation. Detailed evidence etc., thereafter, required to be collected by the Inspector(s) during the investigation to hold an accuse guilty for one or other offence i.e. fraud.

52. The Tribunal is not expected to refer all the evidence to form opinion about the malpractice or for fraud mentioned in sub-clause (i), (ii) and (in). It is the job of the Inspecting Authority (Inspector) to go through the evidence before coming to a conclusion and forming opinion that malpractice or fraud mentioned under sub clause (i) or (ii) or (iii) has been committed by one or other member or director(s) or person(s) or the company."

19. This Tribunal would now consider each of the averments of the Petitioner and the materials placed on record and assess whether the materials placed on record are sufficient and whether the circumstance suggest that inferences demonstrated in sub-clause (i) to (iii) of sub-section (b) of Section 213 can be made out.

20. The Petitioner has alleged that Respondent No. 1 deliberately evaded payment of its dues amounting to Rs. 1,32,49,817/-. Several Corporate Insolvency Resolution Process (CIRP) petitions had been filed against Respondent No. 1 by various creditors which were all dismissed as settled. This demonstrates a consistent pattern of conduct whereby Respondent No. 1 discharged its liabilities only upon initiation of legal proceedings, thereby evidencing fraudulent and

evasive conduct warranting an investigation under Section 213 of the Companies Act, 2013. Further, Jammu and Kashmir Bank Limited issued a sale notice dated 21.05.2022 for recovery of a sum of Rs. 371,39,93,794/-. Hence, substantial liabilities of Respondent No. 1 continue to remain unpaid. According to the Petitioner, the continuous disputes with banks and other creditors indicate that the affairs of Respondent No. 1 are being conducted in a manner prejudicial to the interests of creditors and therefore require investigation.

21. In response, Respondent No. 1 has submitted that it had been prompt in repayment of its dues until 2016, when one of its lending banks acted wrongfully and caused financial distress to the Company. The disputes arising therefrom are pending adjudication before the Hon'ble Madras High Court and the Debts Recovery Tribunal. Respondent No. 1 has further submitted that all bona fide claims have either been settled or are being contested before the appropriate forums and there exists no fraudulent modus operandi or siphoning of funds.

22. We have perused the decision of the Hon'ble High Court of Madras ***in ETA Engineering Private Limited v. Jammu and Kashmir Bank in C.R.P. No. 976 of 2021 and CMP No. 7822 of 2021***. SARFAESI proceedings against Respondent No. 1 herein were initiated by Jammu and Kashmir Bank by issuance of possession notice dated 24.04.2018 under Section 14 of the SARFAESI Act, which was challenged by the Company before the DRT. During the pendency of the proceedings,

the DRT had directed the Bank to maintain status quo, however, despite the said order, the Bank proceeded to take possession of the secured asset belonging to Respondent No. 1. Consequently, Respondent No. 1 approached the DRT, which directed restoration of possession of the property to the Company. The said order of DRT was challenged by the Bank before the Debts Recovery Appellate Tribunal (DRAT), which allowed the appeal. Aggrieved thereby, Respondent No. 1 preferred a Civil Revision Petition before the Hon'ble High Court of Madras, which remanded the matter to the Debts Recovery Appellate Tribunal for fresh consideration. Hence, the proceedings concerning the disputes between Respondent No. 1 and Jammu and Kashmir Bank continue to remain pending before the competent forum.

23. The aforesaid proceedings, in our view, do not by themselves disclose circumstances suggesting that the affairs of Respondent No. 1 are being conducted with an intent to defraud its creditors or for any fraudulent or unlawful purpose. The issue arising in the proceedings before the DRT relates to the legality of the measures adopted by the secured creditor and the rights of the parties under the SARFAESI Act. None of the allegations made therein have attained finality, nor has any judicial forum recorded any finding of fraud, misfeasance or misconduct on the part of Respondent No. 1. **This Tribunal cannot, therefore, draw an inference of fraudulent conduct solely on the basis of pending proceedings before another judicial forum. The disputes concerning the Bank's actions are presently sub judice**

before the competent forum, and we do not find it appropriate, in the proceedings under Section 213 of the Companies Act, 2013, to render findings on such issues.

