NATIONAL COMPANY LAW TRIBUNAL,
MUMBAI BENCH COURT III

Item No. 203
COMP.APPL. 353/2022,
COMP.APPL. 332/2022
In
C.P. 150/2022

CORAM:
SH. HARIHARAN NEELAKANTA IYER
Member (Technical)

Ms. LAKSHMI GURUNG
Member (Judicial)

ORDER SHEET OF THE HEARING ON **27.10.2026**

(HEARING THROUGH: HYBRID MODE)

NAME OF THE PARTIES: UOI MCA Through Rd West

V/s.

Birla Cotsyn (India) Limited

Appearance

For Petitioner: Adv. Atishay Jain (PH) i/b Adv. Kunal Kanungo & Adv. Gaurav Jaiswal, Public Prosecutor.

For R-2: Ms. Nidhi Faganiya i/b Vidhii Partners (PH)

For R-7: Adv. Aamir Attari i/b Avyaan Legal (PH)

SECTIONS 221, 222, 241 & 242 OF THE IBC, 2016

ORDER

These applications are listed for pronouncement of order. The same are pronounced in open court, vide a separate order.

Sd/-
HARIHARAN NEELAKANTA IYER
Member (Technical)

Sd/-
LAKSHMI GURUNG
Member (Judicial)

---Nidhi---

IN THE NATIONAL COMPANY LAW TRIBUNAL,

MUMBAI BENCH COURT-III

CP No. 150 of 2022

Along With

CA No. 332 of 2022 and

CA No. 353 of 2022

CP/150/2022

Under Sections 221, 222, 241, 222, 246 read with 339 of the Companies Act, 2013

Union Of India, Ministry Of Corporate Affairs

Through Regional Director (Western Region)

Having registered office at:

Everest, 5th Floor, 100, Marine Drive, Mumbai - 400002

... Petitioner

Vs.

1. **BIRLA COTSYN (INDIA) LIMITED**

   CIN No:

   Having registered office at:

   Dalamal House, 1st Floor, J.B. Marg, Nariman Point, Mumbai MH 400020, IN.

2. **YASHOVARDHAN BIRLA**

   Having address at:

   BIRLA HOUSE, 21, MOUNT PLEASANT ROAD, MALABAR HILL, MUMBAI 400006, Maharashtra, India

3. **PALAPARTHY VENKATARAMANA MURTHY**

   Having address at:

   FLAT NO: C-402, FORTUNE TOWERS HITECHCITY ROAD, MADHAPUR HYDERABAD 500081, Telangana, India

4. GIRDHARILAL LATH

Having address at:

A-801, ASTER TOWER, VASANT VALLEY-2 GEN A.K. VAIDYA MARG, MALAD EAST, MUMBAI - 400097, Maharashtra, India

5. PRIYA BHUSHAN BHARDWAJ

Having address at:

REGENCY VILLA, OUTER CIRCLE, REGENTS PARK, NWI 4HB, LONDON, United Kingdom

6. SURESH KUMAR GUPTA

Having address at:

RAJRUDAM CHS, KRISHANA VATIKA MARG, NEAR RYAN INTERNATIONAL, GOKULDHAM, GOREGAON EAST, MUMBAI 400063, Maharashtra, India

7. OM PRAKASH JAIN

Having address at:

A-403, CITI SCAPE, ANDHERI KURLA ROAD, J.B. NAGAR, NEAR KOHINOOR HOTEL, ANDHERI EAST 400059, Maharashtra, India

8. ASISH NARAYAN

Having address at:

IIA/504, SPRING LEAF, LOKHANDWALA, KANDIVALI (EAST), MUMBAI 400101, Maharashtra, India

9. VINOD KUMAR KAPUR

Having address at:

HOUSE NO-301, GROUND FLOOR, BLOCK-E, M BLOCK MAIN ROAD, GREATER KAILASH-2, SOUTH DELHI 110048, Delhi, India

10. RAKESH KUMAR DIXIT

Having address at:

C/O Birla Cotsyn (I) Ltd, Guest House, A-82, MIDC Area Khamgaon Buldhana, Buldhana 4443()3, Maharashtra, India

11. SATYA KISHORE MATHUR

Having address at:

