IN THE NATIONAL COMPANY LAW TRIBUNAL
PRINCIPAL BENCH, NEW DELHI

INTERVENTION PETITION No. 60 to 67 of 2026

IN

C.A. No. 62 of 2024, C.A. No. 231 of 2023, C.A. No. 223 of 2023, C.A. No. 228 of 2023, C.A. No. 08 of 2024, C.A. No. 315 of 2023, C.A. No. 390 of 2023, C.A. No. 261 of 2023

IN

C.P. No. 105 of 2023

ALONG WITH

C.A. No. 223 of 2023, C.A. No. 228 of 2023, C.A. No. 231 of 2023, C.A. No. 315 of 2023, C.A. No. 261 of 2023, C.A. No. 390 of 2023, C.A. No. 08 of 2024 and C.A. No. 62 of 2024

IN

C.P. No. 105 of 2023

IN THE MATTER OF:

UNION OF INDIA THROUGH
SERIOUS FRAUD INVESTIGATION OFFICE

...PETITIONER

VERSUS

BHUSHAN AIRWAYS SERVICES
PRIVATE LIMITED & ORS.

...RESPONDENT

AND IN THE MATTER OF INTERVENTION PETITION NOS. 60 TO 67 OF 2026

BHUSHAN POWER & STEEL LIMITED

...APPLICANT/RESPONDENT NO. 76

VERSUS

UNION OF INDIA THROUGH THE
SERIOUS FRAUD INVESTIGATION OFFICE & ORS.

...NON-APPLICANT/PETITIONER

AND IN THE MATTER OF C.A. NO. 223 OF 2023

DÉCOR INVESTMENTS & FINANCE PVT. LTD. & ORS.

...APPLICANT/RESPONDENT NO. 12

VERSUS

UNION OF INDIA THROUGH THE

SERIOUS FRAUD INVESTIGATION OFFICE

...NON-APPLICANT/PETITIONER

AND IN THE MATTER OF C.A. NO. 228 OF 2023

SILVER STAR COMMERCIAL COMPANY PVT. LTD. & ORS.

...APPLICANT/RESPONDENT NO. 34

VERSUS

UNION OF INDIA THROUGH THE

SERIOUS FRAUD INVESTIGATION OFFICE & ORS.

...NON-APPLICANT/PETITIONER

AND IN THE MATTER OF C.A. NO. 231 OF 2023

MR. HARDEV CHAND VERMA & ANR.

...APPLICANT/RESPONDENT NO. 38

VERSUS

UNION OF INDIA THROUGH THE

SERIOUS FRAUD INVESTIGATION OFFICE & ORS.

...NON-APPLICANT/PETITIONER

AND IN THE MATTER OF C.A. NO. 315 OF 2023

MR. RAJ KUMAR KEDIA

...APPLICANT/RESPONDENT NO. 54

VERSUS

UNION OF INDIA THROUGH THE

SERIOUS FRAUD INVESTIGATION OFFICE & ORS.

...NON-APPLICANT/PETITIONER

AND IN THE MATTER OF C.A. NO. 261 OF 2023

MR. SANJAY SINGAL & ANR.

...APPLICANT/RESPONDENT NO. 36

VERSUS

UNION OF INDIA THROUGH THE

SERIOUS FRAUD INVESTIGATION OFFICE & ORS.

...NON-APPLICANT/PETITIONER

AND IN THE MATTER OF C.A. NO. 390 OF 2023

MR. DPS BHATIA

...APPLICANT/RESPONDENT NO. 46

VERSUS

UNION OF INDIA THROUGH THE

SERIOUS FRAUD INVESTIGATION OFFICE & ORS.

...NON-APPLICANT/PETITIONER

AND IN THE MATTER OF C.A. NO. 08 OF 2024

PRIYANKA MIGLANI

...APPLICANT/RESPONDENT NO. 44

VERSUS

UNION OF INDIA THROUGH THE

SERIOUS FRAUD INVESTIGATION OFFICE & ORS.

...NON-APPLICANT/PETITIONER

AND IN THE MATTER OF C.A. NO. 62 OF 2024

PRUDENT TRANSPORT COMPANY LIMITED

...APPLICANT/RESPONDENT NO. 30

VERSUS

UNION OF INDIA THROUGH THE

SERIOUS FRAUD INVESTIGATION OFFICE & ORS.

...NON-APPLICANT/PETITIONER

ORDER PRONOUNCED ON: 30.10.2026

Coram:

JUSTICE ANUPINDER SINGH GREWAL
HON'BLE PRESIDENT

SHRI RAVINDRA CHATURVEDI
HON'BLE MEMBER (TECHNICAL)

Present:

For the Applicants in Ivn. Pet. No. 60 of 2026; Ivn. Pet. No. 61 of 2026; Ivn. Pet. No. 62 of 2026; Ivn. Pet. No. 63 of 2026; Ivn. Pet. No. 64 of 2026; Ivn. Pet. No. 65 of 2026; Ivn. Pet. No. 66 of 2026; Ivn. Pet. No. 67 of 2026 and Respondent No. 76	:	Mr. Gyanendra Kumar, Senior Advocate a/w Ms. Kamalika Bhattacharjee, Mr. Saurabh Bhargavan, Mr. Spandan Biswal, Ms. Sugandh Virmani, Ms. Salonee Sirohi, Mr. Nikhil, Mr. Shivendra Pandey, Advs.
For Applicants in C.A. No. 223 of 2023; C.A. No. 228 of 2023 (for Respondent Nos. 3, 8 and 11)	:	Mr. Sudhir Makkar, Senior Advocate a/w Mr. Vineet Wadhwa and Ms. Somya Gupta, Advs.
For Applicant in C.A. No. 231 of 2023; C.A. No. 228 of 2023 (for Respondent No. 34)	:	Mr. Rishav Banerjee, Adv. a/w Mr. Anurag Yadav, Mr. Aalok Jain, Advs.
For Applicant in C.A. No. 08 of 2024/Respondent No. 44	:	Mr. Pervinder, Advocate
For Applicant in C.A. No. 62 of 2024 (Respondent No. 30)	:	Mr. Vineet Wadhwa, Advocate
For Respondent Nos. 2 to 5 and Respondent Nos. 7, 9, 10, 13 to 15, 17 to 25, 28, 29, 31 & 33	:	Mr. Shaurya Mittal, Advocate
For Applicants in C.A. No. 261 of 2023	:	Mr. K. Avinash, Advocate
For Applicants in C.A. No. 315 of 2023/Respondent No. 54	:	Mr. Arun Saxena, Advocate along with Mr. Rahul Kumar and Mr. Amit Verma, Advs.
For the Union of India through SFIO/ Petitioner	:	Mr. Aditya Sikka, Adv. a/w Ms. Onshi Jakhar, Ms. Yuganshi Singh, Advs.

ORDER

1. The captioned applications have been filed in the Company Petition bearing C.P. No. 105 of 2023 which in turn has been filed by the Union of India ("**UOI**") through Serious Fraud Investigation Office ("**SFIO**" / "**Petitioner**" / "**Respondent in C.A. No. 223 of 2023**; **C.A. No. 228 of 2023; C.A. No. 231 of 2023; C.A. No. 261 of 2023; C.A. No. 315 of 2023; C.A. No. 390 of 2023; C.A. No. 08 of 2024 and C.A. No. 62 of 2024**"), Ministry of Corporate Affairs represented by Sh. Anand Kumar, Assistant Director, SFIO, New Delhi upon being duly authorised vide order no. SFIO/PROS/0528/2020 dated July 16, 2022 and the letter of the Ministry of Corporate Affairs bearing F. No. Legal-35/15/2022 dated 19.05.2022, under sections 241(2), 242 and 246 read with section 339 of the Companies Act, 2013 ("**the Act**") against 76 respondents including Bhushan Power and Steel Limited pursuant to the investigation that was ordered into the affairs of Bhushan Power and Steel Limited ("**BPSL**" / "**Respondent No. 76**") and the affairs of entities associated with BPSL and/or BPSL's erstwhile promoters and further pursuant to the investigation report dated 06.05.2022 filed under Section 212(12) of the Companies Act, 2013 prepared by the SFIO and the sanction letter dated 19.05.2022 issued by the Ministry of Corporate Affairs, seeking the following reliefs:

Interim Reliefs:

a. *That the Respondents (R-1 to R-74) be restrained from mortgaging or creating charge or lien or third-party interest or in any way alienating, their movable or immovable properties owned whether held individually or jointly with any others and whether in India or abroad and further, direct freezing of all properties;*
b. *That the Bank Accounts held by the Respondent Nos. 1 to 74 whether individually or jointly with any other persons and whether in India or abroad (except proforma Respondent No. 76) be frozen with immediate effect;*

c. *That the Respondents Nos. 1 to 74 be immediately directed to disclose all their moveable and immovable properties/assets, including bank accounts, owned or held by it/them whether individually or jointly with any other persons whether in India or anywhere in the world and as of May 19, 2022 and as on date;*

d. *That the Central Depository Services Ltd. (CDSL) and National Securities Depository Ltd. (NSDL) be directed that securities owned/held by Respondent Nos. 1 to 75 whether jointly or solely in any company/society be frozen and details as of May 19,2022 and as on date thereof be shared with the Petitioner;*

e. *That the Central Board of Direct Taxes (CBDT) may be directed to disclose information about all assets of the Respondents Nos. 1 to 75 as of May 19, 2022 and as of date whether jointly or solely in their knowledge or possession, for the purpose of freezing and restraint on alienation of such assets;*

f. *That the Reserve Bank (RBI) and the Indian Banks Association (IBA) be directed to facilitate disclosure of the details of the bank accounts, lockers owned by the Respondent Nos. 1 to 74 (as of May 19, 2022 and as on date) whether jointly or solely and freeze with immediate effect; and*

g. *That the State Government and Administration of Union Territories be directed to identify and disclose all details of immovable properties owned/held by the Respondent Nos. 1 to R-74 whether jointly or solely as of May 19, 2022 and as on date;*

h. *That the legal heir of Respondent No. 75 be directed to disclose on oath the details of the estate of the Late Sh. R.K. Mehra including movable and immovable properties/assets (whether owned solely or jointly) as on date of his demise and as on date and freeze such movable and immovable properties/assets with immediate effect.*

Reliefs Sought

a. *Declare that Respondent Nos. 1 to 74 and the erstwhile auditor of BPSL i.e., the late Sh. R.K. Mehra were knowingly parties to the fraudulent conduct of business and/or conducted the business of Respondent No. 76*

with a view to defraud the creditors of Respondent No. 76 and hold the Respondent Nos. 1 to 74 and the estate of the late Sh. R.K. Mehra personally liable without any limitation of liability for fraud perpetrated by them for an amount of at least Rs. 5431 crores (approx.) or any other amount as would be determined by the Hon'ble Tribunal during the proceedings of this case plus interest thereon at such rate as this Tribunal may direct;

b. *That the Respondents Nos. 1 to 74 be restrained from mortgaging or creating charge or lien or third-party interest or in any way alienating, the movable or immovable properties owned by them and further, direct attachment of all their movable and immovable assets and thereafter to realise the said assets for discharge of their liability as may be fixed by this Hon'ble Tribunal;*
c. *That the Respondent No. 75 be restrained from mortgaging or creating charge or lien or third-party interest or in any way alienating, the movable or immovable properties forming a part of the estate of the late Sh. R.K. Mehra and further, direct attachment of all their movable and immovable assets forming a part of the estate of the late Sh. R.K. Mehra and thereafter to realise the said assets for discharge of their liability as may be fixed by this Hon'ble Tribunal;*
d. *The Petitioner craves leave of the Hon'ble Tribunal to file documents/records or any other papers that may be relevant for the purpose of the present petition as per the NCLT Rules at any future appropriate time. Further, the Petitioner also craves leave of the Hon'ble Tribunal to file any documents in order to supplement/enlarge/amend/modify the present petition, including addition to the array of Respondents, as per the NCLT Rules;*
e. *The Petitioner seeks the leave of the Hon'ble Tribunal to enlarge the scope of the reliefs sought and prayers made in this petition by filing any other documents or applications in view of the extraordinary nature of the circumstances pertaining to the present petition;*
f. *The Hon'ble Tribunal may allow the Petitioner to file additional affidavit/or add or alter the number of Respondents mentioned in the Company Petition if any further particulars come into existence.*

KEY RESPONDENTS

2. Respondents Nos. 1, 6, 12 and 26 ("**Applicants in C.A. No. 223 of 2023**"); Respondent Nos. 3, 8, 11, 34 ("**Applicants in C.A. No. 228 of 2023**"); and Respondent No. 30 ("**Applicant in C.A. No. 62 of 2024**"), are entities managed and controlled by the erstwhile promoters of BPSL including Mr. Sanjay Singal and Mrs. Aarti Singal (Respondent Nos. 36 and 37 respectively). It was the contention of the Petitioner/Non-Applicant that the said Respondents were allegedly used by the erstwhile promoters to (i) siphon and divert monies of BPSL; (ii) receive and utilize siphoned and diverted monies of BPSL, and (iii) cause massive loss to public funds. It is further alleged that the directors/partners/management of these entities acted on the directions of the erstwhile promoters of BPSL and enabled (i) the conduct of affairs of BPSL in a fraudulent manner; and (ii) perpetration of a fraud on the stakeholders of BPSL.

3. Respondent Nos. 36 and 37 ("**Applicants in C.A. No. 261 of 2023**") were the erstwhile promoters of BPSL and were the alleged masterminds and eventual beneficiaries of the fraud that was perpetrated on BPSL's stakeholders. Respondent No. 36 was the erstwhile chairman and managing director of BPSL and some of its associated companies which have been arrayed as Respondent Nos. 1 to 30 herein. Respondent No. 37 is the wife of Respondent No. 36 and was a director on the board of BPSL and various of its group/associate companies. It is alleged that Respondent Nos. 36 and 37 were also the signatories to the bank accounts of BPSL and a number of group/associate companies of BPSL (including entities arrayed as Respondent Nos. 1 to 30).

4. The Petitioners allege that Respondent No. 36, along with Respondent No. 37, hatched a conspiracy to commit fraud, issued instructions for its implementation and personally directed and gained from the fraud that was perpetrated on public funds. It is alleged that the large-scale diversion and siphoning of funds has led to a massive wrongful loss to the creditors and

other stakeholders of BPSL and wrongful gain to Respondent Nos. 36 and 37 amongst others.

5. Respondent No. 44 ("**Applicant in C.A. No. 08 of 2024**") is the daughter of Respondent Nos. 36 and 37, and she was a director on the board of various companies that were involved in the round tripping/siphoning of funds. In addition, it is alleged that Respondent No. 44 was a designated partner in a Firm i.e., Respondent No. 31, which appropriated and used the diverted/siphoned funds of BPSL to purchase a real estate asset for the benefit of the promoter family.

6. Respondent Nos. 38 and 39 ("**Applicants in C.A. No. 231 of 2023**") were erstwhile directors, key managerial personnel and in the senior management of BPSL during the period under investigation. In addition to this, it is alleged that Respondent Nos. 38 and 39 were directors in various companies that were instrumental in siphoning off/diverting money and utilization of diverted monies to dupe banks and cause wrongful loss to public money.

7. It is alleged that the Respondent Nos. 38 and 39 were the close aides of the erstwhile promoter family of BPSL and knowingly perpetrated various fraudulent acts including but not limited to theft of goods and other materials belonging to BPSL and sale of the same in cash in the open market, cover-up of theft, diversion/round/tripping of money of BPSL. It is alleged that Respondent Nos. 38 and 39 were instrumental in the fraud perpetrated in BPSL and its cover-up.

8. Respondent No. 54 ("**Applicant in C.A. No. 315 of 2023**") is the individual who received monies that were siphoned off from BPSL (cash and otherwise) and transferred the same as directed to various entities associated with the erstwhile promoters of BPSL and enabled its (mis)utilization by the erstwhile promoters of BPSL in line with their fraudulent designs. It is

alleged that he had no business relationship with BPSL either as a vendor or a purchaser and yet received large amounts of monies from BPSL or at BPSL's cost during the period under investigation.