24. The Petitioner has also relied on the CIRP petitions instituted against Respondent No. 1, all of which have been dismissed as withdrawn. The particulars relied upon by the Petitioner is a screenshot of NCLT web portal listing the CIRP cases initiated against Respondent No. 1. However, the mere institution of insolvency proceedings by different creditors, which ultimately came to be withdrawn upon settlement, cannot by itself constitute a circumstance suggesting fraud or an intention to defraud creditors. On the contrary, the material placed before us indicates that Respondent No. 1 appeared before the Tribunal and settled the claims of the creditors, resulting in withdrawal of the proceedings. While the repeated institution of insolvency proceedings may indicate that Respondent No. 1 has been facing significant financial constraints, such circumstances, by themselves, do not necessarily lead to an inference that the affairs of the Company are being conducted fraudulently or with an intent to evade its creditors. At best, the circumstances indicate a company under financial stress attempting to resolve multiple claims through settlements. **The circumstances placed on record do not suggest that the affairs of Respondent No. 1 are being conducted with intent to defraud creditors, for a fraudulent or unlawful purpose, in an oppressive manner, or whether there has been fraud,**

misfeasance, misconduct, or withholding of information as contemplated under Section 213(b) of the Companies Act, 2013.

25. The Petitioner has further alleged that, being an MSME supplier, Respondent No. 1 was under a statutory obligation to disclose outstanding dues payable to MSME suppliers by filing MSME Form-I pursuant to the notification issued by the Ministry of Corporate Affairs dated 22.01.2019. According to the Petitioner, the date of MSME registration is immaterial, as it always possessed the character of an MSME enterprise and the disclosure obligations cannot be avoided by Respondent No. 1 merely on the ground that formal registration was obtained subsequently. However, the Respondents contend that the requirement to file MSME Form-I came into force only in 2019, whereas the Petitioner's alleged dues pertain to a much earlier period. Moreover, the Petitioner obtained MSME registration only on 23.07.2021. Therefore, it cannot retrospectively claim the benefit of disclosure requirements applicable to MSME creditors.

26. The Petitioner has also alleged that the Respondent No. 1 has repeatedly violated the provisions of the Companies Act, 2013 by failing to present a true and fair view of its financial affairs. It is alleged that the financial statements for the financial years 2016-2018 failed to disclose the outstanding dues payable to the Petitioner. Respondent No. 1 failed to file its financial statements for the financial years 2021-2022 and 2022-2023 and did not convene Annual General Meetings after the year 2021. The Petitioner further

contended that the repeated statutory violations necessitate an explanation from the officers of Respondent No. 1 and warrant an investigation into the affairs of the Company. According to the Petitioner, any violation of law attributable to the affairs of the Company is a relevant circumstance for the purpose of Section 213.

27. The Petitioner has also placed reliance on the decision of the National Company Law Tribunal, Principal Bench, in ***M/s. PTC Energy Ltd. v. R.S. India Wind Energy Pvt. Ltd. (C.P. No. 100(ND)/2015).*** In that case, the Petitioners had produced material demonstrating extensive tampering of the minutes of meetings of the Company. Such tampering attracted the penal consequences prescribed under Section 118 of the Companies Act, 2013, and included discrepancies relating to the agenda, text of the minutes, signatures of directors, attendance of directors, and even differences in the formatting and font of the records. Upon appreciation of the material placed before it, the Tribunal found that the affairs of the Company lacked bona fides and the apparent manipulation of statutory records, coupled with other violations of the Companies Act, 2013, constituted sufficient circumstances warranting an investigation under Section 213. The said order was affirmed by the Hon'ble National Company Law Appellate Tribunal in ***R.S. India Wind Energy Pvt. Ltd. v. PTC India Financial Services Ltd. & Ors. (Company Appeal (AT) No. 15 of 2016).*** The Appellate Tribunal observed that the discrepancies in the minutes were not confined to minor clerical inconsistencies but extended to substantive differences in the agenda circulated, agenda recorded,

inclusion of agenda items, text of the proceedings, signatures of directors, names of directors shown as present, and even the formatting and font size of the documents. These discrepancies constituted prima facie evidence of manipulation of statutory records and justified the direction for investigation.