BHINDO KA RASTA DUSRA CHORAHA, CHANDPOLE BAZAR, JAIPUR 302001, Rajasthan, India

12. NIRMALA MATHUR

Having address at:

2327, Bhainruji Ki Gali, Kishanpole Bazar, JAIPUR 302001, Rajasthan, India

13. MONICA GANDHI

Having address at:

A-703, Neel Tower Devidas Cross Lane, Borivali (W), Mumbai 400103, Maharashtra, India

14. VINEETA NANDAN AGARWAL

Having address at:

60/11, Kasturi Building, Masulkar Colony, Ajmera Road, Pune 411018, Maharashtra, India

15. VIPIN DILIP KUMAR V ARKHAWAT

Having address at:

1209, C Wing, Siddhivinayak Darshan Building, J. R. Boricha Marg, Mahalaxmi East, Mumbai 400011, Maharashtra, India

... Respondents

Along with

CA/332/2022

Under Rule 11 of the NCLT Rules, 2016

Yashovardhan Birla

1st Floor, Dalamal House, Nariman Point, Mumbai - 400021

... Applicant

And

CA/353/2022

Under Section 420 of the Companies Act, 2013 read with Rule 11 of the NCLT Rules, 2016

Om Prakash Jain

A-403, Citi Space, Andheri Kurla Road, J. B. Nagar, Nr. Kohinoor Hotel, Andheri East, Mumbai – 400059

... Applicant

Order pronounced on: 27.10.2026

Coram:

Ms. Lakshmi Gurung, Member *(Judicial)*

Sh. Hariharan Neelakanta Iyer, Member *(Technical)*

Appearances:

For the Petitioner in CP/150	:	Adv. Kunal Kanungo, Adv. Gaurav Jaiswal & Adv. Akshay Jain
For Respondent 2 (Applicant	:	Adv. Subhradeep Banerjee a/w Nidhi

in CA/332/2022)		Faganiya i/b Vidhii Partners
For Respondent 7 (Applicant in CA/353/2022)	:	Adv. Shyam Kapadia a/w Adv. Aamir Attari i/b Avyaan Legal

Per: **Coram**

Company Petition No. 150 of 2022

1. The instant Company Petition was filed by Union of India through Regional Director on 08.04.2022 under sections 241 and 246 read with 339 and 221 and 222 of the Companies Act, 2013, seeking following main reliefs:

Main Reliefs

(m) That directions be issued for the recovery of the amount involved in the above-detailed financial fraud and the depositors or any of the victims identified during the course of investigation by the SFIO be compensated.

(n) Pass any other order(s) as deemed fit and proper under the circumstances by the Hon'ble Tribunal.

Background of the case in brief:

2. Upon an application being CP-(IB) No. 579 (MB)/2018 filed by Edelweiss Asset Reconstruction Company Ltd. under Section 7 of the Insolvency and Bankruptcy Act, 2016 ('**Code**'), M/s Birla Cotsyn (India) Limited (the **Company**) was admitted to Corporate Insolvency Resolution Process (**CIRP**) by this Tribunal vide order dated 20.11.2018.

3. The Resolution Plan submitted for the Company was rejected by the Committee of Creditors (**CoC**) and consequently, the Company was admitted to liquidation vide order dated 24.09.2019 passed in Miscellaneous Application No. 2929 of 2019.

4. In the meantime, the Registrar of Companies (RoC) had submitted a Report dated 27.09.2018 (**RoC Report**) and recommended for filing of prosecution against the Company and its officers for non-compliance of the provisions of the Companies Act and further recommended for investigation into the affairs of the Company.

5. Thereafter, the Central Government vide its letter dated 07.01.2019 (**Investigation Order**) ordered for investigation into the affairs of the Company by the Serious Fraud Investigation Office (**SFIO**) and based on the RoC Report dated 27.09.2018 and the Investigation Order dated 07.01.2019, the Central Government, vide its letter dated 27.04.2021 ordered for filing of the present petition against the Company and its officers under sections 221, 222, 241, 222, 246 read with 339 of the Companies Act, 2013. Hence the Petition.

6. **Submissions of the Petitioner**

6.1 It is submitted that the Registrar of Companies (ROC) submitted its Report dated 27.09.2018 under section 208 of the Companies Act, 2013, wherein it is reported there are complaints registered against the Company since 2013 and most of them related to the non-payment of maturity amount of Deposits.