9. It is stated that, admittedly, these funds were received by him only to enable diversion and for providing accommodation entries. It is alleged that his involvement as facilitator and abettor to the round tripping of funds makes him a participant in the fraudulent conduct of affairs of BPSL/fraud perpetrated on the then creditors of BPSL.

10. Respondent No. 46 ("**Applicant in C.A. No. 390 of 2023**") is stated to be the Transporter and allegedly had issued bogus Goods Receipts (GRs) in favour of BPSL without actual transportation services and used to return the money back to BPSL through Ritesh Kapoor (Respondent No. 45) after deducting some commission.

11. BPSL is arrayed as Respondent No. 76 ("**Applicant in Inv. P. Nos. 60-67 of 2026**"). It is stated that BPSL has undergone a Corporate Insolvency Resolution Process under the Insolvency and Bankruptcy Code, 2016 ("**Code, 2016**" **/** "**Code**" / "**IBC**") and was thus acquired by JSW Steel Limited ("**JSW**") on 26.03.2021.

Brief Background

12. It was submitted that the Ministry of Corporate Affairs ("**MCA**"), based on the material available and in exercise of its power conferred under Section 212(1)(c) of the Act, assigned investigation to SFIO, vide Order No. 5/5/2016/CL-II dated 03.05.2016, into the affairs of the following 15 companies, (out of which 11 companies, including BPSL, have been arrayed as Respondents in the present petition) i.e., (i) Bhushan Steel & Power Limited (to be read as Bhushan Power and Steel Limited in terms of the Corrigendum dated 10.05.2016); (ii) Oasis Steel Limited; (iii) Olympian Finvest Pvt. Ltd.; (iv) Paragon Securities Limited; (v) Prudent Transport

Company Limited; (vi) Vishal Holdings and Capital Pvt. Ltd.; (vii) Vision Steel Limited; (viii) Aarti Iron & Power Pvt. Ltd.; (ix) Adarsh Info Tech Pvt. Ltd.; (x) Atma Ram House Investment Pvt. Ltd.; (xi) Bhushan Airways Services Pvt. Ltd.; (xii) BSN Enterprises Pvt. Ltd.; (xiii) Décor Investments and Finance Pvt. Ltd.; (xiv) Bhushan Steel Limited; and (xv) Bhushan Capital Limited.

13. Vide Order dated 12.05.2016, the Director, SFIO, appointed a team of inspectors along with the Investigating Officer to conduct the investigation. Subsequently, vide order dated 27.09.2016, a new team of inspectors and an Investigating Officer was constituted by the Director, SFIO, which was further partially modified on 30.08.2019, 31.12.2020 and 28.10.2021.

14. Meanwhile, on 26.07.2017, Corporate Insolvency Resolution Process ("**CIRP**") was initiated against BPSL on an Application under Section 7 of the Code filed on behalf of Punjab National Bank, Financial Creditor of BPSL, in **C.P. (IB) No. 202/PB/2017**.

15. Based on the material uncovered during the course of the investigation, approval for investigation into 20 more companies associated with BPSL or its erstwhile promoters was obtained from MCA u/s 219 of the Companies Act, 2013 (**"Act/Act, 2013"**), vide order dated 08.01.2018.

16. Meanwhile, vide order dated 05.09.2019, this Adjudicating Authority approved the Resolution Plan submitted by JSW Steel Limited in respect of BPSL, which resolution plan was upheld, subject to certain modifications, by the NCLAT on 17.02.2020. The Supreme Court set aside the plan by its judgment dated 02.05.2025 in **Kalyani Transco v. Bhushan Power and Steel Ltd., 2025 INSC 621, then recalled** that judgment on 31.07.2025 in review, and finally dismissed the appeals and upheld the NCLAT judgment dated 17.02.2020 by its judgment dated 26.09.2025 (2025 INSC 1165).

17. Thereafter, upon completion of the investigation into the affairs of BPSL and others, the SFIO submitted an investigation report under Section 212(12) of the Act, dated 06.05.2022, to MCA. Briefly, the investigation revealed that the affairs of the Respondent No. 76 have been conducted in a manner prejudicial to the interests of shareholders, creditors and the public at large (as well as through Respondent Nos. 1 to 30). Further, the erstwhile promoter and CMD of BPSL i.e., Respondent No. 36, along with his wife, Respondent No. 37, who were also the Directors in BPSL, were controlling directly or indirectly all Respondent Companies and proforma company.

18. It was further revealed that Respondent No. 36, the erstwhile promoter of BPSL, obtained huge loans from various banks and financial institutions, with outstanding liabilities at Rs. 47,304 crore as on 26.07.2017, at the time when the company went into insolvency, and the Resolution Professional was appointed in terms of the provisions of the Code. It is alleged that Respondent No. 36 needed to infuse capital in BPSL in order to avail credit facilities from lender banks for its steel plant and thus in order to infuse capital, and maintain the required level of debt-equity, the erstwhile promoter i.e., Respondent No. 36, assisted by its employees and close associates, through a series of concerted actions, siphoned off funds from BPSL starting from the year 2009-10. It is further alleged that in the same process, funds were also siphoned to purchase immovable and movable properties. It was submitted that the various modus operandi used for committing fraud and/or conducting the business of Respondent No. 76/BPSL in a fraudulent manner and/or defrauding creditors of BPSL are highlighted in the Investigation Report dated 06.05.2022.

19. Thereafter, vide letter dated 19.05.2022, MCA directed SFIO to initiate criminal prosecution under Section 212(14) and authorised SFIO to file captioned proceedings under Section 241, 242, 246 read with Section 339 of the Act, against the 30 CUIs (except two CUIs, namely BPSL, which had undergone CIRP under the IBC, and Bhushan Capitals Ltd.), the persons

and entities named in paragraph 3 thereof, and all other persons and entities booked under Section 447 of the Act in the report, with liberty to enhance the scope of the application. Thereafter, the instant Petition under Section 241 of the Companies Act, 2013 was filed on 11.04.2023. However, SFIO has arrayed BPSL as proforma respondent and, based on the registered office of BPSL, the territorial jurisdiction of this Tribunal has been invoked. The relevant portion of the letter dated 19.05.2022 is reproduced hereunder:

"3. Further, SFIO has recommended that disgorgement proceedings be initiated by the Central Govt. u/s 241,242,246 and 339 of Companies Act, 2013 against 30 CUIs (except two CUIs namely BPSL, which has undergone CIRP under IBC 2016 and Bhushan Capitals Ltd.) Sanjay Singal, Aarti Singal, Arun Kumar Agrawal, Alkesh Sharma, Amarjeet Singh, R.P. Goyal, H.C. Verma, Priyanka Miglani, Assurity Real Estate LLP, Shree Ankleshwar Commercial Company Pvt Ltd, Silverstar Commercial Company Pvt Ltd, Aarti Tubes Pvt Ltd, Nova lron & Steel Ltd. Accordingly, SFIO is authorized to file an application u/s 241,242, 246 and 339 of Companies Act, 2013 against the aforesaid persons/ entities along with all the persons/ entities booked u/s 447 of Act in this report with seeking liberty to enhance the scope of application to include the persons found to be involved in fraud in view of the supplementary report."

20. It is also submitted that a criminal complaint bearing Ct. Case No. 374 of 2022 has also been filed before the Special Court (Companies Act) at Dwarka, Delhi against 92 individuals and entities including Respondents herein on the basis of MCA's direction under Section 212(14) of the Act. The Special Court has taken cognizance of the said Complaint vide its order dated 20.09.2022.

21. The captioned Petition was listed for the very first time before this Tribunal on 08.06.2023, wherein the following order was passed by this Tribunal:

Heard the submission made by the Ld. Counsel for the petitioner. Ld. Counsel for the petitioner has prayed for dispensation of service of the petition, which is filed before this Tribunal along with the annexures. Keeping the principles of natural justice in view, the petitioner is hereby directed to serve a copy of the petition to all the respondents.

Respondents No. 1, 6 and 26 are represented by Ld. Senior Counsel Mr. Sudhir Makkar, who appeared physically and Respondent No. 3, 8, 11, and 34 are represented by Ld. Senior Counsel Mr. P. Nagesh who appeared through VC.

The counsel appearing on behalf of the respondents have prayed for the service of notice.

Therefore, the petitioner is directed to ensure service of notice to all the respondents in all aspects and file an affidavit of service before the next date of hearing.

Having considered the interim relief prayed for, this Tribunal directs all the respondents (R-1 to 74) to maintain the *status quo* with respect to the business assets comprising moveable or immovable properties owned whether held by individuals or jointly with others, whether situated in India or abroad, except in the regular course of business requirements and transactions.

The respondents are directed to file their reply by serving an advance copy to the petitioner before the end of the vacation. Respondents no. 36 to 74 being individuals, who are arrayed as respondents in the present petition are directed to furnish statement of assets on the next date of hearing along with their reply.

The status quo order passed today is till the next date of hearing and is subject to further direction if necessary.

Post the matter **on 13.07.2023** for a physical hearing.

Meantime, Court Officer may coordinate with Registry and ensure that the e-notice is exhibited on the NCLT website. The SFIO is also directed to exhibit the e-notice on their official website, so as to facilitate the respondents to defend their interest in the matter.

Compliance with the above order is to be reported on the next date of the hearing.

22. Thereafter, in compliance of the aforesaid order dated 08.06.2023, passed by this Tribunal, Affidavit of Service dated 10.07.2023 on behalf of the Petitioner was uploaded on the DMS-e portal on 11.07.2023.

23. On 13.07.2023, the following order was passed by this Tribunal:

> Ld. Counsel Mr. Aditya Sikka appeared on behalf of the Petitioner.
>
> Ld. Sr. Counsel Mr. P. Nagesh appeared on behalf of Respondents No. 3, 8, 11 & 34.
>
> Ld. Sr. Counsel Mr. Sudhir Makkar appeared on behalf of Respondents No. 1, 6, 12 & 26.
>
> Ld. Sr. Counsel Mr. Arvind Nayyar also appeared on behalf of Respondents No. 36 & 37.
>
> List the matter again for a physical hearing **on 20.07.2023** for completion of the pleadings, if any as per the earlier order. Vide earlier order dated 13.07.2023 this tribunal ordered all the respondents (R1 to R74) to the maintain the status quo with respect to their business assets comprising moveable or immovable properties owned whether held by individuals or jointly with others, whether situated in India or abroad, except in the regular course of business requirements and transactions. It is ordered that the interim order dated 13.07.2023 shall continue.

24. Thereafter, reply on behalf of Respondent No. 57 (Mr. Himanshu Verma) dated 11.07.2023, was uploaded on the DMS-e portal on 24.07.2023. Further, reply on behalf of Respondent No. 70 (Sh. Deepak Agarwal) dated 11.07.2023, was uploaded on the DMS-e portal on 03.08.2023.

25. Thereafter, several applications under Rule 11 read with Rule 32 of the National Company Law Tribunal Rules, 2016 ("**NCLT Rules, 2016**") challenging the maintainability of the captioned petition, bearing C.A. No. 223 of 2023 (on behalf of Respondent Nos. 1, 6, 12 and 26), C.A. No. 228 of 2023 (on behalf of Respondent Nos. 3, 8, 11 and 34), C.A. No. 231 of 2023 (on behalf of Respondent Nos. 38 and 39) and C.A. No. 261 of 2023 (on behalf of Respondent Nos. 36 and 37) came to be filed and uploaded on the DMS-e portal on 12.07.2023, 17.07.2023 and 19.07.2023 respectively, inter alia, seeking similar reliefs, as follows:

   a. *Dismiss the present proceedings being not maintainable bearing no. CP/105/241/PB/2023 titled as Serious Fraud Investigation Office on behalf of Union of India v. Bhushan Airways Services Private Limited & Ors.;*
   b. *Pass any such or further order(s) which this Tribunal may deem fit and proper.*

26. On 20.07.2023, the following order was passed by this Tribunal:

> **New CA-222/2023, New CA-223/2023, New CA-228/2023 & New CA-231/2023**
>
> Ld. Counsel Mr. Aditya Sikka for the SFIO appeared physically.
>
> In the case of *R. K. Gupta & Ors. vs. Union of India through Ministry of Corporate Affairs & Anr. in W.P.(CRL) 1891/2023,* following proceedings as recorded by the Hon'ble Delhi High Court has been filed by the *Ld. Counsel for the Respondent.*

27. On 10.08.2023, the following order was passed by this Tribunal:

> **New CA-261/2023**
>
> Notice of this Application be issued to the Respondents/Non-applicants returnable on dated 31.08.2023.
>
> List the matter on 31.08.2023.

28. Thereafter, a reply dated 24.08.2023, on behalf of UOI through SFIO, to C.A. No. 223 of 2023; C.A. No. 228 of 2023, C.A. No. 231 of 2023 and C.A. No. 261 of 2023 was filed and uploaded on the DMS-e portal on 25.08.2023.

29. On 31.08.2023, the following order was passed by this Tribunal:

> **CA-222/2023, CA-223/2023, CA-228/2023, CA-231/2023 & CA-261/2023**
>
> In the Applications filed by the Respondents in the main matter, Union of India (SFIO) has filed the reply.
>
> Applicants in these applications seeks some time to file the rejoinder.
>
> Request is granted.
>
> Ld. Counsel for the UOI points out that in earlier order dated 13.07.2023, a reference is made inadvertently to order dated 13.07.2023 whereas it should be reference to order dated 08.06.2023. The same is ordered to be rectified.
>
> List the matter on 21.09.2023.

30. Thereafter, C.A. No. 315 of 2023 under Rule 11 read with Rule 32 of the NCLT Rules, 2016, also challenging the maintainability of the captioned petition, was filed and uploaded on the DMS-e portal on 04.09.2023 seeking the following reliefs:

a. *Dismiss the present proceedings being not maintainable bearing no. CP 105/241/PB/2023 titled as Serious Fraud Investigation Office on behalf of Union India vs. Bhushan Airways Services Private Limited & Ors.;*

b. *Pass any such or further order(s) which this Hon'ble Tribunal may deem fit and proper.*

31. On 14.09.2023, the following order was passed by this Tribunal:

> **New CA-315/2023**
>
> List the CA on 21.09.2023 with the main matter.

32. Thereafter, rejoinder to C.A. No. 223 of 2023, C.A. No. 228 of 2023 and C.A. No. 261 of 2023 dated 20.09.2023 was uploaded on the DMS-e portal on 20.09.2023.

33. On 21.09.2023, the following order was passed by this Tribunal:

> **CA-222/2023, CA-223/2023, CA-228/2023, CA-231/2023, CA-315/2023 & CA-261/2023**
>
> In few of the applications filed for maintainability, the Union of India has filed the reply and the parties have also filed the rejoinder.
>
> In some applications, replies have been filed yesterday and the rejoinders will be filed before the next date of hearing.
>
> There are fresh applications which are yet to be numbered in this matter and that will be taken up for consideration.
>
> In view of the proceedings pending before the Hon'ble Delhi High Court and at request of the Ld. Counsels for the parties, the matter stands adjourned to 19.10.2023.
>
> Interim order to continue.

34. Thereafter, a reply dated 20.09.2023, on behalf of UOI through SFIO to C.A. No. 315 of 2023, was filed and uploaded on the DMS-e portal on 21.09.2023. Rejoinder thereto was filed and uploaded on the DMS-e portal on 18.10.2023.

35. In C.A. No. 315 of 2023 (dated 30.08.2023), Respondent No. 54 contended, inter alia, that:

(i) the Petition arrays multiple independent companies and individuals, is based on generic and vague allegations without specific accusations against the respective respondents, and rests solely on the Investigation Report dated 06.05.2022, which is merely the opinion of the investigating officers;

(ii) the investigation against him was carried out without the prior approval of the Central Government required under Section 219(d) of the Act;

(iii) the validity of the investigation, the Investigation Report and the sanction letter dated 19.05.2022 was sub judice in W.P. (Crl.) No. 1891 of 2023 (R.K. Gupta v. Union of India), in which notice was issued on 07.07.2023, and the present proceedings ought not to proceed in the meantime;

(iv) Section 241(2) refers to "the company" and contemplates proceedings against one company at a time, whereas plural, unconnected causes of action and remedies are pursued against Respondent Nos. 1 to 35; and;

(v) there was no urgency, the sanction having been granted on 19.05.2022 and the Petition having been filed in the first week of April 2023.

