IN THE NATIONAL COMPANY LAW TRIBUNAL,
MUMBAI BENCH-I

Company Application No. 66 of 2021
AND
Company Application No. 67 of 2021
IN
CP (IB) 277 of 2018

IN THE MATTER OF

Prafull Sawant ... *Applicant*

AND

IN THE MATTER OF

Becchu Tiwari ... *Applicant*

IN THE MATTER BETWEEN

Union of India
Ministry of Corporate Affairs .... *Petitioner*
Versus
Gitanjali Gems Ltd &Ors. .... *Respondents*

Order pronounced on 24.09.2026

Coram*:*

Shri. Prabhat Kumar	**Shri Sushil Mahadeorao Kochey**
Hon'ble Member (Technical)	Hon'ble Member (Judicial)

Appearances:

For the Applicants	**:**	Mr. Premlal Krishnan
For the Respondent	**:**	Mr. Aditya Sikka

ORDER

1. The present Company Applications i.e. **CA/66/2021** and **CA/67/2021** have been filed by Mr. Becchu Tiwari and Mr. Prafull Sawant, respectively, who have been impleaded as Respondent Nos. 70 and 72 in **CP/277/2018,** seeking dismissal of the Company Petition against them and vacation of the attachment of their respective properties pursuant to the orders dated 23.02.2018 and 04.02.2019.
2. The Company Petition has been filed against the Applicants under Sections 221, 222, 241, 242 read with Section 339 of the Companies Act, 2013. The Applicants submit that the CBI has filed a charge-sheet against them, arraying them as accused in the FIR relating to the Nirav Modi and Mehul Choksi Group case. It is further submitted that this Tribunal, vide order dated 04.02.2019, modified the earlier order dated 23.02.2018 and directed attachment of the properties belonging to the Applicants also.
3. It is stated that Mr. Prafull Sawant was suspended from service, he was subsequently reinstated after completion of the departmental enquiry and is presently serving as an officer of Punjab National Bank. Further, Mr. Becchu Tiwari, was serving as Chief Manager of Punjab National Bank. Their employer bank was a creditor of the Nirav Modi/Mehul Chokshi Group of Companies, who has defrauded their creditors, particularly lenders.
4. The Applicants further rely upon the judgment of the Hon'ble Supreme Court in ***Civil Appeal No. 7604 of 2019***, ***Ms. Usha Ananthasubramanian v. Union of India***, dated 12.02.2020, wherein it was held that Sections 337 and 339 of the Companies Act, 2013 cannot be invoked against employees of the creditors of a company and are applicable to the officers of the company in

which the alleged mismanagement or fraudulent conduct has occurred. The Applicants also rely upon the order of the Hon'ble NCLAT in ***Company Appeal No. 126 of 2019*** dated 17.08.2020, wherein, relying upon the aforesaid judgment of the Hon'ble Supreme Court, the attachment of properties belonging to the then Executive Director of Punjab National Bank was set aside.

5. In view of the aforesaid submissions, the Applicants seek vacation of the attachment of their respective properties and reliefs in respect of their impleadment in the Company Petition.
6. We have considered the submissions of the Applicants and perused the material placed on record.
7. The Company Petition has been filed against the Applicants, inter alia, under Sections 221, 222, 241, 242 read with Section 339 of the Companies Act, 2013. The Applicants contend that they were officers of Punjab National Bank, which was itself a creditor of the companies concerned, and were not officers of the said companies.
8. The Company petition was filed by the Union of India, based on the events surrounding certain first information report (FIR) filed by the Panjab National Bank Limited (PNB) alleging perpetration of the fraud by the Nirav Modi group company through its directors and other unknown persons in connivance with bank officers, particularly Mr. Gokulnath Shetty & Mr. Manoj Hanumant Kharat. Consequent thereto the SFIO was asked to carry out investigation in the affairs of 107 companies and 7 LLP’s identified with the persons involved in the said fraud to identify –
    a) The persons/entities who are or have been financially interested including real or apparent or;
    b) Persons or entities interested in control or materially influence or;

c) Existence of any arrangements or understanding observed or likely observed in practice relevant for the purpose of the investigation or;
d) Chain of companies, entities, persons in the gamut of rotation of funds including beneficiaries etc. or;
e) To lift the corporate veil and identify the real face in the financial rotation of funds or identification of quantum of diversion of funds or siphoning thereof or;
f) Instances of mismanagement, negligence or fraud or;
g) The role of auditors, KMP or independent directors or any other person in the alleged fraud and
h) The role of entities used as conduit in alleged fraud.