6.2 In the said Report, it is further stated that the Company Law Board, Mumbai Bench passed an order dated 27.04.2016 for rescheduling the repayment of the deposits for a specified period under section 58A (9) read with section 74(2) of the Companies Act, 2013. However, the company has not repaid the deposits in compliance with the said order and various such Orders passed from time to time prior to the Order dated 27.04.2016.

6.3 It is further submitted that in the statutory Auditors reports, the Auditors have also qualified that the Company has defaulted in the repayment of depositors and the dues of such depositors as on 31.03.2018 is Rs. 62,00,650.

6.4 It is submitted that the affairs of the company are grossly mismanaged including playing diversion, siphoning off funds including public deposits by running the company in gross violations of the Companies Act and against public interest.

6.5 It is submitted that the Central Government Ministry's order No. 03/741/2018-CLII(WR) dated 07.01.2019 under section 212(1)(a) and (c) of the Companies Act, 2013, has ordered investigation into full affairs of the Company by the SFIO. Pursuant thereto, the SFIO is conducting an investigation into the affairs of Company.

7. **Reply of the Respondents**

The Respondents No. 1, 2, 4, 7, 8, 10, 11, 13, 14, and 15 have filed their respective replies and made submissions on similar lines which are summarised hereinbelow:

7.1 The ROC Report dated 27.09.2018 and the investigation order dated 07.01.2019 are subject matter of challenge in writ petition no. 3447 of 2022 before the Hon'ble Bombay High Court.

7.2 It is submitted that Respondents No. 2 and 7 had resigned as officers of the Company prior to the alleged default in repayment to depositors by the Company that had occurred in March, 2013 and therefore, they have no connection with the alleged default.

7.3 It is submitted that Respondents No. 10, 11, 14, and 15 were appointed as officers of the Company on or after 2013 and were not part of the alleged deposits between FY 2010-11 till 2012-13.

7.4 It is submitted that vide order dated 24.09.2019, liquidation proceedings were initiated against the Company and during the pendency of such liquidation proceedings, the captioned Petition has been filed. The Scheme of Compromise and Arrangement under Section 230 read with Section 66 of the Companies Act, 2013, read

with the Insolvency and Bankruptcy Code, 2016 (**Code**) submitted by: (a) Mr. Nikhil Jain (Acquirer No. I), (b) M/s Rohstoffe International Private Limited (Acquirer No. 2), and (c) M/s Wendt Finance Private Limited (Acquirer No. 3), for taking over the Company was sanctioned by this Tribunal vide order dated 09.01.2025.

7.5 It is submitted that while sanctioning the Scheme, this Tribunal specifically addressed the pendency of the captioned proceedings and held that the Clean Slate Principle under Section 32A of the Code applies to an entity revived pursuant to a sanctioned Scheme of Compromise and Arrangement and therefore, the pendency of the captioned petition would not bar the sanctioning and approval of the Scheme.

7.6 It is submitted that the Company, under the new management, is a distinct and restructured entity with no nexus to allegations against its erstwhile management. In light of the aforesaid read with the sanction order dated 09.01.2025, the Company stands revived free from all past liabilities and litigations and continuation of these proceedings would defeat the object and mechanism of revival under the Code.

7.7 It is submitted that a petition under section 241(2) of the Companies Act, 2013 can only be in respect of affairs in praesenti of a company that *"are being conducted",* being the language of the section itself. The present CP is not maintainable as the Company's affairs are under the management, control and supervision of the Liquidator appointed by this Tribunal. The direction of the Central Government to file petition is in violation of the moratorium imposed under the Insolvency and Bankruptcy Code, 2016. The Petitioner has not even impleaded the Liquidator as a party to the present proceedings.

7.8 It is submitted that the present Petition has been solely premised on the *prima facie* observations and recommendation given in the Report dated 27.09.2018 filed by the ROC in exercise of its powers under

section 208 of the Companies Act, 2013. However, since admittedly the detailed inquiry to be conducted by the ROC was not completed, the said Report dated 27.09.2018 is not a complete report and is limited in its examination of the defaults made by the Company towards the dues of its depositors and therefore, the said Report cannot be considered as a report issued under section 208 of the 2013 Act.