36. In its reply dated 20.09.2023, the SFIO contended that the Petition alleges the fraudulent conduct of the business of Respondent No. 76 and seeks, under Section 339, to impose liability on Respondent Nos. 1 to 75 as knowing parties thereto; that the causes of action are interconnected; that no approval under Section 219 was required qua the Applicant; that the High Court had not stayed the Petition; and that the Applicant had not disclosed his assets despite the orders of this Tribunal. It annexed its short affidavit filed in W.P. (Crl.) No. 1891 of 2023. In his rejoinder dated 18.10.2023, Respondent No. 54 reiterated these grounds and contended that the questions raised were pure questions of law to be decided at the threshold.

37. On 19.10.2023, the following order was passed by this Tribunal:

> **CA-222/2023, CA-223/2023, CA-228/2023, CA-231/2023, CA-315/2023, CA-261/2023**
>
> Mr. Sudhir Makkar, Ld. Sr. Counsel appeared and stated that the Hon'ble High Court of Delhi vide order dated 17.10.2023 has reserved the judgment. The said order reads as follows:-
>
> 1. *Arguments have been heard.*
> 2. *Judgment is reserved.*
> 3. *Interim order to continue till then.*
>
> In view of the judgment having been reserved, we defer the hearing in this matter till 11.01.2024.
>
> The parties are at liberty to mention for early hearing if any order is passed before 11.01.2024.

38. Thereafter, C.A. No. 390 of 2023 under Rule 11 read with Rule 32 of the NCLT Rules, 2016, also challenging the maintainability of the captioned petition was filed and uploaded on the DMS-e portal on 27.10.2023 seeking the following reliefs:

a. *Dismiss the present proceedings bearing CP No. 105/241/PB/2023 titled as Serious Fraud Investigation Office on behalf of Union of India vs. Bhushan Airways Services Private Limited & Ors. being not maintainable; and/or;*
b. *Pass any such or further order(s) which this Hon'ble Tribunal may deem fit and proper.*

39. On 02.11.2023, the following order was passed by this Tribunal:

> **New CA-390/2023**
>
> Notice of this application be issued to the Respondent/Non-applicant returnable **by 11.01.2024.**

40. Thereafter, C.A. No. 08 of 2024 under Rule 11 read with Rule 32 of the NCLT Rules, 2016, also challenging the maintainability of the captioned petition was filed and uploaded on the DMS-e portal on 10.01.2024 seeking the following reliefs:

a. *Dismiss the captioned petition and proceedings being not maintainable and in contravention to Companies Act 2013;*
b. *Delete the name of the Applicant/original Respondent No. 44 from the array of parties in the captioned petition;*

c. *Pass an **interim relief,** that Petitioner in the original Captioned Petition/Respondent herein, be restrained from taking any cognizance of the subject report and initiate any proceedings/take any action against the original Respondent No. 44/Applicant herein;*

d. *Pass any other order or relief(s) as this Hon'ble Tribunal may deem fit and necessary in the facts and circumstances of this case and in the interest of justice.*

41. On 11.01.2024, the following order was passed by this Tribunal:

> **CA-222/2023, CA-223/2023, CA-228/2023, CA-231/2023, CA-315/2023, CA-261/2023, IA(CA)-371/2023, CA-390/2023, New CA-08/2024**
>
> Ld. Counsels for the parties appeared.
>
> These cases were adjourned on the ground that the matter was pending before the Hon'ble Delhi High Court. However, today it has been submitted by all the parties that the Hon'ble Delhi High Court has dismissed the matter and the parties have filed an appeal before the Hon'ble Supreme Court which is coming up tentatively on Monday i.e. 15.01.2024.
>
> Ld. Counsel for the Union of India appeared through VC and sought time to get proper instruction.
>
> At the request and with the consent of all the parties, list the matter for a physical hearing **on 25.01.2024.**

42. On 25.01.2024, the following order was passed by this Tribunal:

> **CA-08/2024**
>
> Notice of the application be issued to the Respondent(s)/non-applicant(s), returnable **on 07.03.2024.**
>
> If a reply has been filed, the Rejoinder is to be filed.
>
> In the meantime, parties are at liberty to complete the pleadings. Let the hard copies of the pleadings be filed before the next date of hearing.
>
> **CP 105/241/PB/2023**
>
> At request and with consent of the parties, list the matter along with the other pending applications for a physical hearing **on 07.03.2024.**

43. Thereafter, reply on behalf of UOI through SFIO to C.A. No. 08 of 2024, dated 24.01.2024, was filed and uploaded on the DMS-e portal on 15.02.2024.

44. Thereafter, C.A. No. 62 of 2024 under Rule 11 read with Rule 32 of the NCLT Rules, 2016, also challenging the maintainability of the captioned petition, was filed and uploaded on the DMS-e portal on 04.03.2024 seeking the following reliefs:

a. *Dismiss the present proceedings being not maintainable bearing no. CP 105/241/PB/2023 titled as Serious Fraud Investigation Office on behalf of Union of India vs. Bhushan Airways Services Private Limited & Ors.;*

b. *Pass any such or further order(s) which this Hon'ble Tribunal may deem fit and proper.*

45. On 11.03.2024, the following order was passed by this Tribunal:

> **CA-222/2023, CA-223/2023, CA-228/2023, CA-231/2023, CA-315/2023, CA-261/2023, IA(CA)-371/2023, CA-390/2023, CA-08/2024**
>
> Mr. Aditya Sikka, Ld. Counsel for the Petitioner appears through VC.
>
> Several Counsels representing the Respondents appear physically and some appear through VC.
>
> Respondents are permitted to file the reply, if not already filed.
>
> At request and by consent of all the parties, list the matter **on 16.05.2024.**
>
> **New CA-62/2024**
>
> Mr. U. K. Choudhary, Ld. Sr. Counsel for the Applicant appears physically.
>
> Notice of this application be issued to the Respondent(s)/Non-applicant(s).
>
> Mr. Aditya Sikka, Ld. Counsel for the Respondent/SFIO in this application appears through VC and accepts notice.
>
> At request and by consent of both sides, list this application **on 16.05.2024** with connected matters.

46. Thereafter, rejoinder dated 11.05.2024, in C.A. No. 08 of 2024, was filed and uploaded on the DMS-e portal on 11.05.2024.

47. In C.A. No. 08 of 2024, Respondent No. 44 contended, inter alia, that:

(i) she had no role in the day-to-day working of Respondent No. 76, and no specific allegation or role has been ascribed to her in the Petition;

(ii) under Section 219(d) of the Act, no investigation could be carried out against her without the prior approval of the Central Government, and none is on record;

(iii) the Petition is a consolidated petition against independent companies having their registered offices in different regions, contrary to 63 Moons Technologies Ltd. v. Union of India, Company Appeal (AT) No. 03 of 2017, and the registered office of the proforma Respondent No. 76 cannot confer jurisdiction;

(iv) multiple remedies are sought on plural, unconnected causes of action; and

(v) Respondent No. 42 had challenged the Investigation Report and the sanction letter in W.P. (Crl.) No. 1891 of 2023 before the High Court of Delhi.

48. In its reply dated 24.01.2024, the SFIO contended that the Applicant was a designated partner of Assurity Real Estate LLP (Respondent No. 31), into which siphoned monies were routed to purchase real estate, that she had received monies from entry operators and was a director on the boards of front companies, that no approval under Section 219(d) was required to array her, and that W.P. (Crl.) No. 1891 of 2023 had been dismissed and the dismissal confirmed by the Supreme Court. In rejoinder, Respondent No. 44 reiterated her contentions, denied having been a director of any of the companies, and relied on the pendency of W.P. (Crl.) No. 3497 of 2023 and W.P. (Crl.) No. 3697 of 2023 before the High Court of Delhi and of Ct. Case No. 374 of 2022 before the Special Court, Dwarka.

49. On 16.05.2024, the following order was passed by this Tribunal:

> On 08.06.2023, the following order was passed.
>
> *"Heard the submission made by the Ld. Counsel for the petitioner. Ld. Counsel for the petitioner has prayed for dispensation of service of the petition, which is filed before this Tribunal along with the annexures. Keeping the principles of natural justice in view, the petitioner is hereby directed to serve a copy of the petition to all the respondents.*
> *Respondents No. 1, 6 and 26 are represented by Ld. Senior Counsel Mr. Sudhir Makkar, who appeared physically and Respondent No. 3, 8, 11, and 34 are represented by Ld. Senior Counsel Mr. P. Nagesh who appeared through VC.*
> *The counsels appearing on behalf of the respondents have prayed for the service of notice.*
> *Therefore, the petitioner is directed to ensure service of notice to all the respondents in all aspects and file an affidavit of service before the next date of hearing.*
> ***Having considered the interim relief prayed for, this Tribunal directs all the respondents (R-1 to 74) to maintain the status quo with respect to the business assets comprising moveable or immovable properties owned whether held by individuals or jointly with others, whether situated in India or abroad, except in the regular course of business requirements and transactions.***
> *The respondents are directed to file their reply by serving an advance copy to the petitioner before the end of the vacation. Respondents no. 36 to 74 being individuals, who are arrayed as respondents in the present petition are directed to furnish statement of assets on the next date of hearing along with their reply.*
> *The status quo order passed today is till the next date of hearing and is subject to further direction if necessary.*
> *Post the matter* ***on 13.07.2023*** *for a physical hearing.*
>
> > *Meantime, Court Officer may coordinate with Registry and ensure that the e-notice is exhibited on the NCLT website. The SFIO is also directed to exhibit the e-notice on their official website, so as to facilitate the respondents to defend their interest in the matter.*
> > *Compliance with the above order is to be reported on the next date of the hearing."*

The interim order was extended in subsequent hearing and remains in force till further orders.

Certain issues have been raised by Ld. Counsel for the SFIO supported by the Respondent No. 76 (BPSL). It appears from the statement made by SFIO that there are certain transactions which happened post the filing of the petition and also post the interim order dated 08.06.2023. Whether it is true or not, it is always necessary that the parties who are respondents should show the details of the transactions, which happened post the filing of the petition and also post the interim order.

We direct each one of the respondents through their counsels to give full disclosure of any transactions that had happened post the filing of petition and also post the interim order passed before the next hearing date with serving a copy in advance to the SFIO.

List the matter again **on 18.07.2024** along with all other pending applications.

50. On 06.06.2024, the following order was passed by this Tribunal:

> 1. Ld. Sr. Counsel Mr. Gopal Jain appeared on behlaf of the Applicant.
>
> 2. Ld. Sr. Counsel Mr. Sudhir Makkar appeared on behalf of the Respondent(s).
>
> 3. Ld. Sr. Counsel Mr. Arvind Nayyar also appeared on behalf of the Respondents No. 36 and 37.
>
> 4. A copy of the order passed by the Ld. Single Judge of the Hon'ble Delhi High Court dated 31.05.2024 was placed before us which would be filed in due course. It is also informed by Ld. Sr. Counsel Mr. Sudhir Makkar appearing for the Respondent(s) that two LPAs have been filed and they are also taken by the Hon'ble Division Bench. Certain interim directions have been issued and the same will be produced on the next date of hearing.
>
> 5. In any event, since the issue is pending before the Hon'ble Delhi High Court both before the Ld. Single Judge and before the Hon'ble Divison Bench, we are inclined to adjourn the matter along with all the other pending applications for a physical hearing to **18.07.2024.**

51. On 22.08.2024, the following order was passed by this Tribunal:

> Ld. Counsels for the parties appeared.
>
> Proxy Counsel Ms. Onshi Jakhar appeared on behalf of the main counsel Mr. Aditya Sikka for the Petitioner and stated that the main counsel is unwell, so she sought adjournment in the matter. It is also stated that the same is already informed to other party/Respondent(s).
>
> At request of Proxy Counsel Ms. Onshi Jakhar for the Petitioner and with consent of the parties, list the matter along with all the other pending applications for a physical hearing **on 29.08.2024.**

52. On 29.08.2024, the following order was passed by this Tribunal:

CP 105/241/PB/2023

In terms of order dated 16.05.2024, Ld. Counsels for the Respondents appeared and undertook to comply with the said order. Ld. Counsels undertook to file affidavit preferably on or before 12.09.2024.

At request and by consent, list the matter on **12.09.2024.**

CA-194/2024, CA-195/2024

Mr. Gaurav Mitra, Ld. Counsel appeared for the Applicants. On hearing his submissions and perusing the applications, we find no cause for clarification.

In view of the above, **CA-194/2024 & CA-195/2024 stands dismissed**.

New Cont. P-19/2024

Issue notice of this Contempt Petition to the Respondent(s) by all modes, returnable by 12.09.2024.

List the matter on **12.09.2024.**

New CA-201/2024, New CA-203/2024, New CA-205/2024, New CA-206/2024, New Cont. P-18/2024, New CA-213/2024 New CA-214/2024

Issuance of notice in these applications will be considered after compliance of order dated 16.05.2024. At request and by consent, list these IAs on **12.09.2024.**

CA-222/2023, CA-223/2023, CA-228/2023, CA-231/2023, CA-315/2023, CA-261/2023, IA(CA)-371/2023, CA-390/2023, CA-08/2024, IA(CA)- 58/2024, CA-62/2024, IA(CA)- 09/2024, CA-126/2024, CA-78/2024

At request and by consent, list these IAs on **12.09.2024.**

53. On 12.09.2024, the following order was passed by this Tribunal:

> **1.** Ld. Counsels for the parties appeared.
>
> **2.** In terms of our order dated 16.05.2024, it is stated that the Respondent No. 1, 3, 6, 7, 8, 9, 11, 12, 17, 19, 20, 21, 26, 30, 75 have filed their affidavit which has also been served to Union of India through SFIO.
>
> **3.** Ld. Sr. Counsel Mr. Sudhir Makkar appeared and stated that he had filed the affidavit on behalf of Respondent No. 34 yesterday only and has also served the same to Union of India through SFIO.
>
> **4.** Ld. Sr. Counsel Mr. Arvind Nayar appearing on behalf of Respondent No. 36 & 37, Ld. Counsel Gaurav Mitra appearing on behalf of Respondent No. 38, 39 & 41, and Ld. Counsel Ms. Aparana Singh appearing on behalf of Respondent No. 47, 48 & 49 sought some time to file the affidavit in compliance with the order dated 16.05.2024.
>
> **5.** In so far as these Respondents are concerned, they tendered an unconditional apology for not filing the affidavit in time which is taken on record. They undertook to file the affidavit on or before the next date of hearing.
>
> **6.** All the Respondents are directed to upload the same on the DMS portal and file the hard copy, if not done. Further, all the respondents are directed to serve the copy of the affidavit well in advance (if not served) to the counsel for the SFIO for effective adjudication.
>
> **7.** In addition to that, some of the Respondents are seeking liberty to file documents in a sealed cover. They are permitted to do so through the Registry and the same will be taken on record on the next date of hearing.
>
> **8.** Ld. Counsel for the SFIO objects and states that the affidavit filed so far are not adequate compliance of the order dated 16.05.2024 and he pleads that the same would be indicated on the next date of hearing.
>
> **9.** At request and with consent of the parties, list the matter along with other pending applications for a physical hearing **on 03.10.2024.**
>
> **CA-194/2024, CA-195/2024**
>
> It is stated that these applications have already been dismissed vide order dated 29.08.2024. Registry is directed to delete the CA-194/2024, CA-195/2024 from the cause list.

54. On 03.10.2024, the following order was passed by this Tribunal:

> In terms of our order dated 12.09.2024, it appears that some of the parties have complied with the directions while some have not. In this regard, Ld. Counsel for the SFIO stated that there is a list of respondents from Sr. No. 1 to 48, whose names are given below who have not filed their affidavit of disclosure in terms of order dated 08.06.2023 and 16.05.2024:-
>
> 2. It appears that some may have filed at the last minute yesterday. In view of the same, if these respondents have not filed the compliance disclosure affidavit complying with our order as above, they are directed to comply with the same on or before the next date of hearing.
>
> 3. We direct them not to seek further time as appropriate action will be initiated for not complying with these directions.
>
> 4. On instructions Mr. Arvind Nayyar, Ld. Sr. Counsel states that respondent No. 40 (Alkesh Sharma) is no more and accordingly may also be taken into consideration on the next date of hearing.
>
> 5. List the matter on 14.11.2024.