9. Prior to SFIO investigation, PNB had also forwarded its investigation report dated 12.002.2018 and preliminary investigation report dated 25.02.2018 after internal vigilance investigation carried out by them. The Petitioner has stated that the said report(s) reveal that the firms belonging to the Nirav Modi Group and Gitanjali Group of Companies had been availing transactions for the past 8 years based on unauthorized and fraudulently issued Letters of Understanding (LOUs) and Foreign Letters of Credit (FLC), without necessary sanction and without entering the details of same on CBS system of the bank. Further, for issuance of fraudulent LOUs, the conniving officer of the bank did not obtain any documents required by the law and also did not make any entry in the trade finance module of the bank's CBS system to avoid detection. Funds received under buyers' credit from overseas banks were credited to Nostro account of the bank and subsequently utilized as per direction given by the conniving officer to repay imports/earlier buyers' credit used by the firms. For

the issuance of fraudulent Letters of Credit (LC), the conniving officer issued LC by entering a smaller amount in trade module of CBS system and generating the reference no. and a SWIFT message was sent for the amount. Subsequently, without making any change in trade finance module of CBS system, the conniving officer sent modified SWIFT message for the same reference to the beneficiary bank for enhanced amount unauthorizedly. Thus, the amount was enhanced fraudulently. The beneficiary bank had discounted the documents based on SWIFT message received. There are no documents held for these import transactions.

10. The Company Petition further summarizes the findings of PNBs investigation stating that fraudulent LOUs were issued in SWIFT system without making any entry in trade finance module of CBS system to avoid detection and the proceeds of these LOUs were used for payment of earlier buyers credit upheld under similar fraudulent LOUs. Further, the PNB had at that time not ruled out connivance of other staff members and outsiders, however, these investigation reports had not named Applicants before us specifically.

11. The Petitioner had filed an investigation report issued by SFIO in terms of Section 212(12) of Companies Act, 2013 duly accepted by the Central Government in terms of Section 212(14) vide CA No.379 of 2024. The said SFIO investigation report has pointed out that (a) document related to fraudulent LOUs were not maintained at branch; (b) LOUs were issued without margin / security; (c) These LOUs were not recorded in CBS; (d) Commission on fraudulent LOUs was not recovered; (e) The SWIFT Messages were not integrated with the CBS system resulting into the gap between the SWIFT messages passed in

relation to these fraudulent LOUs and recording of corresponding liability in the CBS.

12. The said investigation report alleges that non-generation of SWIFT log and its reconciliation with the data entered in CBS helped in perpetuation of fraud even though such generation and the reconciliation was mandated by the internal circular of the Bank and the Applicants herein had intentionally failed to do so to allow the perpetration of the fraud.
13. The SFIO investigation report in particular has alleged that Mr. Bechchu Tiwari was incharge & responsible for handling the entire Foreign exchange business of branch, and he had not ensured the generation & reconciliation of daily SWIFT log mandated by the circular dated 15/12/2016, accordingly, the omission on his part for non-performance of the mandated duty of generation & reconciliation of SWIFT log helped in perpetuation of fraud.
14. Further, similar allegation has been made against Mr. Prafull Sawant, who was assigned the work of daily generation & reconciliation of SWIFT log. It is stated in the SFIO investigation report that, during examination, he was asked the reason for non-generation & reconciliation of daily SWIFT log, and he simply stated that he was not aware about the process of how the SWIFT log will be generated from the system. It is further stated that he was further asked that whether he informed his superior authorities about his incapability of generation of SWIFT log he simply stated that it was informed orally, which shows his evasive answer regarding the non-performance of his crucial work of daily generation and reconciliation of SWIFT log which helped in perpetuation of fraud.

15. This Tribunal, in ***Ravi Bansal v. Union of India, COMP.APPL/314(MB)2025 in CP/3638(MB)2018***, has considered the scope of **Section 339** of the Companies Act, 2013 in relation to persons who are outside the organisation of the company in whose affairs the alleged fraud has been committed. The relevant portion of the order is reproduced hereinbelow-

"41.The above judicial proposition makes it abundantly clear that the word 'any persons' would also include the persons outside the organisation of the company, in whose affairs the fraud has been committed, who participate in, facilitate or assist fraudulent transactions by a company when they know that the company's business is being carried on for any fraudulent purpose. It also follows that the third persons cannot be automatically brought within the ambit of section 339 of Companies Act, 2013 merely because they were parties to any activity alleged to be fraudulent unless they have participated in facilitating or furthering the said, fraudulent activity. It is also clear that 'director, manager, officer or employee' of such third person cannot be brought within ambit of section 339 of the Companies Act, 2013 unless 'director, manager, officer or employee' of such third person are imputed with the knowledge of fraud having been perpetrated in the business of the company, in whose affairs the fraud has been committed, with they being party to such alleged fraudulent act. Accordingly, it can not be held that no order can be passed against any person who is outsider to the company, in whose affairs the fraud is alleged to have taken place, unless the conduct and act of such third person

or its directors or employees is examined in the commission of alleged fraud in the light of evidence(s) and allegations.