7.9 Additionally, and without prejudice to the above, it is submitted that the said Report is completely devoid of any circumstances or particulars which suggest any fraud or wrongdoing or mismanagement in order to recommend the filing of a petition under sections 241, 242, 246 read with 339 of the 2013 Act. It is stated that the said Report merely sets out the defaults by the Company in repayment of the deposits, which by itself cannot be considered to be indicative of any fraud or that the affairs of the Company are being mismanaged.

7.10 The ROC Report only reveals that the Company has been requesting for extensions for repayment of the outstanding towards the Depositors, whereas, it fails to show that the Company has repaid the defaulted amounts of Rs. 8,78,54,350 (principal amount) with Rs. 92,99,096 (interest payable) to 1821 Depositor since the year 2011-12 to 2018-19. Thereafter, the Company went under liquidation and the liquidator has received claims from only 5 (five) depositors for a total amount of Rs. 5.13 Lakhs. The Petitioner has not taken any of these facts into consideration and moreover, in the absence of any conclusive findings by the SFIO, the filing of the present Company Petition is unsustainable and premature.

7.11 It is submitted that the cause of action for alleged default in repayment to the fixed deposit holders rose in FY 2012-2013. The Petitioner has however filed the present Company Petition on 08.04.2022 which is beyond the prescribed period of limitation of 3

(three) years. It is further submitted that even after issuance of the ROC Report dated 27.09.2018, the present Petition has been filed nearly 4 years thereafter and therefore the present Petition is clearly barred by limitation.

7.12 Without prejudice, it is submitted that the invocation and reliance on Section 339 of Companies Act, 2013 by the Petitioner is misplaced as the rights under the said provision are only conferred upon the Official Liquidator, or the Company Liquidator or any creditor or contributory of the company. Additionally, section 339 can only be invoked in the nature of final relief of declaration whereas no final reliefs whatsoever are sought in the Company Petition that are in any manner relatable to Section 339 of said Act. It is submitted that no interim reliefs can ever be sought or granted under Section 339 of the 2013 Act as is evident from a plain reading of the said provision.

7.13 It is submitted that the present Petition is not maintainable also for the reason that it is in the nature of a class action purportedly filed on behalf of the aggrieved fixed deposit holders. The erstwhile Companies Act, 1956 did not provide for a representative or a class action. Even, the 2013 Act which introduces the concept of class action under Section 245, confers such rights only on the members or depositors or any class as indicated in Section 245(2). Furthermore, the Petitioner does not have any authorization from the depositors/ victims of the alleged financial fraud of the Company who remain unidentified by the Petitioner till date.

7.14 The entire alleged cause of action as set out in the present Petition is in respect of default in repayment of deposits which began in the Financial Year 2012 - 2013 i.e. during the operation and effect of the 1956 Act. It is submitted that the repeals and savings provisions of the 2013 Act provides for a repeal of the erstwhile 1956 Act in totality and does not save the right of institution of proceedings under the 2013 Act in respect of the cause of action or violations arising under

the 1956 Act, and only provides for a continuation of proceedings already initiated under the 1956 Act.

7.15 It is submitted that the sole principal relief sought by the Petitioner is for a direction to recover amounts involved in the alleged financial fraud and for compensation to depositors or any of the victims identified during the course of investigation which cannot be asked for under sections 241 and 242 of the Companies Act, 2013 against a company undergoing liquidation.

7.16 It is submitted that the Company had been paying the dues to the fixed deposit holders and mere default in making such payments itself cannot *ipso facto* be indicative of fraud or diversion of funds. Even the Company Petition as well as the ROC Report does not make any allegation or material indicating any diversion or siphoning off funds by the Company or any of its directors.

7.17 It is submitted that the Petition is premature and is liable to be dismissed in view of the ongoing investigation being conducted by the SFIO. Further, the opinion of the Petitioner to file the present Petition on the alleged possibility that the Respondents may during the course of investigation, remove, transfer or dispose off the funds of the Company, investments and the properties during the course of investigation conducted by SFIO, is unfounded especially since the management of the Company has been under the control, management and supervision of the Resolution Professional and thereafter the Liquidator since 20.11.2018 and hence therefore there is no possibility of the Respondents diverting the funds of the Company.