55. On 14.11.2024, the following order was passed by this Tribunal:

> In furtherance of our order dated 03.10.2024, Ld. Counsel Mr. Aditya Sikka appearing for the SFIO seeks some time to collate all the compliance affidavits filed by the respective Respondents and prepare a chart so as to proceed further in the matter. If anything further is required, he will also indicate the same on the next date of hearing. If any party has still not filed the compliance as already ordered, they are directed to do so without any further delay failing which they will be liable to other consequential orders as may be necessary.
>
> At request and with consent of the parties, list the matter along with all the other pending applications for a physical hearing **on 12.12.2024.**

56. On 12.12.2024, the following order was passed by this Tribunal:

> **CA-222/2023, CA-223/2023, CA-228/2023, CA-231/2023, CA315/2023, CA-261/2023, IA (CA)-371/2023, CA-390/2023, CA-08/2024, IA(CA)- 58/2024, CA-62/2024, IA(CA)- 09/2024, CA-126/2024, CA78/2024**
>
> Mr. K. Avinash, Ld. Counsel for Respondent Nos. 36 & 37 having instructed Ld. Sr. Counsel to appear, he himself choose not to appear either in person or through VC alongwith Ld. Sr. Counsel, thereby causing delay in adjudication process. He is directed to be present in person on the next date of hearing.
>
> In compliance of our order dated 08.06.2023, Ld. Counsel for the Union of India has produced a tabulation of notes. In the said note, compliance and non-compliance have been listed in Annexures – 4 to 9.
>
> There are certain compliances in respect of Annexure-4 which the Ld. Counsel will amplify on the next date of hearing.
>
> Annexure-5 contains list of Respondents who have not filed affidavits in compliance of our orders dated 08.06.2023 & 16.05.2024. As a last chance, time is given till 02.01.2025 failing which appropriate order will be passed to secure their presence and compliance of the orders as above.
>
> Annexure-6 are category-A affidavits which are taken on record subject to verification and submission of few deficiencies thereon.
>
> Annexure-7 are category-B affidavits which are given in sealed cover. The same will be verified by this court later on.
>
> As far as Annexure-8 which are category-C affidavits are concerned, it is directed to ensure that the affidavits are fully compliant in terms of the defect pointed out by Union of India.
>
> Annexure-9 are category-D affidavits. In these affidavits, some defects have been pointed out by the Counsel for Union of India. The same will be considered on the next date of hearing. At request and by consent, list the matter on **02.01.2025.**

57. On 02.01.2025, the following order was passed by this Tribunal:

> Ld. Counsel for the parties appeared and are directed to comply with order dated 08.06.2023 and 16.05.2024.
>
> At request and with consent, list the matter on **23.01.2025.**

58. On 23.01.2025, the following order was passed by this Tribunal:

> Heard Ld. Counsel Mr. Aditya Sikka appearing on behalf of the SFIO, Ld. Sr. Counsel Mr. Sudhir Kumar Makkar appearing on behalf of Respondent No. 1, 3, 6, 8, 11, 12, 26, 34 and Ld. Sr. Counsel Mr. Arvind Nayyar appearing on behalf of Respondent No. 36 & 37.
>
> Since the present bench is only a Special Bench and there will be a change in the Constitution of the Bench.
>
> For the convenience of all parties and for proper adjudication, at request and with consent of parties, list the matter along with all the other pending applications for a physical hearing **on 13.02.2025.**

59. On 06.03.2025, the following order was passed by this Tribunal:

> **CA-30/2025**
>
> Notice of the application be issued to the Respondent(s)/non-applicant(s), returnable **on 24.04.2025.**
>
> **Cont. P 18/2024**
>
> This is a petition filed by Bhushan Power & Steel Limited, which is a pro forma party. As to whether this contempt petition lies on the basis of the petitioner is an issue that will be considered later.
>
> List the matter again **on 24.04.2025.**
>
> **CA-222/2023, CA-223/2023, CA-228/2023, CA-231/2023, CA-315/2023, CA-261/2023, IA(CA)-371/2023, CA-390/2023, CA-08/2024, IA(CA)- 58/2024, CA-62/2024, IA(CA)- 09/2024, CA-126/2024, CA-78/2024, CA-201/2024, CA-203/2024, CA-205/2024, CA-206/2024, Cont. P 19/2024, CA-213/2024, CA-214/2024, CA-241/2024, New CA-41/2025.**
>
> Ld. Counsels for the parties appeared.
>
> The Regular Bench is now sitting, and the sealed cover submitted will be verified. The next course of action will be informed on the next date of hearing.
>
> List the matter for further consideration **on 24.04.2025.**

60. On 22.05.2025, the following order was passed by this Tribunal:

> **1.** Post the decision of Hon'ble Supreme Court in the matter of "***Kalyani Transco v. M/s. Bhushan Power and Steel Ltd. & Ors., Civil Appeal No. 1808 of 2020 and other connected cases, including the Appeal filed by the Applicant, being Civil Appeal Nos. 2192-2193 of 2020***", effectively, there is no representation on behalf of Bhushan Power and Steel Ltd. & Ors. as such.
>
> **2.** Be that as it may, in the main matter file by the SFIO, there are several applications filed by the respondents raising preliminary issues on the maintainability of the proceedings, those applications are:
>
> CA-222/2023, CA-223/2023, CA-228/2023, CA-231/2023, CA-315/2023, CA-261/2023, CA-390/2023, CA-08/2024, and CA-62/2024.
>
> **3.** And there are also applications for vacating of the interim order on the plea of maintainability, which reads as under:
>
> CA-201/2024, CA-203/2024, CA-205/2024, CA-206/2024, CA-213/2024 and CA-214/2024.
>
> **4.** Ld. Counsel Mr. Aditya Sikka, appearing on behalf of SFIO, submitted that as among the aforementioned list, he has filed reply in seven applications (CA-223/2023, CA-228/2023, CA-222/2023, CA-231/2023, CA-261/2023, CA-315/2023, CA-08/2024) and he seeks time to file reply to the remaining applications (CA-201/2024, CA-203/2024, CA-205/2024, CA-206/2024, CA-213/2024 and CA-214/2024). After receiving the reply in aforementioned applications, further directions will be issued, as to how the matter should be proceed.
>
> **5.** At the request and with the consent of both sides, list the matter **on 07.08.2025** along with IA(CA)-371/2023 IA(CA)-09/2024 CA-126/2024 CA- 78/2024 Cont. P 18/2024 Cont. P 19/2024 CA-241/2024 CA-30/2025 CA- 41/2025.

61. On 07.08.2025, the following order was passed by this Tribunal:

> **1.** On 22.05.2025, the following order was passed:
>
> *"* ***ORDER***
>
> ***1.*** *Post the decision of Hon'ble Supreme Court in the matter of* ***"Kalyani Transco v. M/s. Bhushan Power and Steel Ltd.&Ors., Civil Appeal No. 1808 of 2020 and otherconnected cases, including the Appeal filed by theApplicant, being Civil Appeal Nos. 2192-2193 of 2020",*** *effectively, there is no representation on behalf of BhushanPower and Steel Ltd. &Ors. as such.*
>
> ***2.*** *Be that as it may, in the main matter file by the SFIO, there are several applications filed by the respondents raisingpreliminary issues on the maintainability of theproceedings, those applications are:*
>
> *CA-222/2023, CA-223/2023, CA-228/2023, CA-231/2023, CA-315/2023, CA-261/2023, CA-390/2023,CA-08/2024, and CA-62/2024.*
>
> ***3.*** *And there are also applications for vacating of the interimorder on the plea of maintainability, which reads as under:*

CA-201/2024, CA-203/2024, CA-205/2024, CA-206/2024, CA-213/2024 and CA-214/2024.

4. *Ld. Counsel Mr. Aditya Sikka, appearing on behalf of SFIO,submitted that as among the aforementioned list, he hasfiled reply in seven applications (CA-223/2023, CA-228/2023, CA-222/2023, CA-231/2023, CA-261/2023, CA-315/2023, CA-08/2024) and he seeks time to file reply tothe remaining applications (CA-201/2024, CA-203/2024,CA-205/2024, CA-206/2024, CA-213/2024 and CA-214/2024). After receiving the reply in aforementionedapplications, further directions will be issued, as to how thematter should be proceed.*

5. *At the request and with the consent of both sides, list thematter* ***on 07.08.2025*** *along with IA(CA)-371/2023 IA(CA)-09/2024 CA-126/2024 CA- 78/2024 Cont. P 18/2024 Cont. P. 19/2024 CA-241/2024 CA-30/2025 CA- 41/2025."*

2. Today, when the matter was taken up, Ld. Counsel Mr. Aditya Sikka appearing for the petitioner (UOI) and submitted that he requires some more time to file the reply to CA-201/2024, CA-203/2024, CA-205/2024, CA-206/2024, CA-213/2024 and CA-214/2024. He also seeks further time to file a reply to CA-62/2024.

3. At the request and with the consent, list the matter **on 25.09.2025.**

CA-126/2024

All respondents, who have been served, are directed to file their replies before the next date of hearing. If service has not been completed on any parties, the applicant is directed to ensure completion of service so that effective appearance can be made.

At the request and with the consent, list the matter **on 25.09.2025.**

CA-222/2023, CA-223/2023, CA-228/2023, CA-231/2023, CA-315/2023, CA-261/2023, CA-390/2023, CA-08/2024, IA(CA)-371/2023, IA(CA)-09/2024, CA-78/2024, Cont.P 18/2024, Cont. P-19/2024, CA-241/2024, CA-30/2025, CA-41/2025 and IA(CA)- 58/2024.

Ld. Counsel for the parties appeared.

At the request and with the consent, list the matter **on 25.09.2025.**

62. On 25.09.2025, the following order was passed by this Tribunal:

> **CA-222/2023, CA-223/2023, CA-228/2023, CA-231/2023, CA-315/2023, CA-261/2023, CA-390/2023, CA-08/2024, CA-62/2024 (Category A : Maintainability of CP related applications)**
> **CA-201/2024, CA-203/2024, CA-205/2024, CA-206/2024, CA-213/2024 and CA-214/2024 (Category B: For vacating of the interim order on the plea of maintainability)**
> **IA(CA)-371/2023, IA(CA)-09/2024, CA-126/2024, CA-78/2024, Cont. P 18/2024, Cont. P-19/2024, CA-241/2024, CA-30/2025, CA-41/2025 and IA(CA)- 58/2024 (Category C : Others Applications).**
>
> Proxy Counsel, Ms. Onshi Jakhar, for the Mr. Aditya Sikka, appearing on behalf of the UOI, appeared and submitted that he is blessed with a child and sought for an adjournment. All the parties have been informed by the concerned person.
>
> At the request and with consent of all the parties concerned, list the matter **on 11.12.2025.**

63. On 11.12.2025, the following order was passed by this Tribunal:

> **CA-126/2024**
>
> Ld. Senior Counsel Mr. J. Sivanandraaj appearing for the Applicant. The applicant is directed to file affidavit of service and serve the copy of this application to the Respondent(s) before the next date of hearing, if not already done. The Respondent(s) are directed to file reply within a week from the receipt of the copy of the application.
>
> The applicant is at liberty to file rejoinder, if any, thereafter.
>
> List the application on **12.02.2026**.
>
> **CA-222/2023; CA-223/2023; CA-228/2023; CA-231/2023; CA-315/2023; CA-261/2023; CA-390/2023; CA-08/2024; CA-62/2024; CA-201/2024; CA-203/2024; CA-206/2024; CA-205/2024; CA-213/2024; CA-214/2024; IA(CA)-371/2023; IA(CA)-09/2024; CA- 78/2024; Cont. P 18/2024; Cont. P 19/2024; CA-241/2024; CA-30/2025; IA(CA)-58/2024; CA- 41/2025**
>
> Ld. Counsels for the Parties appeared and states that some of the applications are part-heard. In view of the same, since, this is a Special Bench, the matter may be listed before the Regular (Principal) Bench. In the meanwhile, the parties are directed to complete pleadings before the next date of hearing, if not already done.
>
> At request and with consent, list the matter before the Regular (Principal) Bench for further consideration on **12.02.2026**.

64. On 12.02.2026, the following order was passed by this Tribunal:

CA-241/2024

Ld. Counsel Mr. Aditya Sikka for the SFIO submits that he has wrongly made one of the parties as respondent. Considering the submissions made by the Ld. Counsel, the application is allowed. Ld. Counsel Mr. Aditya Sikka is directed to file the amended memo of parties and to take appropriate steps to bring the same on record.

Accordingly, the **CA-241/2024** stands **disposed of**.

CA-126/2024

Ld. Counsel for the Petitioner appears and seeks time to file rejoinder. He is permitted to do so before the next date of hearing.

List the matter on **09.04.2026.**

CA-222/2023; CA-223/2023; CA-228/2023; CA-231/2023; CA-315/2023; CA-261/2023; CA-390/2023; CA-08/2024; CA-62/2024; CA-201/2024; CA-203/2024; CA-205/2024; CA-206/2024; CA-213/2024; CA-214/2024; IA(CA)-371/2023; IA(CA)-09/2024; CA- 78/2024; Cont. P 18/2024; Cont. P 19/2024; CA-30/2025; CA- 41/2025; IA(CA)-58/2024

Since, there are numbers of applications which needs to be argued on merits, it may not be possible to complete proceedings today. Hence, due to paucity of time, list the matter on **09.04.2026**.

65. On 09.07.2026, the following order was passed by this Tribunal:

1. Ld. Counsel for the Parties are directed to file a short note before the next date of hearing.

2. List **on 23.07.2026.**

CA-222/2023; CA-223/2023; CA-228/2023; CA-231/2023; CA-315/2023; CA-261/2023; CA390/2023; CA-08/2024; CA-62/2024; CA-201/2024; CA-203/2024; CA-205/2024; CA-206/2024; CA-213/2024; CA-214/2024; IA(CA)-371/2023; IA(CA)-09/2024; CA-126/2024, CA-78/2024; Cont. P 18/2024; Cont. P 19/2024; CA-30/2025; CA-41/2025; IA(CA)-58/2024, CA-110/2026

List **on 23.07.2026.**

66. Thereafter, Intervention Petitions bearing Nos. 60-67 of 2026 on behalf of Respondent No. 76 under Rule 11 read with Rules 2(16), 34, 41 and 51 of the NCLT Rules, 2016, read with Sections 420(1), 424(1) and 242(4) of the Companies Act, 2013 and the principles underlying Order I Rule 10(2) of the Code of Civil Procedure, 1908 seeking leave to intervene in the maintainability applications bearing C.A. No. 223 of 2023, C.A. No. 228 of 2023, C.A. No. 231 of 2023, C.A. No. 315 of 2023, C.A. No. 261 of 2023, C.A. No. 390 of 2023, C.A. No. 08 of 2024 and C.A. No. 62 of 2024 were filed and uploaded on the DMS-e portal on 21.07.2026, 31.07.2026 and 20.08.2026 seeking the following reliefs (as framed in Ivn. Pet. No. 60 of 2026 in C.A. No. 62 of 2024, the prayers in the other Intervention Petitions being identical mutatis mutandis):

a. *Grant leave to the Applicant, Bhushan Power and Steel Limited, being Respondent No. 76 in Company Petition No. 105/241/PB/2023, to intervene and to be heard in Company Application No. 62 of 2024 upon maintainability of the Company Petition;*
b. *Direct that no order be passed upon the said Company Application without affording to the Applicant a reasonable opportunity of being heard;*
c. *Direct that the Applicant be served with copies of all pending applications, and of any application hereafter filed, by which maintainability of Company Petition No. 105/241/PB/2023 is assailed or its dismissal upon any threshold ground is sought, and that the Applicant be entitled to address the arguments thereon;*
d. *Pass such further or other orders as this Hon'ble Tribunal may deem fit and proper in the facts and circumstances of the case.*

67. In the said Intervention Petitions, Respondent No. 76 pleaded, inter alia, that:

(i) it was arrayed as a proforma respondent but was omitted from the array of every maintainability application, and so had neither notice nor an opportunity to be heard on a threshold issue which, if decided against the

Petition, would extinguish the only proceeding for recovery of the alleged fraud of approximately INR 5,431 crores perpetrated on it;

(ii) its right to be heard rests on six foundations: it is the corpus of the lis, liability under Section 339 operates through it, its own status is in issue on territorial jurisdiction, it has an interest in the integrity of the clean slate under Section 32A of the IBC, it is bound by the outcome (the order dated 16.05.2024 records its support and it preferred LPA No. 493 of 2024 in its own name, and its C.A. No. 18 of 2024 and C.A. No. 126 of 2024 are pending), and Section 224(1) casts a duty of assistance on it;

(iii) Writ Petition (Crl.) No. 1891 of 2023, assailing the Investigation Report and the sanction, was dismissed by the High Court of Delhi on 21.12.2023 and the SLP therefrom was dismissed by the Supreme Court on 16.01.2024;

(iv) the Division Bench of the High Court of Delhi, by order dated 15.07.2024 in LPA Nos. 492 and 493 of 2024, set aside the stay order dated 31.05.2024 and clarified that this Tribunal is at liberty to proceed; and

(v) The effects of the fraud are continuing, Respondent No. 44 having sold immovable property at Chandigarh for INR 37.25 crores on 06.07.2023, after the status quo order dated 08.06.2023, and a portion of the Chennai land having been on-sold by sale deed dated 05.06.2023. It may be noted that, during the course of the hearing, this Tribunal allowed the aforementioned Intervention Applications, thereby impleading Respondent No. 76 as a party Respondent in the captioned Company Applications. The said impleadment was not opposed by any of the parties.