44. *It is noted that the Hon'ble NCLAT, in the order dated 04.03.2020 passed in bunch of appeals filed by various respondents against they being impleaded pursuant to order passed in MA 2071 of 2019 by this Tribunal, noted the decision of Hon'ble Supreme Court in the case of "**Aliji Momonji & co. Vs. Lalji Mavji & Ors. (1996) 5 SCC 379**" and held at para 84 that the question of grant of final relief against one or other is not the question for the present, as such we are not inclined to give such findings on such issue.*
45. *It is also noted that the Hon'ble Supreme Court in **Aliji Momonji (supra)** held that "5….. it is settled law by catena of decision of this Court that were the presence of the respondent is necessary for complete and effectual adjudication of the dispute, though no relief is sought, he is a proper party. Necessary party is one without whose presence no effective and complete adjudication of the dispute could be made and no relief granted."*
46. *It is noted that the aspect whether third persons, including the auditors, participated in, facilitated or assisted fraudulent transactions by a company knowing that the company's business is being carried on for any fraudulent purpose are yet to be looked into and can only be considered when the evidence(s) on record in relation to their role in perpetration of such fraud are examined. No general rule for their exclusion from scope of section 339 of the Companies Act, 2013 can be laid, as it would depend on the facts of each case. Accordingly, we find the contention of*

third persons, including auditors, against their liability premature at this juncture."

16. The aforesaid decision further makes it clear that the question whether an outsider, including an officer or employee of such third party, had knowledge of the alleged fraud and participated in or facilitated the same is required to be determined on the basis of the evidence and allegations concerning his or her individual role.

17. Indubitably, the Applicants herein were posted in Foreign Exchange Division at the relevant time and were responsible for the activities concerning SWIFT Messages and CBS recording / reconciliation, which if had been carried out in accordance with the bank circular could have prevented perpetration of fraud at the first instance itself. However, whether such failure was intentional to further the perpetration of fraud or was only an act of negligence oversight without any knowledge of fraud having been perpetrated through exploitation of a loophole in the system (non-integration of SWIFT messages with CBS) is yet to be decided. It is further contended that the internal inquiry by the Bank against the Applicants had discharged them. It is also noted that there is no specific material, except circumstantial inferences, to prove the allegation of the Union that the Applicants had intentionally failed to carry out their duties in accordance with the Bank circular in this relation.

18. In the present case, the Applicants have placed reliance upon their respective positions as officers of Punjab National Bank and the fact that the Bank was a creditor of the company concerned. However, at this stage, the question whether the Applicants had any knowledge of the alleged fraudulent conduct or whether they participated in, facilitated or assisted any such fraudulent activity

requires examination in the light of the material and evidence available on record. The mere fact that the Applicants were employees of the creditor bank cannot, by itself, be treated as sufficient to fasten liability upon them under Section 339; equally, their status as employees of the creditor bank cannot, by itself, warrant their deletion if material on record raises plausible inference in relation to their individual involvement in the alleged fraudulent conduct on account of they being entrusted with the duties, which, if carried out diligently, would have prevented occurrence of fraud.

19. In view of the aforesaid position, and having regard to the principles laid down by this Tribunal in **Ravi Bansal v. Union of India,** we are of the considered view that the issue of the Applicants' liability under Section 339 cannot be determined merely on the basis of their designation or employment with Punjab National Bank. Their individual role, knowledge and alleged participation, if any, in the fraudulent conduct are required to be examined on the basis of the evidence on record. Accordingly, the prayer for dismissal of the Company Petition against the Applicants cannot be allowed at this stage. However, as is noted above that the case against the Applicants is primarily based on circumstantial inferences, SFIO has not brought on record any incriminating or adverse evidence against the applicants and PNB has found no involvement of them in the perpetration of the fraud in their internal inquiry, we consider it appropriate to vacate the attachment of properties of the applicants by modifying the order dated 04.02.2019 read with the earlier order dated 23.02.2018 attachment to exclude the Applicants herein from the ambit thereof.

20. Accordingly, **CA 66 of 2021 and CA 67 of 2021** are partly allowed and disposed of.

SD/-

Prabhat Kumar
Member (Technical)

SD/-

Sushil Mahadeorao Kochey
Member (Judicial)

Vipul Ghate