8. **Rejoinder filed by Petitioner**

8.1 It is submitted that the Writ Petition No. 3447 of 2022 is an independent proceeding and cannot be an embargo over the powers of this Tribunal under the Companies Act, 2013.

8.2 With respect to the scheme of arrangement, it is submitted that while sanctioning the Scheme, the Tribunal has specifically considered the pendency of the present Company Petition and held that the pendency of these proceedings "does not pose any hindrance to the sanctioning of the Scheme". It has been also held that all pending inquiries, investigations and prosecutions "may continue independently of the approval of this Scheme".

8.3 It is submitted that the sanction order does invoke and apply the doctrine of "clean slate" in favour of the revived company, but only in the limited context of restructuring of admitted creditor claims and tax/ regulatory consequences, and not by way of a blanket immunity from all proceedings under the Companies Act, 2013 or from all forms of public-law action.

8.4 It is submitted that the Petitioner is not pressing for any additional reliefs against the revived company qua its new management beyond what is already prayed and what is consistent with the Scheme order and with Section 32A of the Code. However, given that: (i) the SFIO investigation is still pending and at an advanced stage, (ii) the Petition itself is expressly framed to be modifiable in light of such investigation, and (iii) the scheme order at para 20 (f), has expressly directed the reconstituted board to cooperate with any authority investigating offences committed prior to liquidation, the Company's continued presence on record as a party is both necessary and appropriate, at least in a formal / proforma capacity, to facilitate any future directions, discovery, cooperation, or consequential orders. The Petition is rooted in the ROC report of 27 .09.2018 and the Central Government's decision dated 27.04.2021 to direct filing of this Petition, based on past defaults and alleged large scale diversion of funds and fraud in the affairs of the Company and its then management. The corporate entity's presence in these proceedings remains necessary notwithstanding the change in management.

8.5 It is further submitted that the submission qua protection under Section 32A of the IBC is erroneous is as much as the fact that Mr. Nikhil Jain joined as Senior Vice President Strategy in 2015 and worked with the Company till liquidation commencement date. Further, the father of Mr. Nikhil Jain i.e. Mr. O.P. Jain is the Managing Director of the Corporate Debtor and he departed from the Company in late 2012 (i.e. the period related to investigation). As also Mr. O.P. Jain has been director various Yash Birla group Companies from time to time in the past. Hence, the entire submission on applicability of Section 32A of Code is erroneous and is liable to be set aside.

8.6 It is further submitted that while the scheme approval order dated 09.01.2025 proceeds on a narrow understanding that Mr. O .P. Jain was Managing Director of the Corporate Debtor only for a period of 39 days between 08.11.2012 and 17.12.2012 and that he had ceased to hold such office nearly six years prior to the insolvency commencement date of 20.11.2018, the said order fails to consider the long-standing and substantive connection of Mr. O.P. Jain with the Company and its management. It is submitted that the SFIO during preliminary investigation has further brought out that funds aggregating approximately Rs. 12.89 crore were diverted and siphoned off to Mr. O.P. Jain, his family members and family concerns and those people who were involved in and benefited from the alleged diversion of funds are now, through the present scheme, seeking to re-enter the corporate structure of the Company. These facts go to the root of the acquirer's eligibility and the true nature of "change of control" and have a direct bearing on the inapplicability of Section 32A of the IBC to the present case. It is further submitted that investigation is still under process with SFIO and final Investigation report will be submitted as & when report is submitted by SFIO to Ministry.

8.7 It is submitted that the present Petition is a statutory enforcement action by the Central Government in public interest and not a mere private recovery proceeding. The scheme order does not and cannot, nullify or truncate this public-law enforcement jurisdiction already triggered and actively seized of by this Tribunal.

8.8 It is submitted that the investigation by SFIO is presently "pending and active, at an advanced stage, unearthing the active role of the Respondents as set out in the Petition". In such circumstances, any attempt by Respondent No. 1 to dilute or pre-empt the outcome of SFIO's investigation by seeking deletion from these proceedings is premature.

8.9 As far as the limitation is concerned, it is submitted that the petition has been filed pursuant to the ROC Report dated 27.09.2018 and the investigation order dated 07.01.2019. Based on the aforesaid, the Central Government vide its letter dated 27.04.2021 directed for filing of this Petition. Therefore, the cause of action arose only upon the issuance of letter dated 27.04.2021 and therefore, the Petition is filed within the prescribed period of limitation.