68. In compliance of the aforesaid order dated 09.07.2026, short notes on behalf of Respondent No. 54 were filed and uploaded on the DMS-e portal on 22.07.2026 and short notes on behalf of the Applicants in C.A. No. 223 of 2023 and C.A. No. 228 of 2023 were uploaded on the DMS-e portal on 23.07.2026. On 23.07.2026, the following order was passed by this Tribunal:

CP-105/241/PB/2023

1. Heard.

2. On the request, list **on 30.07.2026.**

CA-126/2024

3. Ld. Sr. Counsel for the Applicant prays for time to file a rejoinder to the reply filed by the respondent. He may do so within a week with copy in advance to the respondent counsel.

4. List **on 30.07.2026.**

CA-222/2023, CA-223/2023, CA-228/2023, CA-231/2023, CA-315/2023, CA-261/2023, CA-390/2023, CA-08/2024, CA-62/2024, CA-201/2024, CA-203/2024, CA-205/2024, CA-206/2024, CA-213/2024, CA-214/2024, IA(CA)-371/2023, IA(CA)-09/2024, CA-78/2024, Cont. P-18/2024, Cont. P-19/2024, CA-30/2025, CA-41/2025, IA(CA)-58/2024, CA-110/2026, New Ivn. P60/2026, New Ivn. P61/2026, New Ivn. P62/2026, New Ivn. P63/2026 and New Ivn. P64/2026.

5. List **on 30.07.2026.**

69. The matter was next listed on various dates i.e., 30.07.2026, 31.07.2026, 03.08.2026, 04.08.2026, 06.08.2026, 10.08.2026, 11.08.2026, 13.08.2026, 18.08.2026, 20.08.2026, 21.08.2026, 25.08.2026, 01.09.2026, 03.09.2026, 07.09.2026, and 10.09.2026 wherein detailed arguments from both sides were advanced on the issue of maintainability of the captioned petition before this Tribunal.

70. It is pertinent to note that on 07.09.2026, in IA(CA) No. 383 of 2026 filed by Respondent No. 76, it was brought to the notice of this Tribunal that despite the interim directions passed by this Tribunal on 08.06.2023 and 16.05.2024, that the respondents shall not alienate any of their assets, the respondents have alienated some assets. Therefore, in the interest of justice, this Tribunal directed the respondents to file an affidavit disclosing the list of assets as on 08.06.2023 and as on 07.09.2026 and also restrained the respondents from selling, encumbering, alienating or parting with their assets in any manner whatsoever without the prior permission

of this Tribunal. Notice was also issued on the prayer to implead Shree Balaji Steel and Metal Private Limited, which was restrained from alienating any asset purchased from the main respondents, directly or indirectly. Relevant paragraphs of the said order dated 07.09.2026, passed by this Tribunal, are as follows:

New IA(CA)- 383/2026

2. Ld. Counsel for the Applicant submits that despite the interim directions passed by this court on 08.06.2023 and 16.05.2024, that the respondents shall not alienate any of their assets, the respondents have alienated some assets. The relevant extract of the order dated 08.06.2023 is reproduced hereunder:

".....Having considered the interim relief prayed for, this Tribunal directs all the respondents (R-1 to 74) to maintain the status quo with respect to the business assets comprising moveable or immovable properties owned whether held by individuals or jointly with others, whether situated in India or abroad, except in the regular course of business requirements and transactions."

The relevant extract of the order dated 16.05.2024 reproduced hereunder:

".....The interim order was extended in subsequent hearing and remains in force till further orders.

Certain issues have been raised by Ld. Counsel for the SFIO supported by the Respondent No. 76 (BPSL). It appears from the statement made by SFIO that there are certain transactions which happened post the filing of the petition and also post the interim order dated 08.06.2023. Whether it is true or not, it is always necessary that the parties who are respondents should show the details of the transactions, which happened post the filing of the petition and also post the interim order."

6. After hearing the parties, it is manifest that the orders passed by this court on 08.06.2023 and 16.05.2024 have not been modified by either this court or by the appellate tribunal. Therefore, we deem it appropriate to direct the respondents to inform this court as to whether any assets have been sold by the respondents after the order passed on 08.06.2023. The respondents shall, by affidavit, state whether any assets have been sold after 06.06.2023; the affidavit shall also set out the list and detailed description of the properties which existed as on 08.06.2023 and as on 07.09.2026.

7. It is directed that the respondents shall not sell, encumber, alienate, or part with the assets in any manner whatsoever without prior permission of this court.

8. This application in prayer 'c' also seeks to implead Shree Balaji Steel and Metal Private Limited as a necessary party, as the other respondents who were parties in the main petition and were bound by the orders of this court and were restrained from alienating their assets by the order dated 08.06.2023 and 16.05.2024 have transferred their assets to it.

9. Ld. Counsel Mr. Aditya Sikka for the Petitioner submits that Shree Balaji Steel and Metal Private Limited is a necessary party as it is a beneficiary of the assets alienated by the respondents in contravention of the orders passed by this court on 08.06.2023 and 16.05.2024.

10. Issue notice.

11. Ld. Counsel for the Respondent No. 1 accepts notice and prays for time to file the reply. He may do within two weeks.

12. Ld. Counsel Mr. Akshay Sharma for the Respondent No. 2 accepts notice and submits that as he was not a party in the main petition, he shall not be a necessary party and accordingly the interim orders would not be applicable to Shree Balaji Steel and Metal Private Limited. He seeks time to file a reply. He may do so within two weeks.

13. In the meantime, the Shree Balaji Steel and Metal Private Limited shall not alienate any asset which have been purchased from the main respondents directly or indirectly.

14. List on **10.09.2026**

71. On 10.09.2026, the following order was passed by this Tribunal:

CA-223/2023; CA-228/2023; CA-231/2023; CA-315/2023; CA-261/2023; CA-390/2023; CA-08/2024; CA-62/2024; Ivn. P-60/2026, Ivn. P-61/2026, Ivn. P-62/2026, Ivn. P-63/2026, Ivn. P-64/2026, Ivn. P-65/2026, Ivn. P-66/2026 and Ivn. P-67/2026.

1. Heard.

2. Order reserved.

3. Ld. Counsel for the Parties are directed to file a short note within ten days.

4. List **on 15.10.2026.**

In compliance of the said order dated 10.09.2026, written submissions on behalf of Respondent No. 76 were filed on 19.09.2026 and re-filed on 29.09.2026. Further, additional written submissions and a compendium of judgements on behalf of the Applicants in C.A. No. 223 of 2023; C.A. No. 228 of 2023; and C.A. No. 62 of 2024 were filed and uploaded on the DMS-e portal on 22.09.2026. Written Submissions on behalf of Union of India through SFIO were also filed and uploaded on the DMS-e portal on 12.10.2026.

72. Ld. Senior Counsel Mr. Sudhir Makkar, appearing for Respondent Nos. 1, 3, 6, 8, 11, 12, 26 and 34 in C.A. Nos. 223 and 228 of 2023, and Ld. Counsel Mr. Rishav Banerjee, appearing for Respondent Nos. 38 and 39 in C.A. No. 231 of 2023 (collectively, the "Respondents" / "Applicants"), have challenged the maintainability of the Petition on several grounds. Mr. Banerjee supported the submissions of Mr. Makkar and additionally urged limitation, non-invocation of the special remedy under Section 212(14A) of the Act and the pendency of parallel proceedings under the Insolvency and Bankruptcy Code, 2016 (IBC) as grounds against the maintainability of the captioned petition. The applications are opposed by Mr. Aditya Sikka, Ld. Counsel for the Union of India/SFIO, who is supported by Mr. Gyanendra Kumar, Ld. Senior Advocate for Respondent No. 76 (BPSL), the applicant in Intervention Petition Nos. 60 to 67 of 2026.

73. It is further noted that the respective learned counsels entered appearance, during the course of hearing on behalf of Respondent No. 30 in C.A. No. 62 of 2024, Respondent Nos. 36 and 37 in C.A. No. 261 of 2023, Respondent No. 44 in C.A. No. 08 of 2024, Respondent No. 46 in C.A. No. 390 of 2023 and Respondent No. 54 in C.A. No. 315 of 2023, but elected not to address

arguments before this Bench. However, they have adopted the arguments advanced by the respective learned counsels in the remaining three Company Applications. Notwithstanding the same, this Bench has taken due cognizance of the pleadings filed and uploaded by or on behalf of the said Respondents, including the short note dated 22.07.2026 filed on behalf of Respondent No. 54, and has perused the material available on record pertaining to each of them.

74. It is a foundational axiom of public law that before an adjudicating body can wield the sword of substantive justice, it must first measure the length of its own sheath. This inherent authority, captured globally in the doctrine of ***Kompetenz-Kompetenz*** demands that a Tribunal possess the primary competence to determine the boundaries of its own competence. In addressing the preliminary challenge to maintainability, this Bench does not merely engage in a procedural formality; we discharge a structural duty to ensure that our statutory mandate is neither artificially truncated nor unlawfully expanded. It is through this prism of self-reckoning that we address the foundational threshold question regarding the maintainability of the present petition.

Submissions made on behalf of the parties/Issues Framed:

75. The submissions on behalf of the parties are recorded below issue-wise, the contentions of the Applicants on each issue being followed by the submissions on behalf of Respondent No. 76 (where made) and the reply of the SFIO. The following issues arise for consideration:

1. Whether this Bench has territorial jurisdiction to entertain the present Petition, and whether a single petition is maintainable against multiple entities having registered offices within different jurisdictions?

2. Whether the Central Government formed the requisite opinion under Section 241(2) of the Act?

2(A). Whether the Petition was validly instituted by the Central Government "itself", or required delegation of powers under Section 458 of the Act?

3. Whether the expression "are being conducted" under Section 241(2) of the Act encompasses past transactions that continue to have subsisting or continuing effects?
4. Whether Sections 246 and 339 of the Act have been validly invoked, and what is the scope of the Tribunal's powers under Section 242 of the Act?
5. Whether Section 212(14A) of the Act provides a special remedy that bars the institution or maintainability of the present Petition?
6. Whether the pendency of proceedings before the High Court of Delhi affects the maintainability or adjudication of the present Petition?
7. Whether the present Petition is barred by Limitation? and
8. Whether the parallel proceedings under the IBC render the present Petition impermissible on grounds of double jeopardy, *res sub judice* or *lis pendens*?

ISSUE 1: TERRITORIAL JURISDICTION OF THIS BENCH AND MAINTAINABILITY OF A SINGLE PETITION AGAINST MULTIPLE ENTITIES HAVING REGISTERED OFFICE IN DIFFERENT JURISDICTIONS OF THE COUNTRY

Submissions on behalf of the Applicants

Territorial jurisdiction

76. Mr. Sudhir Makkar, Ld. Counsel appearing on behalf of the above-numbered Respondents has vehemently argued before the Tribunal on the issue of territorial jurisdiction of the Bench to hear and adjudicate the captioned petition. It is his contention that the present Petition under Sections 241, 242, 246 read with Section 339 of the Companies Act, 2013 is not maintainable before this Tribunal since SFIO seeks to invoke the jurisdiction of the New Delhi Bench against numerous independent companies having their registered offices outside the territorial jurisdiction of this Bench. It was submitted that the registered offices of Respondent Nos. 6, 8 to 11 and 13 to 30 are situated in Chandigarh, Respondent Nos. 7 and 12 in Jaipur, Respondent Nos. 31, 33 and 34 in Mumbai, Respondent

No. 32 in Bhubaneswar and Respondent No. 35 in Bilaspur (while Respondent Nos. 1 to 5 have their registered offices in New Delhi) and thus these companies fall outside the exclusive jurisdiction of this Tribunal.

77. Ld. Counsel submitted that the jurisdiction of this Tribunal has been invoked merely on the basis of the registered office of Bhushan Power & Steel Limited being at Delhi. It is stated that merely because one proforma respondent, namely Bhushan Power & Steel Limited, has its registered office at Delhi, no territorial jurisdiction can be conferred upon this Tribunal in respect of independent companies registered in Chandigarh, Rajasthan, Maharashtra, Odisha and Chhattisgarh, particularly when no relief is claimed against the said proforma respondent. It is further stated that impleadment of BPSL as a pro-forma Respondent is an impermissible attempt to manufacture jurisdiction as, the MCA letter dated 19.05.2022 expressly excluded BPSL to be arrayed as a party from these proceedings.

78. It was contended, including in the short note dated 22.07.2026 filed on behalf of Respondent No. 54 (Applicant in C.A. No. 315 of 2023), that the Petitioner/Non-Applicant has filed a single composite petition collectively clubbing and targeting 36 distinct corporate entities (being Respondents Nos. 1 to 35 along with Respondent No. 76) and 40 separate individuals (being Respondent Nos. 36 to 75) into a singular mass, which is completely destructive of the jurisdictional prerequisites explicitly mandated by the legislature under Section 241(2) of the Act, which according to their submissions requires independent focus on a standalone corporate person. It was contended that the Companies Act does not recognise the concept of such a composite petition against several independent companies and individuals merely because allegations arise out of a common investigation or involve common shareholders, directors or alleged transactions.

It was submitted that neither the Companies Act, 2013 nor the National Company Law Tribunal Rules, 2016 contain any provision permitting a combined oppression and mismanagement petition against multiple

unrelated companies. Likewise, Rule 11 of the NCLT Rules, 2016 cannot enlarge or create territorial jurisdiction where none exists under the statute.

79. It was submitted that Section 419(1) of the Companies Act, 2013 empowers the Central Government to constitute different Benches of the National Company Law Tribunal with specified territorial jurisdiction. The jurisdiction of every Bench is determined exclusively by the registered office of the concerned company. Ld. Counsel took us through Section 419 of the Companies Act, 2013 to further contend that the Central Government has, in furtherance to Section 419(4) of the Act, established various benches and conferred jurisdiction upon such tribunals, based on the registered offices of the Companies.

80. By way of illustration, it was submitted that if minority shareholders suffer oppression and mismanagement in five different companies situated in Delhi, Chandigarh, Mumbai, Chennai and Kolkata respectively, they cannot institute one consolidated petition before a single Bench. Separate petitions are necessarily required before the jurisdictional Bench where the registered office of each company is situated. It was further submitted that the cause of action cannot confer jurisdiction where the statute expressly provides otherwise.