28. The facts of the decisions relied upon by the Petitioner are distinguishable from the present case. In those cases, the material placed before the Tribunal disclosed specific circumstances indicating manipulation of statutory records, concealment of material information, or other conduct giving rise to a prima facie inference of fraud or misconduct. In the present case, the statutory non-compliances alleged against Respondent No. 1 are primarily procedural in nature, such as delayed statutory filings and non-filing of financial statements, which are capable of being addressed through adjudication proceedings under the Companies Act, 2013. It is also pertinent to note that the Regional Director and the Registrar of Companies have already submitted that adjudication proceedings are being initiated against Respondent No. 1 in respect of the alleged statutory defaults. Such procedural violations, by themselves, do not furnish circumstances warranting an investigation under Section 213 of the Companies Act, 2013. We refer to the decision of the Hon'ble NCLAT in ***Amit Nagindas Kapadia v. United Petrofer Ltd. and Ors. ((2026) ibclaw.in 99 NCLAT),*** wherein a prayer of investigation under Section 213(b) was sought based on alleged statutory violations under Sections 92 and 137. The Court upheld the decision of the Adjudicating

Authority that non-compliance of statutory nature/regulatory lapses are very well enforceable by the ROC under Section 92, 137 and 454 of the Companies Act, 2013 and does not necessitate proceedings under Section 213 of the Act. The relevant paragraphs are extracted as under:

> *"7. We have heard the arguments and perused the material and we are in conformity with the findings in the impugned order. We are also of the view the allegations merely relate to the recovery of dues or dishonoured cheques as non-compliance of statutory nature/regulatory lapses are very well enforceable by the ROC under Section 92, 137 and 454 of the Companies Act, 2013 and there is no prima facie evidence of any systematic fraud with an intention to prima facie defraud its members, creditors or any other stake holders. The appellant has already filed complaints before the said statutory authorities and no concrete/final findings have come in the said complaints till date and it also shows the appellant has been taking recourse to alternative remedies. There could be no violation of natural justice either as hearing has since been given to the appellant by the Ld. NCLT.*
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> *9. We are also of the considered view, the Ld. NCLT was right in rejecting the company petition in limine, without issuing notice to the Respondents on the grounds viz (i) the allegations merely relate to recovery of dues or dishonoured cheques; (ii) non-compliances are*

regulatory lapses enforceable by the Registrar of Companies under Sections 92, 137, and 454, and (iii) there is no prima facie evidence of systemic fraud or intent to defraud creditors. Thus, the complaint/petition under Section 213 of the Companies Act, 2013 appears to be an act of frustration of the appellant in not recovering his dues."

29. In the present case, the allegations of the Petitioner are confined to regulatory lapses such as non-filing of financial statements, and non-disclosure MSME Form I. Further, the documentary material placed before this Tribunal is insufficient to justify the relief sought. The Petitioner has relied upon certain sale notices, email communications seeking balance confirmations, and documents evidencing proceedings initiated by banks and other creditors against Respondent No. 1. However, these documents, either individually or collectively, do not disclose circumstances suggesting that the affairs of Respondent No. 1 are being conducted with an intent to defraud creditors or for any fraudulent or unlawful purpose. Although support of its claim that it continues to remain a creditor of Respondent No. 1, Petitioner has placed on record tax invoices dated 07.03.2013, 22.03.2013 and 25.03.2013 but the respondent No. 1 has questioned the authenticity of these invoices on the ground that they bear a GSTIN, although the Goods and Services Tax regime was introduced only with effect from 01.07.2017. Significantly, along with its written submissions, the Petitioner has produced another set of invoices bearing the same dates but without the GSTIN. The production of two different sets of

invoices relating to the same transactions puts a question mark on the veracity of documents relied upon by the Petitioner.

30. In the facts and circumstances of the case, this Tribunal is unable to conclude that the materials placed on record constitute sufficient objective material to satisfy the statutory threshold under Section 213(b) of the Companies Act, 2013. While it is well settled that the Tribunal is not required to conclusively determine allegations of fraud or misconduct at the stage of directing an investigation, but it must nevertheless be satisfied that the material before it discloses prima facie circumstances suggesting the existence of one or more of the statutory grounds contemplated under Section 213(b). Mere allegations, procedural statutory defaults, pending disputes with creditors, or documents of doubtful evidentiary value cannot, by itself, justify the invocation of the extraordinary jurisdiction under Section 213.

31. The circumstances relied upon by the Petitioner, viewed cumulatively, do not prima facie lead to any of the inferences contemplated under Section 213(b). Rather, they disclose a company embroiled in financial and commercial disputes, the resolution of which is already pending before the competent judicial forums. Such circumstances, without more, cannot justify directing an investigation into the affairs of the Company under Section 213 of the Companies Act, 2013.

32. With the above observations, the Company Petition **CP/CA/125/CB/2023** is **dismissed**.

33. No order as to costs.

34. File be confined to Records.

-Sd-	-Sd-
VENKATARAMAN SUBRAMANIAM	**SANJIV JAIN**
MEMBER (TECHNICAL)	MEMBER (JUDICIAL)