8.10 It is submitted that section 246 of the Companies Act, 2013 provides that the provisions of section 339 shall apply mutatis mutandis in relation to application filed under section 241 or 245 of the Companies Act, 2013. Thus, this Tribunal has powers to pass orders under section 339 of the Companies Act, 2013.

8.11 With respect to the contention that the Petition is in the nature of class of action, it is submitted that section 245 is a separate and distinct remedy to the provisions under which the present Petition is filed by the Petitioner and as such, the interpretation sought to be placed on section 245 of the Act is not only technical but not in terms of the clear and unambiguous language thereof.

8.12 With respect to the applicability of Companies Act, 1956, it is submitted that the repeal of the 1956 Act does not, in any manner whatsoever, affect the right and power of the Petitioner to initiate such proceedings for breach and violation of the terms thereof as per the provisions of section 465 of the Companies Act, 2013.

Company Application No. 332 of 2022

9. This Company application is filed by Respondent No. 2 challenging the maintainability of the captioned Company Petition 150 of 2022. The submissions made by R-2 in his reply to CP/150/2022 has been reiterated in this application.

Company Application No. 353 of 2022

10. This Company application is filed by Respondent No. 7 challenging the maintainability of the captioned Company Petition 150 of 2022 primarily on the ground that when the present petition for oppression and mismanagement was filed in the year 2022, the Respondent No. 1 Company was undergoing liquidation process and was under the control and management of the Liquidator, as the liquidation order was passed on 04.09.2021.

Observations

11. The C.P. No. 150 of 2022 has been filed by the Union of India (**Petitioner**) on 08.04.2022 against the Company under Sections 221, 222, 241, 242, 246, and 339 of the Companies Act, 2013.

12. Respondents No. 1, 2, 4, 7, 8, 10, 11, 13, 14, and 15 have filed their respective replies and made similar submissions challenging the maintainability of CP/150/2022. In addition to the replies, Respondent No. 2 has filed CA/332/2022 and Respondent No. 7 has filed CA/353/2022 contesting the CP/150/2022.

13. We had heard CA/353/2022 at length. It is noted that one of the preliminary grounds argued by the Applicant in CA/353/2022

(Respondent No. 7 in CP/150/2022) while challenging the maintainability of the said CP was that the Company was admitted to CIRP on 20.11.2018 and thereafter, liquidation order was passed on 24.09.2019 and the affairs of the Company was in the control of the Resolution Professional and the Liquidator who are officers of this Court.

14. It is submitted that it cannot be the case of the Central Government that the affairs of the Company are being conducted in a manner prejudicial to public interest by the aforesaid officers. A Petition under Section 241(2) of the Companies Act, 2013 could be filed only if the Central Government is of the opinion that the *affairs of the company are being conducted* in a manner prejudicial to public interest and therefore, can only be in respect of affairs in *praesenti* of a company and not of past actions.

15. It is apposite to refer to section 241 of the Companies Act, 2013:

(1) Any member of a company who complains that—

(a) the affairs of the company have been or are being conducted in a manner prejudicial to public interest or in a manner prejudicial or oppressive to him or any other member or members or in a manner prejudicial to the interests of the company; or

(b) the material change, not being a change brought about by, or in the interests of, any creditors, including debenture holders or any class of shareholders of the company, has taken place in the management or control of the company, whether by an alteration in the Board of Directors , or manager, or in the ownership of the company's shares, or if it has no share capital, in its membership, or in any other manner whatsoever, and that by reason of such change, it is likely that the affairs of the company will be conducted in a manner prejudicial to its interests or its members or any class of members, may apply to the Tribunal , provided such member has a right to apply under section 244, for an order under this Chapter.

(2) The Central Government, if it is of the opinion that the affairs of the company are being conducted in a manner prejudicial to public

interest, it may itself apply to the Tribunal for an order under this Chapter.

Provided that the applications under this sub-section, in respect of such company or class of companies, as may be prescribed, shall be made before the Principal Bench of the Tribunal which shall be dealt with by such Bench.