81. Reliance was placed on the judgement of the NCLAT in **63 Moons Technologies Ltd. v. Union of India and Others (2018) 206 Comp Cas 61** to contend that, the territorial jurisdiction of NCLT is not determined on the basis of the place where the cause of action has arisen, but is primarily determined with reference to the location of the registered office of the company in respect of which the proceedings are instituted. Relevant extract of the aforenoted judgement is as follows:

"18. *There is no provision in the Companies Act, 2013, conferring any territorial jurisdiction on a High Court or any Bench of the NCLT on the*

basis of cause of action. In other words, there is no statutory enactment conferring territorial jurisdiction on the basis of where the cause of action has arisen.

19. *The Notification dated June 1, 2016 merely prescribes the territories over which the different Benches of the NCLT will have territorial jurisdiction. It does not provide that such Benches will have territorial jurisdiction where cause of action has arisen within its territorial limits. There is no rule in the NCLT Rules which provides that territorial jurisdiction of any Bench of the NCLT can be invoked on the basis of cause of action. In other words, the Benches of the NCLT within its territorial jurisdiction can only exercise jurisdiction over the concerned company which is present within its territorial jurisdiction, i.e., where the company having its registered office.*

25. *Section 434(a) read with sub-section (1) of section 419 of the Companies Act, 2013 and Notification dated June 1, 2016 issued by the Central Government under sub-section (1) of section 419 and rule 64 of the NCLT Rules it is clear the Benches, including the Principal Bench have territorial jurisdiction on the companies exclusively on the basis of location of the registered office of such company. In fact, this law is also being followed by the Principal Bench of the NCLT, New Delhi for placing all the petitioners before one or other Bench and that section 388B of the Act 1956, cannot be exception of the same."*

82. It was submitted that the SFIO has wrongly interpreted the judgement of **63 Moons Technologies Ltd. (*supra*),** to contend that the jurisdiction of NCLT is based on the concerned company under investigation. In this regard, it was stated that SFIO has not confined its investigation to the affairs of Bhushan Power and Steel Limited. It was contended that the investigation extends to the affairs of 35 other companies, which have been arrayed as Respondent Nos. 1 to 35 in the captioned petition.

83. In such circumstances, SFIO cannot, at its own discretion, select one company among the entities investigated by it and invoke the jurisdiction of a particular Bench of this Tribunal in respect of all other companies,

irrespective of the territorial jurisdiction to which their registered offices are subject. Thus, the contention of SFIO that BPSL was the concerned company under investigation is also incorrect and contrary to the record. A perusal of the captioned Petition at para 13 under the head "jurisdiction", SFIO has itself stated that "*the present Petition arises out of the investigation done by the Serious Fraud Investigation Office into the affairs of Bhushan Power & Steel Ltd. and 31 other companies connected to it.*"

84. It was further contended that in similar circumstances, and on the basis of Investigation Reports, the SFIO has instituted petitions under Sections 241, 242, 246 read with Section 339 of the Companies Act, 2013 before different Benches of this Tribunal, depending upon the territorial jurisdiction of the respective Benches over the registered offices of the companies concerned. The aforesaid practice adopted by the SFIO itself demonstrates that the territorial jurisdiction of the concerned Bench is determined with reference to the location of the registered office of the company against whom proceedings are instituted. A complete list of all the Company Petitions arising out of Investigation into the affairs of 147 companies having registered offices at different places, filed by SFIO before different benches of NCLT was enclosed by the Applicants in C.A. No. 223 of 2023 as **Enclosure-C** to the Written Note of Submission dated 22.09.2026.

85. It was further submitted that if it is the case of SFIO that it is only BPSL whose affairs are conducted in a manner prejudicial to public interest and the affairs of the other Respondent Companies have not been challenged, in such a scenario, the captioned Petition deserves to be dismissed qua all the Respondent Companies and no relief can be granted with respect to such companies. Reliance in this regard is placed upon **Manish Goel v. Nikhil Kumar Goel CP No. 136/241-242/ND/2020, order dated 14.10.2020, Court-V, NCLT Delhi.**

Relevant paragraphs of the said order dated 14.10.2020, passed by Court-V, NCLT, New Delhi are as follows:

"…

8. In the light of the submissions raised on behalf of the parties, we have gone through the averments made in the application and we notice that it is admitted fact that no oppression or mismanagement has been alleged against R-2 & R-3. The allegation is against R-1.

…

10. It is settled principle of law, while exercising its powers under Section 241-242 of the Companies Act, 2013, the Tribunal has to examine the facts mentioned under Section 241 referred under Section 241(1)(a)(b). The relevant provisions of Section 241(1)(a) and (b) provision are quoted below:-

241. Application to Tribunal for relief in cases of oppression, etc

(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 manger, 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.

Mere plain reading of the provisions show that the Tribunal before exercising its power u/s 242 of the companies Act examine this facts that affairs of the company, is prejudicial and oppressive to the applicant or any other member or members. As we have already stated in the aforementioned para that the petitioners no where in the application alleged any act of oppression against R-2. Therefore, we are of the considered view while exercising its powers u/s 242 of the companies Act 2013, we cannot restrain the bank from conducting auction, when the bank has proceeded in accordance with the provision of law under SARFESI Act."

Section 241 contemplates proceedings in respect of "the company" and not multiple companies

86. Ld. Counsel submitted that the statutory scheme of Section 241 of the Act makes it evident that the jurisdiction contemplated thereunder is company-specific. It was contended that the language employed in Section 241(1) and Section 241(2) consistently refers to "the company" and not "companies" while setting out the circumstances in which the jurisdiction of the Tribunal may be invoked. It was argued that the use of a singular expression "the company" is deliberate and significant. It was submitted that, applying the settled principle of literal interpretation, where the language of the statute is clear and unambiguous, the provision must be given effect to in the form in which it has been enacted, the legislature consciously intended that proceedings under Chapter XVI be company-specific.

87. It was argued that the Act does not empower the Central Government or SFIO to aggregate distinct companies under a composite "group fraud" petition, and the NCLT must remain confined to its statutory jurisdiction and that every incorporated company possesses a separate legal personality with its own corporate identity, board, financial records, and banking streams, thereby precluding any omnibus, cross-corporate proceedings.

88. It was further submitted that a bare, literal construction of the provisions of oppression and mismanagement establishes that the legislature has deliberately and consciously employed the singular noun “the company”. The statutory scheme obligates the Central Government to separately examine each company’s affairs and form an independent opinion that the affairs of the company are being conducted in a manner prejudicial to public interest. Pursuant to such opinion, it must institute a distinct application before the Tribunal seeking reliefs confined exclusively to that company. Such satisfaction necessarily has to be referred to the affairs of the particular company against which the jurisdiction is sought to be exercised. An omnibus allegation concerning a group of companies cannot, by itself, constitute the statutory foundation for invoking jurisdiction against each and every company forming part of such group.

89. It was submitted that, where the Central Government intends to invoke the jurisdiction under Section 241(2) of the Act in respect of more than one company, the proviso to Section 241(2) specifically contemplates that, in respect of such company or class of companies as may be prescribed, the application shall be made before the Principal Bench of this Tribunal. Thus, the statutory scheme itself recognises that an application concerning more than one company can be dealt with by the Principal Bench only where the relevant company or class of companies has been prescribed by the Central Government in accordance with the proviso. In the absence of any such prescription, the statutory position would continue to apply, and a petition has to be filed separately against each company before the appropriate bench, governing the territorial jurisdiction of the respective Benches.

90. It was submitted that the proviso is not merely procedural in nature; it has a direct bearing on the forum before which an application under Section 241(2) of the Act is required to be instituted. The legislative scheme makes a specific distinction between an application concerning a particular company and an application concerning such company or class of companies as may be prescribed. Consequently, the jurisdiction of the

Principal Bench cannot be assumed and a composite petition cannot be filed arraying multiple companies as respondents. Accordingly, the Petition is liable to be dismissed/rejected on this ground alone.

91. It was submitted that the SFIO has attempted to justify the filing of the captioned Petition by contending that the same is based on the affairs of BPSL. However, such contention is nothing but an illusory cause of action sought to be created through clever drafting. It is a matter of record that: (i) the SFIO was assigned investigation into the affairs of 31 different companies; (ii) the SFIO conducted investigations into the affairs of 31 different companies; and (iii) the investigation report submitted by the SFIO pertains to 35 different companies. Thus, the captioned Petition could not have been filed in a composite manner, particularly when the scheme of Section 241(2) of the Act consistently refers to "the company" and not "companies".

92. It was further contended that the letter dated 19.05.2022 itself identifies and directs the filing of a petition under Section 241(2) of the Act against, the said companies, and that the Petition seeks disgorgement of assets and imposition of liability against them as well. Being a composite petition in respect of companies other than BPSL, it was contended that the Petition is untenable.

93. It was submitted that by virtue of the ruling in **Union of India v. Hansoli Devi (2002) 7 SCC 273**, the principle of literal interpretation bars any judicial expansion of statutory text. Accordingly, Section 241(2) must be read in its plain singular form "the company," and this Tribunal cannot construe it as encompassing "companies" or "group of companies," as such construction would amount to impermissible judicial legislation. Relevant paragraph of the said judgement in **Union of India v. Hansoli Devi** as relied upon by the Applicants is as follows:

"9. *Before we embark upon an inquiry as to what would be the correct interpretation of Section 28-A, we think it appropriate to bear in mind certain basic principles of interpretation of a statute.* ***The rule stated by***

Tindal, C.J. in Sussex Peerage case [(1844) 11 Cl & Fin 85: 8 ER 1034] still holds the field. The aforesaid rule is to the effect: (ER p. 1057)

> ***"If the words of the statute are in themselves precise and unambiguous, then no more can be necessary than to expound those words in their natural and ordinary sense. The words themselves alone do, in such case, best declare the intention of the lawgiver."***

It is a cardinal principle of construction of a statute that when the language of the statute is plain and unambiguous, then the court must give effect to the words used in the statute and it would not be open to the courts to adopt a hypothetical construction on the ground that such construction is more consistent with the alleged object and policy of the Act. In Kirkness v. John Hudson & Co. Ltd. [(1955) 2 All ER 345 : 1955 AC 696 : (1955) 2 WLR 1135] Lord Reid pointed out as to what is the meaning of "ambiguous" and held that: (All ER p. 366 C-D)

> ***"A provision is not ambiguous merely because it contains a word which in different contexts is capable of different meanings. It would be hard to find anywhere a sentence of any length which does not contain such a word. A provision is, in my judgment, ambiguous only if it contains a word or phrase which in that particular context is capable of having more than one meaning."***

It is no doubt true that if on going through the plain meaning of the language of statutes, it leads to anomalies, injustices and absurdities, then the court may look into the purpose for which the statute has been brought and would try to give a meaning, which would adhere to the purpose of the statute. Patanjali Sastri, C.J. in the case of Aswini Kumar Ghose v. Arabinda Bose [(1952) 2 SCC 237: AIR 1952 SC 369: 1953 SCR 1] had held that it is not a sound

principle of construction to brush aside words in a statute as being inapposite surplusage, if they can have appropriate application in circumstances conceivably within the contemplation of the statute. In Quebec Railway, Light Heat & Power Co. Ltd. v. Vandry [AIR 1920 PC 181] it had been observed that the legislature is deemed not to waste its words or to say anything in vain and a construction which attributes redundancy to the legislature will not be accepted except for compelling reasons. Similarly, it is not permissible to add words to a statute which are not there unless on a literal construction being given a part of the statute becomes meaningless. But before any words are read to repair an omission in the Act, it should be possible to state with certainty that these words would have been inserted by the draftsman and approved by the legislature had their attention been drawn to the omission before the Bill had passed into a law. At times, the intention of the legislature is found to be clear but the unskilfulness of the draftsman in introducing certain words in the statute results in apparent ineffectiveness of the language and in such a situation, it may be permissible for the court to reject the surplus words, so as to make the statute effective. *…"*

94. It is further submitted that the statutory mandate confines the Tribunal's jurisdiction strictly to the affairs of a standalone incorporated entity, excluding composite group trials, as affirmed by the Madras High Court in **Amalgamations Ltd. v. Shankar Sundaram (2011) 168 Comp Cas 68**. That to anchor this strict literal boundary, the High Court placed direct reliance on the judgement of the Supreme Court in **Vijay Narayan Thatte v. State of Maharashtra, (2009) 9 SCC 92**, wherein it was held that the plain grammatical text must prevail, barring any expansion beyond the literal rule of interpretation. Relevant paragraphs of the said judgement in **Amalgamations Ltd. v. Shankar Sundaram** (***supra***) as relied upon by the Applicants is as follows:

*"**42.** Therefore, the proposition of law that the affairs of the company would mean the affairs of the subsidiaries also cannot be accepted as it creates a legal fiction to treat the members of the holding company as members of the subsidiary company. This section can be implemented only in so far as section 235 of the Act invoking section 214(2) of the Act and not for sections 397 and 398 of the Act. When the intention of the Legislature is clear to include only one company simplicitor, we cannot put our own words into that. In fact, for this proposition also, learned senior counsel relied on the decision reported in Vijay Narayan Thatte v. State of Maharashtra (2009) 9 SCC 92, wherein the honourable Supreme Court held that when a plain grammatical meaning of law and literal rule of interpretation is very clear and when there is a conflict between law and equity, law as such must prevail."*

95. It is therefore submitted that by applying the above jurisprudence, Section 241(2) confines the Central Government to proceedings against a single company, and any attempt to construct a "group fraud" linking multiple entities constitutes an impermissible legal fiction, rendering the petition ex-facie non-maintainable.

96. It was submitted by Ld. Senior Counsel, that proceedings under Sections 241 and 242 are intended to examine one continuous course of oppressive conduct concerning one company and grant consequential reliefs in respect thereof. The present petition combines numerous independent transactions, distinct causes of action, different respondents and unrelated reliefs and such plural causes of action and plural reliefs cannot be adjudicated in one oppression and mismanagement proceeding, and therefore, the petition is liable to be rejected on this ground also.

Submissions on behalf of the Respondent No. 76 (BPSL)

97. Ld. Senior Advocate Mr. Gyanendra Kumar, appearing on behalf of Respondent No. 76, supplementing the arguments of Mr. Aditya Sikka,

submits that the Petition is maintainable. To counter the arguments of the Applicants on the point of territorial jurisdiction, the Ld. Senior Counsel submitted that the entities and individuals made a party to the petition are necessary and proper parties in the petition of fraud and misfeasance.

98. It was submitted that a party against whom personal allegations of malafides, fraud and deceit are made in an oppression and mismanagement petition, must be impleaded as a proper and necessary party, even where they are neither a shareholder nor a director and no specific relief is claimed against them. It was further argued that the petition instituted by SFIO could not have been maintainable before this bench if these parties were not arrayed as Respondents, as allegations of fraud and misfeasance could not have been adjudicated behind their back. Reliance is placed on the judgements of **Dr. Brahma Deo v. Secretary, National Commission for Scheduled Castes 2022 SCC Online Del 2613** and **DCM Hyundai Ltd. v. H.B. Stockholdings Ltd. 2016 SCC Online NCLAT 2.**

99. Relevant paragraphs of the aforenoted judgement in **Dr. Brahma Deo v. Secretary, National Commission for Scheduled Castes** (*supra*) as relied upon by the Ld. Counsel are as follows:

> ***"4.*** *It is well settled as held that persons, against whom personal allegations of malafides are levelled have to be impleaded personally by name.*
>
> ***5.*** *Despite Dr. Brahma Deo, the petitioner, who appears in person, having been repeatedly informed of this legal position, he is neither willing to amend his petition and delete the said allegations or to implead the persons against whom the allegations have been made. His submission is that the said allegations have been made only to provide a background to the case that he seeks to set up. He also submits that he is not praying for any action to be taken against the persons against whom malafides have been alleged in the petition and is only seeking direction to the learned NCSC to follow the due procedure.*

6. *The submission of Dr. Brahma Deo is no answer to the requirement of impleading of persons against whom personal allegations of malafides and deceit are made in the petition.*

7. *So long as the allegations of personal malafides and deceit continue to remain in the pleadings, it is not possible for this Court to continue with the present petition. The Court would be required to adjudicate on the said allegations, as the petitioner chooses to press them. That cannot be done behind the back of the persons concerned."*

100. Relevant paragraphs of the aforenoted judgement in **DCM Hyundai Ltd. v. H.B. Stockholdings Ltd.** (*supra*) as relied upon by the Ld. Counsel are as follows:

"7. After constitution of the Tribunal (since 1st June, 2016), when the matter was heard by the Tribunal, on hearing the parties, the Tribunal by impugned judgment observed as follows: —

"***There is also no dispute that grave and arguable allegations have been made by the applicant-petitioner against the DCM Hyundai in its CA No. 136 filed in the year 2008 and also in the civil suit. These allegations, inter-alia, talks about the role played by the DHL proposed Respondent No. 16 and Respondent No. 1 company in perpetuating a scam to use the R-1 own money to increase the promoters shareholding to the detriment of the other public shareholders. In this amendment petition, the merit of the allegations is not to be examined in detail* (K.K. Modi's case). *However, for proper and complete adjudication of these long pending allegations and also in view of the specific relief sought we are of the view that DHL is a proper party. It would help the Tribunal to have full picture of the complete transactions between R-1 company and DHL. If the transactions and dealings of DCM Hyundai are fair and clean, then there is nothing to be afraid of.***"

…

13. Having heard the Learned Counsel for the parties, we are not inclined to deliberate on such issue as the matter is pending before the Tribunal for

its consideration. ***The fact is that there is an alleged transaction between the Appellant - M/s. DCM Hyundai Ltd. and the company M/s. DCM Shriram Industries Limited. Such transaction is genuine or illegal will be looked into and decided by the Tribunal. In case the Tribunal holds 'oppression and mismanagement' against the company or against any of its member or pass an appropriate order in regard to alleged transaction which may affect the appellant - M/s. DCM Hyundai Ltd. the Tribunal has rightly observed, "However, for proper and complete adjudication of this long pending allegations and also in view of the specific relief sought, we are of the view that DHL (Appellant - M/s. DCM Hyundai Ltd.) is a proper party."***

14. We find no reasons to interfere with the order insofar as it relates to impleadment of Appellant M/ s. DCM Hyundai Ltd. as party-respondent IS concerned.