16. It can be seen that though under sub-section (1) of section 241, a petition can be filed by a member on complaints that the affairs of the Company have been or are being conducted in a manner prejudicial to public interest, etc. which indicates that even for past conduct of the Company, a petition under section 241(1) can be filed. However, under section 241(2), a petition can be filed against the Company by the Central Government when the affairs of the Company are being conducted in a manner prejudicial to public interest.

17. The Hon'ble NCLAT in ***Union of India, Ministry of Corporate Affairs vs. Delhi Gymkhana Club Ltd. & Ors. [Company Appeal (AT) No. 94 of 2020****, decided on 15.02.2021,* observed:

> *"On a plain reading of the provisions engrafted in Section 241, it comes to fore that while any member of a Company complaining of affairs of company being conducted in a manner prejudicial to public interest or in a manner prejudicial or oppressive to him or any other member or members or in a manner prejudicial to the interests of the company is entitled to apply to the Tribunal for relief, subject to its entitlement under Section 244,* ***the Central Government is empowered to apply to the Tribunal for relief in case of mismanagement only if the affairs of the company are being conducted in a manner prejudicial to public interest.****"*
>
> *(Emphasis supplied)*

18. In the case of ***Power Finance Corporation Ltd vs Shree Maheshwar Hydel Power Corporation Limited [Company Appeal (AT) No. 237 of 2017****, decided on 12.03.2018,* the Hon'ble NCLAT observed as follows:

"41. The arguments of the counsel for the Respondents are that the past and concluded acts could not be made grievance of. The learned counsel for the Petitioner-Appellant, however, submitted that the affairs which "have been" or "are being" conducted in a prejudicial or oppressive manner both can be looked into and thus past affairs can also be considered. We find that "have been" relates to present perfect tense. It relates to action that began some time in the past and is still in progress. Wording "are being" relates to present continuous tense. There is a difference between "have been" and "had been". "Had been" would be past perfect tense indicating acts which were committed in the past and which came to an end in the past."

19. We are of considered view that the conspicuous absence of the words "have been" in section 241(2) of the Companies Act, 2013 and the usage of the words "are being" clearly indicates that the affairs of the Company leading to oppression or mismanagement should be in *praesenti.*

20. In the present case, the alleged default of the Company in its repayment towards the dues owed to fixed deposit holders and non-compliance of the order of the Company Law Board had allegedly occurred between the years 2013-2016. Thereafter, the Company was admitted to CIRP vide order dated 20.11.2018 and has been under the control and management of the Resolution Professional appointed by this Tribunal and thereafter, liquidation order was passed on 24.09.2019. The present petition was filed on 08.04.2022 i.e. during the subsistence of liquidation when the erstwhile management had no control in the company's affairs and the control and management of the Company was in the hands of the Liquidator. Based on the averments, it is noticed that the fixed deposit holders have filed their claims before the Liquidator.

21. Thus, we are not satisfied that the requirement under section 241(2) that the affairs of the Company <u>are being conducted</u> in a prejudicial to public interest has been fulfilled and in our considered view, the present petition cannot be filed against a Company whose affairs are conducted by a Liquidator under the supervision of the Adjudicating Authority

under the Insolvency and Bankruptcy Code, 2016. In view thereof, we hold that the present Company Petition is not maintainable.

22. Further, perusal of the Petition shows that the Petitioner has referred to the Report dated 27.09.2019 submitted by the Registrar of Companies (RoC), Mumbai, under Section 208 of the Companies Act, 2013, and the consequential Order dated 07.01.2019 passed by the Central Government ordering for investigation under section 212(1)(a) and (c) of the Companies Act, 2013 into the affairs of the Company to be conducted by the Office of the Serious Fraud Investigation Office (SFIO). It is stated in the Petition that the SFIO is conducting investigation into the state of affairs of Zenith Birla (India) Limited/Respondent No. 1 Company, and the present petition is filed seeking reliefs in support of the investigation by SFIO. Thus, it is clear that the Petition is premised on the ROC Report dated 27.09.2018 and the consequential investigation order dated 07.01.2019.

23. When the matter is taken up for hearing today, the learned counsel appearing for the Respondents No. 1 and 2 have taken us through the judgment dated 08.04.2026 passed by the Hon'ble Bombay High Court in Writ Petition No. 3447 of 2022 whereby the Hon'ble Bombay High Court has quashed the Report dated 27.09.2018 submitted by the Registrar of Companies (RoC), Mumbai, under Section 208 of the Companies Act, 2013, and the consequential Order dated 07.01.2019 passed by the Central Government ordering for investigation by the SFIO.

24. We have perused the judgment dated 08.04.2026 passed by Hon'ble Bombay High Court, the relevant paragraphs are quoted below:

> *"1. The five Writ Petitions before us revolve around the investigation directed by the Ministry of Corporate Affairs, and since all the Writ Petitions before us raise challenge to the order dated 7/1/2019, passed in exercise of power conferred under Section 212(1)(a) of the Companies Act, 2013 as the Central Government expressed an opinion that the affairs of the mentioned companies need to be investigated and directed investigation into the affairs of (i) Birla*

Cotsyn Limited, (ii)Birla Shloka Edutech Limited, and (iii) Zenith Birla Limited, to be carried out by the Serious Fraud Investigation Office (SFIO), as may be designated by its Director.

… ..

5. The aforesaid order contain a reference to the report dated 27/9/2018 submitted to the Central Government under Section 208 of the Companies Act which, according to the impugned order, has recommended investigation into the affairs of three companies. i.e. Birla Cotsyn, Birla Shloka Eductech Limited and Zenith Birla Ltd.

… ..

25. We have perused the report forwarded to the Ministry of the Corporate affairs in respect of the three companies and the preface to the said report, with reference to the company belonging to Yashovardhan Birla group (Yash Birla group) are reported to be persistently defaulting in repayment of public deposits and interest since 2013. The report make a reference to the order passed by the CLB/NCLT granting time to clear the defaults, but it note that there is no compliance, as a result, its Officers are also held liable for prosecution under section 58 A(1) of the Companies Act, 1956.

The fulcrum of the Report is thus the persistent default and large number of complaints against the Companies, and with regards to Birla Cotsyn, the report state that there are 125 complaints, largely on account of default in repayment of principal and interest thereon. It is also recorded that the default is persisting for more than a year and despite order passed by the CLB, there is no repayment of the deposits.

… ..

In fact, the report dated 27/9/2018 purported to be prepared u/s.208, is not based on any inspection or enquiry conducted u/s.206. In fact, in the Report, it is categorically mentioned that the last inspection was conducted in 2012 and the Company started defaulting in making the payment since 2014 and in fact, the Registrar of Companies itself has recommended a fresh inspection u/s.206. The report clearly record that the default has surfaced in the wake of the orders passed by CLB for repayment of deposits and these notices are picked up from the website. Hence, ***we are of the view that the report dated 27/9/2018 purported to be made by the Registrar u/s.208 is ex-facie illegal, as it failed to conform to the requirements and stipulations in the scheme of the Companies Act, 2013.***

The order dated 7/1/2019 based upon the said report, also therefore, cannot sustain and deserve to be quashed and set

aside along with the summons/notices issued to the petitioners, being Directors of the Birla Cotsyn and Birla Shloka Edutech Limited.

For the reasons recorded above, we quash and set aside the impugned order dated 7/1/2019 passed by the respondent no.1 along with the summons and notices issued by the SFIO directing the petitioners to render co-operation in the investigation.

Similarly, since we are of the view that the report of 27/9/2018 is not in conformity with the procedure set out in Section 206, sub-section (4), the same is also quashed and set aside."

(Emphasis Supplied)

25. It is clear that by virtue of the aforementioned judgment, the RoC Report dated 27.09.2018 and Investigation order dated 07.01.2019 have been quashed and set aside. Ld. Counsel for the parties agree that the present CP is premised on the RoC Report dated 27.09.2018 and Investigation Order dated 07.01.2019. As the foundation of this Petition have been quashed by Hon'ble Bombay High Court, nothing survives in the present Petition.

26. For all the above reasons, the Company Petition No. 150 of 2022 stands **dismissed**. Company Application No. 353 of 2022 is **allowed**.

27. Since we are dismissing CP No. 150 of 2022, the Company Application No. 332 of 2022 is **rendered infructuous**.

28. Accordingly, CP/150/2022, CA/332/2022 and CA/353/2022 are **disposed of**. No order as to costs.

Sd/-	Sd/-
Hariharan Neelakanta Iyer	**Lakshmi Gurung**
Member (Technical)	**Member (Judicial)**

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