15. The other appellant M/s. AF Ferguson and Company has taken plea that it is a Chartered Accountancy firm and has nothing to do with the company's management. It is also submitted that except the performance of duty as a Chartered Accountant of the company, no specific role has been played by the Appellant. Ld. Counsel appearing on behalf of the Appellant M/s. AF Ferguson and Company submitted that the said Appellant is ready to disassociate itself from the company and therefore it should be deleted from the arena of respondent.

16. From the record we find that there are allegations levelled against the Appellant, M/s. AF Ferguson and Company about preparation of forged audit report etc. As this Appellate Tribunal at this stage cannot deliberate on such issue for coming to a conclusion whether the majority shareholders in collusion with the appellant have 'oppressed and mismanaged company', and if the Tribunal pass any observation with regard to the allegation as made against the appellant, which may affect the Appellant - M/s. AF Ferguson and Company, we find no reason to delete the

appellant M/s. A.F. Ferguson and Company from the arena of Respondent.

17. We find no merit in these appeals. They are accordingly dismissed. However, in the facts and circumstances of the case there shall be no order as to cost."

Submissions on behalf of the SFIO

101. Ld. Counsel Mr. Aditya Sikka, appearing on behalf of the Central Government/SFIO, submitted that the Petition is maintainable in all respects and that the issues raised by the Applicants/Respondents are devoid of merit and dilatory, and must be rejected at the threshold. On territorial jurisdiction it was submitted that Section 408 of the Act provides for establishment of this Tribunal. The said provision is as under:

"408. The Central Government shall, by notification, constitute, with effect from such date as may be specified therein, a Tribunal to be known as the National Company Law Tribunal consisting of a President and such number of Judicial and Technical members, as the Central Government may deem necessary, to be appointed by it by notification, to exercise and discharge such powers and functions as are, or may be, conferred on it by or under this Act or any other law for the time being in force."

102. It was submitted that the aforesaid provision merely empowers the Central Government to establish the Tribunal and does not set out its jurisdiction or provide that the territorial jurisdiction is based on the registered address of the company. Section 419 provides for the constitution of such number of Benches of the Tribunal as may be specified by notification. Section 419 (2) of the Act further provides that the principal bench of the Tribunal shall be at New Delhi and shall be presided over by the President. It is submitted that, Section 419(1) and (2) of the Act also do not prescribe the jurisdiction of the Tribunal or that the territorial jurisdiction is based on the registered address of the company.



103. Ld. Counsel further submitted that, in exercise of the powers conferred under Section 419 of the Act, the Central Government issued a notification dated June 1, 2016 constituting benches of the Tribunal at different locations and specifying their territorial jurisdiction. The relevant portion of the notification reads as follows :

"In exercise of the powers conferred by sub-section (1) of Section 419 of the Companies Act, 2013 (18 of 2013), the Central Government hereby constitutes the following benches of the National Company Law Tribunal mentioned in column (2) of the table below, located at the place mentioned in column (3) and to exercise the jurisdiction over the area mentioned in column (4), namely:-…"

104. It was submitted that the aforesaid notification thus establishes benches of this Tribunal and specifies the areas over which each bench constituted would exercise jurisdiction over the area mentioned in the tabular statement in the notification. The tabular statement prescribes "***Territorial Jurisdiction of the Bench***" and sets out the areas over which each bench would exercise jurisdiction. It was submitted that the said notification also only sets the area over which each bench of this Tribunal would exercise jurisdiction. This notification also does not link the territorial jurisdiction to the registered address of a company. Therefore, neither the provision of the Act nor the notification issued under Section 419 of the Act by the Central Government mandates that the territorial jurisdiction of this Tribunal to be assessed on the basis of the registered address of the company. Territorial jurisdiction to entertain a matter thus can be based on three concepts as per the Code of Civil Procedure, 1908. As per Section 20 of the Code of Civil Procedure, 1908, a Suit can be filed within the territorial jurisdiction of a court:

a. where the Defendant resides or carries on business or works for gain;

b. where there are multiple defendants, the court within whose jurisdiction one of the defendants resides, subject to the requisite leave or permission to proceed against the others; or

c. where the cause of action arises.

It is submitted that none of these prescriptions, or any other such prescription, has been incorporated in the Act or the notification issues thereunder, which merely specifies the areas over which the respective Benches of the Tribunal would exercise jurisdiction.

105. It was argued that the National Company Law Appellate Tribunal (NCLAT) has considered the scope of territorial jurisdiction of this Tribunal in the case of **63 Moons Technologies Limited v. Union of India & Ors., Company Appeal (AT) No. 03 of 2017 : (2018) 206 Comp Cas 61** wherein it was held that for the purposes of the Companies Act, 2013, the NCLT does not exercise territorial jurisdiction on the basis of cause of action. Instead, the territorial jurisdiction is to be determined by assessing the registered office of the "**concerned company".** Relevant paragraph of the said judgement as relied upon by the SFIO is as follows:

*"**25.** Section 434(1)(a) read with sub-section (1) of section 419 of the Companies Act, 2013 and Notification dated June 1, 2016 issued by the Central Government under sub-section (1) of section 419 and rule 64 of the NCLT Rules it is clear the Benches, including the Principal Bench have territorial jurisdiction on the companies exclusively on the basis of location of the registered office of such company. In fact, this law is also being followed by the Principal Bench of the NCLT, New Delhi for placing all the petitioners before one or other Bench and that section 388B of the Act 1956, cannot be exception of the same."*

106. It was submitted that the application of the law expounded to the facts of the case in the said judgment is important. In the said case, the NCLAT was considering a case where a Petition inter alia under Section 397-398

read with Section 388B of the Companies Act, 1956 and other sections (corresponding to Sections 241-242 of Companies Act, 2013) was being considered by the principal bench of the Company Law Board (as it then was) in view of circulars issued under the Company Law Board Regulations, 1991 in respect of:

a. one company (parent company) having its registered address in Chennai viz. the Appellant company; and
b. the other company (subsidiary) having its registered address in Mumbai viz. the Respondent No. 29.

107. Ld. Counsel pointed out that, as evident from paragraph 2 of the said judgment, reliefs were sought in respect of both the appellant and Respondent No. 29. Nevertheless, the NCLAT transferred the matter to be heard by the Chennai Bench of the Tribunal. It is submitted that, had the contention of the Respondents, that the registered office of each company impleaded in the petition was required to be considered, the petition would not have been transferred in its entirety to the Chennai Bench. Instead, the petition would have been directed to be split, with the reliefs concerning Respondent No. 29 being pursued before the Mumbai Bench and those concerning the appellant before the Chennai Bench. No such direction was issued. Relevant paragraphs of the said judgement as relied upon by the Counsel for the Petitioner are as follows:

*"**2.** The brief facts of the case is as follows :*

The Central Government filed Company Petition No. 1 of 2015 under sections 397 and 398 read with sections 388B, 388C, 401, 402, 403, 406 and 408 of the Companies Act, 1956, along with supporting documents before the erstwhile Company Law Board. Apart from other relief, declaration has been sought for to declare the second to twenty-eighth respondents of the first respondent-company are not "fit and proper" persons to hold the office as directors or any other office connected with the conduct and management of first respondent-company and twenty ninth respondent company and also

not eligible for appointment as directors in any other company by invoking the provisions of section 388B(1)(a) to (d) of the Companies Act, 1956.

26. *For the reasons aforesaid we set aside the impugned order dated December 6, 2016 passed by the "Principal Bench" of the NCLT, New Delhi in C.P. No. 1 of 2015 with the direction to the registry of the Principal Bench, NCLT, New Delhi to transfer C.P. No. 1 of 2015 to the NCLT Bench at Chennai, where registered office of the appellant-company is situated. "*

108. Accordingly, it was submitted that the test laid down by the NCLAT in **63 Moons (*supra*)** for determining the territorial jurisdiction of a particular Bench is to identify the registered office of the "concerned company". The words "concern", "concerning" and "concerned" essentially mean "about", "regarding" or "pertaining to". In this regard, reliance is placed on **Pradeep Kumar Tripathi v. Telecom District Manager, AIR 1994 All 325**, paragraph 12, wherein the Allahabad High Court interpreted the word "concerning" appearing in Section 7B of the Telegraph Act. It is therefore submitted that the "concerned company" is the company about which or in relation to which the petition has been filed, or which forms the subject matter of the petition Relevant paragraph of the said judgement in **Pradeep Kumar Tripathi v. Telecom District Manager (*supra*)** as relied upon by the Counsel for the Petitioner is as follows:

12. *We may now come to the question of dis-connection. In this respect the learned counsel for the petitioner has urged on the basis of Santokh Singh v. Divisional Engineer, Telephones, Shillong, AIR 1990 Gauhati 47 that Section 7B of the Indian Telegraphs Act does not cover a dispute regarding dis-connection of telephone for default. We have considered this argument and we find that in this decision while discussing the matter the Division Bench concerned remarked that it may also be observed that even if a dispute regarding excess billing can be subject matter of arbitration under Section 7B, it would not take away the jurisdiction of the High Court to exercise its jurisdiction under Art. 226 of the Constitution of India. Thus*

this decision does not finally adjudicate upon the question whether Section 7B of the Indian Telegraphs Act is available as an alternative remedy to the petitioner. We are of the opinion that Section 7B of the aforesaid Act covers a dispute regarding dis-connection and excess billing because it is a dispute concerning any telegraph line, appliance or apparatus arising between the telegraph authority and the person for whose benefit the telegraph line, appliance or appratus is, or stands provided. The word 'concerning' used in Section 7B means 'about', 'regarding' 'pertaining to' according to New Lexicon Webstar Dictionary 1987 Edition. Thus dispute regarding safe custody, disconnection, excess billing etc. of the telegraph line, appliance or apparatus is certainly a dispute covered by Section 7B of the Telegraph Act."

109. It was further submitted that to determine the subject matter of the present Petition, it would be first necessary to refer to the provisions invoked in the present case. The present Petition invokes Section 241(2) read with Section 246 and 339 of the Companies Act, 2013. It is the case of the Petitioner that Section 241(2) of the Act empowers the Central Government to file a Petition when it forms an opinion "that the affairs of the company are being conducted in a manner prejudicial to public interest". Section 246 of the Act makes the provisions of and the substance of Section 339 of the Act applicable/available to a Petition under Section 241 of the Act. Section 339 of the Act also provides for liability for fraudulent conduct of business of a company. Pertinently, Section 339 (1) of the Act provides as follows:

"If in the course of the winding up of a company, it appears that any business of the company has been carried on with intent to defraud creditors of the company or any other persons or for any fraudulent purpose, the Tribunal, on the application of the Official Liquidator , or the Company Liquidator or any creditor or contributory of the company, may, if it thinks it proper so to do, declare that any person, who is or has been a director, manager, or officer of the company or any persons who were knowingly parties to the carrying

on of the business in the manner aforesaid shall be personally responsible, without any limitation of liability, for all or any of the debts or other liabilities of the company as the Tribunal may direct."

(Emphasis Supplied)

110. It was submitted that, from the above argument, it is manifest that the NCLAT has clearly held that for determining the territorial jurisdiction, the registered office of the company in question or the "concerned company" which is the subject matter of the Petition is to be considered. In this regard it was submitted that the provisions invoked in the present case are Section 241(2) read with Section 242, 246 and 339 of the Act alleging fraudulent conduct of business of "the company" i.e., Bhushan Power and Steel Limited.

111. It was submitted that a Petition under Section 241(2) of the Act is about or concerning the affairs of a company which is (are) being carried on in a manner prejudicial to public interest. Likewise, Section 339 of the Act also concerns itself with the **business of a company which is being carried on either with intent to defraud the creditors of that company or for any fraudulent purpose.** It then contemplates liability on those responsible **for all or any debts or other liabilities of that company (whose affairs/business is being alleged to be carried on in a fraudulent manner)**.

112. On this basis, it was submitted that the territorial jurisdiction for the purposes of Section 241(2) of the Act and/or Section 339 of the Act would depend on the registered address of that company whose affairs are being alleged to be carried on either in a manner prejudicial to public interest or in a fraudulent manner.

113. Ld. Counsel submitted that in the present case, the Petition has been filed under Section 241(2) of the Act read with Section 246 and 339 of the Act. The Petition is based on the BPSL Report. The BPSL Report is an

investigation report which details the fraud that was perpetrated in Bhushan Power & Steel Limited. On a bare perusal of even the executive summary (tendered separately), it is clear that the entire report sets out: (i) the manner in which funds and assets of Bhushan Power & Steel Limited were stripped and/or siphoned; (ii) the manner in which the lenders of Bhushan Power & Steel Limited were duped; and (iii) the manner in which the funds and assets of Bhushan Power & Steel Limited were misutilized; and (iv) the falsification of books of Bhushan Power & Steel Ltd. Thus, the sole focus of the BPSL Report is the fraud in the affairs/business of Bhushan Power & Steel Limited.

114. It was submitted that the Petition also categorically avers that the said Petition pertains to instances of fraudulent conduct of business of Bhushan Power & Steel Limited and/or conduct of business of Bhushan Power & Steel Limited in a manner prejudicial to public interest and sets out the same instances as the BPSL Report, which in turn are findings on the fraud perpetrated in the business of BPSL.

115. It was further submitted that the instant Petition is a Petition to make the perpetrators of the fraud accountable to the creditors of Bhushan Power and Steel Limited only and specifically prays for a declaration that the business of BPSL was being carried on in a fraudulent manner or to dupe BPSL's creditors. It was submitted that the paragraph in the Petition setting out the jurisdiction of this Tribunal also narrates the above.

116. In view of the above, Ld. Counsel submitted that the captioned Petition concerns the alleged fraud in the affairs **of Bhushan Power & Steel Limited only**. Accordingly, the "concerned company" for determining the territorial jurisdiction of the bench of this Tribunal would be the registered address of BPSL. The registered office of BPSL is New Delhi, and therefore the Principal Bench of this Tribunal would have jurisdiction to entertain, hear and dispose of the Petition.

117. It was further submitted that the admitted position in the present case is that the "concerned company" or the company whose affairs are alleged to have been conducted in a manner prejudicial to public interest, which, according to the Ld. Counsel for the Petitioner, is BPSL. This demolishes the Respondents' argument on territorial jurisdiction.

118. With reference to the aforesaid submissions, Learned Counsel contends that the Respondents' interpretation of the judgment in **63 Moons Technologies Limited** is untenable. It is submitted that, had the NCLAT intended that the registered office of every company impleaded in a petition be considered for determining territorial jurisdiction, it would not have transferred the petition in **63 Moons Technologies Limited** to the Chennai Bench when reliefs were sought in respect of two companies, one registered in Chennai and the other in Mumbai.

119. It was further submitted that after the judgment of the NCLAT in **63 Moons (*supra*)**, the concept of and link between territorial jurisdiction, registered office and concerned company is well understood and applied. It was submitted that there are a plethora of cases where benches of this Tribunal, as a matter of fact, have passed orders in respect of companies having its registered office elsewhere when the allegations of mismanagement or fraud pertain to a company which has its registered office within the territorial jurisdiction of the said bench. **(Union of India vs. Gitanjali Gems & Ors. [(2018) 209 Comp Cas 360** (NCLAT), **Union of India v. Surana Industries & Ors. (CP/125(CHE)/2022))**. It was submitted that a view contrary to the judgment in **63 Moons (*supra*)** would be untenable, leaving those judgments and other similar Petitions as the present being nullified.

120. It was also submitted that the Present Petition is not the only Petition in which several entities across different jurisdictions have been impleaded. Ld. Counsel refers to **Union of India v. Carnoustie Management (I) Pvt. Ltd. CP No. 62 of 2022** and **Union of India v. IL&FS Rail Limited CA No. 257 of 2025** as examples of petitions filed before the respective Benches because the company whose affairs were alleged to have been

conducted in a manner prejudicial to public interest or fraudulently had its registered office within the territorial limits of the concerned Bench.

121. Ld. Counsel further submitted that the present Petition is not a composite Petition as alleged by the Respondents/Applicants. It was submitted that a composite Petition under Section 241 read with Section 246 and 339 of the Act would involve:

i. Allegations that the affairs of multiple companies were being conducted in a manner prejudicial to public interest or fraudulently;
ii. Reliefs seeking contribution towards the debts and liabilities of each company or compensation for the creditors of each company;
iii. A declaration concerning the fraudulent conduct of business of each such company.

122. However, it was submitted that in the present case the allegations concerning fraudulent conduct or conduct defrauding the creditors and prejudicial to public interest relate only to affairs of BPSL. The reliefs seek a declaration qua the affairs of BPSL and the Petitioner's case is that the Petition seeks to compensate the creditors of BPSL alone as reflected in the reliefs at page 143 of the Petition; and the assets and monies sought to be disgorged or brought back are the assets and monies of BPSL.

123. It was further submitted that the contention that the present Petition is a composite Petition because several companies were investigated is erroneous and misleading. In this regard, the Ld. Counsel submitted that the purpose of investigating the other entities was to trace the routing/trail of funds and assets of and from BPSL. This is stated to be evident from the order of the Central Government dated January 8, 2018, which refers to the examination of accommodation entities associated with BPSL; and the Petition is based on the BPSL Report, namely, the investigation report concerning BPSL, and not on the order directing the investigation. The said BPSL Report details the alleged fraud in the affairs and business of BPSL, while the other entities were examined to ascertain the modus operandi of

the alleged fraud concerning BPSL. Investigation into fraud with respect to the assets and business of BPSL, cannot be undertaken in a standalone, isolated manner without carrying out necessary investigation into the affairs of and corresponding verification from entities participating and/or advancing such fraud.

124. Ld. Counsel further submitted that the objection that the Tribunal lacks jurisdiction because reliefs have been sought against several companies, some of whose registered offices are situated outside Delhi, is untenable. It was contended that the objection proceeds contrary to the principle laid down in **63 Moons Technologies Limited**, which requires the registered offices of the "concerned company" to be considered, rather than that of every company impleaded as a necessary or proper party.

125. In this regard, Ld. Counsel submitted that even if separate Petitions were filed before different Benches of the Tribunal, for instance, against Respondent Nos. 6 and 8 to 11 before the Chandigarh Bench, the company whose affairs were alleged to have been conducted fraudulently or in a manner prejudicial to public interest would remain BPSL, in view of the findings set out in the BPSL Report. Such Petitions would detail the role of the concerned Respondents in the alleged fraud perpetrated in BPSL and seek a declaration that they were parties to the fraudulent conduct of BPSL's business, as well as compensation for the creditors of BPSL.

126. It is therefore submitted that the Chandigarh Bench would, in such circumstances, be required to inquire into the affairs of BPSL and the allegations of fraud in its business, and to consider a declaration concerning the conduct of BPSL's business in a fraudulent manner or in a manner prejudicial to public interest. Since BPSL has its registered office in New Delhi, Ld. Counsel submits that the Chandigarh Bench would not have jurisdiction to entertain a Petition under Section 241(2) read with Sections 246 and 339 of the Act concerning BPSL.

127. Ld. Counsel also relied upon the judgement of the Supreme Court in **Usha Ananthasubramanian v. Union of India 2020 4 SCC 122,** wherein it was held that the head of a different organisation could not be implicated for a role in a company other than the company which was the subject matter of the Petition. It was submitted that this demonstrates that, in a proceeding under Section 241(2) read with Section 246 and 339 of the Act, the subject matter of the inquiry is the conduct of the business and affairs of the company concerned. Accordingly, the company whose affairs are alleged to have been conducted fraudulently or in a manner prejudicial to public interest is relevant for determining territorial jurisdiction. In the present case, that company is BPSL, whose registered office is situated in New Delhi. Relevant paragraph of the said judgement in **Usha Ananthasubramanian v. Union of India (*supra*)** as relied upon by the SFIO is as follows:

*"**8.** This being the case, it is clear that powers under these sections cannot possibly be utilised in order that a person who may be the head of some other organisation be roped in, and his or her assets be attached. This being the case, we set aside the impugned order [Usha Ananthasubramanian v. Union of India Company Appeal (AT) No. 79 of 2019, order dated 4-7-2019 (NCLAT)] passed by NCLAT and well as NCLT. The appeal is allowed in the aforesaid terms."*

128. Ld. Counsel further submitted that the Respondents have relied upon the proviso to Section 241(2) of the Act to contend that the Principal Bench would have jurisdiction only in prescribed cases concerning a class of companies. It was submitted that the proviso does not apply to the present case for the following reasons:

a. The proviso applies when rules are notified that a Petition for a company or a class of companies such as 'Telecom companies' or 'companies having share capital exceeding INR 50 Crores' etc. It has no relation to a composite petition.

b. As submitted above, the present Petition is not a composite Petition alleging that the affairs of all Respondent companies are being carried on in a manner prejudicial to public interest; and

c. In any event, the proviso does not exclude the jurisdiction of the Principal Bench where a company having its registered office within its territorial limits is alleged to have been conducting its affairs in a fraudulent manner or in a manner prejudicial to public interest.

129. Ld. Counsel further contends that, if the arguments of the Applicants/Respondents were accepted, that the determination of territorial jurisdiction would become variable and lead to absurd results. In this regard, the following submissions are advanced:

i. **Ever-changing test for territorial jurisdiction:** The manner in determining the territorial jurisdiction of the Petition when only individuals are impleaded as participants or perpetrators of the fraud would be different from a petition where the participant or perpetrator is another entity. This would mean:

- If the petition seeks reliefs against individuals as perpetrators of the fraud, the test for determining territorial jurisdiction would be the registered office of the company whose affairs are being questioned; and
- If the petition arrays another body corporate as a perpetrator or beneficiary of the fraud in the company whose affairs are questioned, then the goalpost changes, discarding the registered **office of the company which is arrayed as perpetrator.**

ii. **Multiplicity of proceedings:** Illustratively, taking a case like the present, there will be multiple petitions before different benches of this Tribunal across India all in respect of BPSL's affairs and arraying BPSL (which has a registered address in New Delhi). Moreover, each petition before such different benches will be in respect of the same transaction of fraud or a successive limb of the fraud. This will lead to multiplicity of proceedings and may also lead to conflicting findings.

130. In support of the aforesaid submissions, Ld. Counsel relies upon the principle that, where a provision is capable of two interpretations, an interpretation leading to absurd, unworkable or impracticable results ought to be avoided. Reliance is placed on the judgement of **Franklin Templeton Trustee Services Pvt. Ltd. & Anr. v. Amruta Garg & Ors. 2021 (6) SCC 736,** where the Supreme Court considered whether a scheme for winding up of a fund/scheme was required to be approved by a simple majority of all unit holders or all unit holders present and voting. It was submitted that the Supreme Court held that requiring a simple majority of all unit holders would lead to an absurd result. Reliance is also placed on **HS Vankani & Ors. V. State of Gujarat & Ors. (2010) 4 SCC 301.**

131. Relevant paragraphs of the judgement in **Franklin Templeton Trustee Services Pvt. Ltd. & Anr. v. Amruta Garg & Ors. 2021 (6) SCC 736** are as follows:

"…

17. ***The concept of "absurdity" in the context of interpretation of statutes is construed to include any result which is unworkable, impracticable, illogical, futile or pointless, artificial, or productive of a disproportionate counter-mischief*** *[See Bennion on Statutory Interpretation, 5th Edn., p. 969.].* ***Logic referred to herein is not formal or syllogistic logic, but acceptance that enacted law would not set a standard which is palpably unjust, unfair, unreasonable or does not make any sense.*** *[Bennion on Statutory Interpretation, 5th Edn., p. 986.]* ***When an interpretation is beset with practical difficulties, the courts have not shied from turning sides to accept an interpretation that offers a pragmatic solution that will serve the needs of society*** *[Id, p. 971, quoting Griffiths, L.J.].* ***Therefore, when there is choice between two interpretations, we would avoid a "construction" which would reduce the legislation to futility, and should rather accept the "construction" based on the view that draftsmen would legislate only for the purpose of bringing about***

an effective result. We must strive as far as possible to give meaningful life to enactment or rule and avoid cadaveric consequences *[See Principles of Statutory Interpretation by Justice G.P. Singh, 14th Edn., p. 50.].*

18. We would neither hesitate in stating the obvious, that modern regulatory enactments bear heavily on commercial matters and, therefore, must be precisely and clearly legislated as to avoid inconvenience, friction and confusion, which may, in addition, have adverse economic consequences [See Bennion on Statutory Interpretation, 5th Edn., p. 980.]. The legislator in the present case must, therefore, reflect and take remedial steps to bring about clarity and certainty in the Mutual Fund Regulations.

…

23. Investment in share market, though beneficial and attractive, requires expertise in portfolio construction, stock selection and market timing. In view of attendant risks, diversification of portfolio is preferred but this consequentially requires a larger investment. Mutual funds managed by professional fund managers with advantages of pooling of funds and operational efficiency are the preferred mode of investment for ordinary and common persons. It would be wrong to expect that many amongst these unitholders would have definitive opinion required and necessary for voting in a poll on winding up of a mutual fund scheme. Such unitholders, for varied reasons, like lack of understanding and expertise, small holding, etc., would prefer to abstain, leaving it to others to decide. Such abstention or refusal to express opinion cannot be construed as either accepting or rejecting the proposals. Keeping in view the object and purpose of the Regulation with the language used therein, we would not accept a "construction" which would lead to commercial chaos and deadlock. Therefore, silence on the part of absentee unitholders can neither be taken as an acceptance nor rejection of the proposal.

24. Regulation 18(15)(c), upon application in ground reality, must not be interpreted in a manner to frustrate the very law and objective/purpose for which it was enacted. We would rather accept a reasonable and

pragmatic "construction" which furthers the legislative purpose and objective. The underlying thrust behind Regulation 18(15)(c) is to inform the unitholders of the reason and cause for the winding up of the scheme and to give them an opportunity to accept and give their consent or reject the proposal. It is not to frustrate and make winding up an impossibility. ***Way back in 1943, Sutherland in Statutes and Statutory Construction, Vol. 2, 3rd Edn. at p. 523, in Note 5109, had stated:***

> ***"Where a statute has received a contemporaneous and practical interpretation and the statute as interpreted is re-enacted, the practical interpretation is accorded greater weight than it ordinarily receives, and is regarded presumptively the correct interpretation of the law. The rule is based upon the theory that the legislature is acquainted with the contemporaneous interpretation of a statute, especially, when made by an administrative body or executive officers charged with the duty of administering or enforcing the law, and therefore impliedly adopts the interpretation upon re-enactment."***

With some modifications, the principle can be applied in the present case. ***Practical interpretation should be accorded greater weight than it ordinarily receives, and can be regarded as presumptively correct interpretation as the draftsmen legislate to bring about a functional and working result.****"*

132. Relevant paragraphs of the judgement in **HS Vankani & Ors. V. State of Gujarat & Ors. (2010) 4 SCC 301** are as follows:

43. It is a well-known rule of construction that the provisions of a statute must be construed so as to give them a sensible meaning. The legislature expects the court to observe the maxim ut res magis valeat quam pereat (it is better for a thing to have effect than to be made void). The principle also means that if the obvious intention of the statute gives rise to obstacles in implementation, the court must do its best to find ways of overcoming those

obstacles, so as to avoid absurd results. It is a well-settled principle of interpretation of statutes that a construction should not be put on a statutory provision which would lead to manifest absurdity, futility, palpable injustice and absurd inconvenience or anomaly.

44. In this connection reference may be made to the judgment in R (Edison First Power Ltd.) v. Central Valuation Officer [(2003) 4 All ER 209 : 2003 UKHL 20 (HL)] wherein Lord Millet said: (All ER pp. 116-17)

> *"116. … The courts will presume that Parliament did not intend a statute to have consequences which are objectionable or undesirable; or absurd; or unworkable or impracticable; or merely inconvenient; or anomalous or illogical; or futile or pointless.*
>
> *117. But the strength of these presumptions depends on the degree to which a particular construction produces an unreasonable result. The more unreasonable a result, the less likely it is that Parliament intended it.…"*

45. Reference may also be made to the judgment in Andhra Bank v. B. Satyanarayana [(2004) 2 SCC 657 : 2004 SCC (L&S) 433] wherein this Court has held: (SCC p. 662, para 14)

> *"14. A machinery provision, it is trite, must be construed in such a manner so as to make it workable having regard to the doctrine 'ut res magis valeat quam pereat'."*

46. In Tinsukhia Electric Supply Co. Ltd. v. State of Assam [(1989) 3 SCC 709] this Court held as follows: (SCC p. 754, para 118)

> *"118. The courts strongly lean against any construction which tends to reduce a statute to futility. The provision of a statute must be so construed as to make it effective and operative, on the principle 'ut res magis valeat quam pereat'. It is, no doubt, true that if a statute is absolutely vague and its language wholly intractable and absolutely meaningless, the statute could be declared void for vagueness. This*

is not in judicial review by testing the law for arbitrariness or unreasonableness under Article 14; but what a court of construction, dealing with the language of a statute, does in order to ascertain from, and accord to, the statute the meaning and purpose which the legislature intended for it."

47. Reference may also be made to the decisions in Madhav Rao Jivaji Rao Scindia v. Union of India [(1971) 1 SCC 85] , Union of India v. B.S. Agarwal [(1997) 8 SCC 89 : 1998 SCC (L&S) 402] and Paradise Printers v. UT of Chandigarh [(1988) 1 SCC 440] .

48. The above legal principles clearly indicate that the courts have to avoid a construction of an enactment that leads to an unworkable, inconsistent or impracticable results, since such a situation is unlikely to have been envisaged by the rule-making authority. The rule-making authority also expects rule framed by it to be made workable and never visualises absurd results. The decision taken by the Government in deputing the non-graduates (1979-1981 batch) to a two-year training course and graduates (1980-1981 batch) to a one-year training is in due compliance with Rule 10 of the 1969 Rules and Rule 18 of the 1974 Rules and the seniority of both the batches has been rightly settled vide Orders dated 12-10-1982 and 5-3-1987 and the Government has committed an error in unsettling the seniority under its proceedings dated 29-9-1993.

133. With regard to the contention that the Petition is not maintainable because it proceeds against multiple entities, Ld. Counsel submitted that the said contention is based on a misreading of the relevant provision. It is argued that the use of the expression "the company" does not restrict the Central Government from proceeding against multiple entities in a single application. Rather, it signifies that the Central Government may file an application where it is of the opinion that the affairs of a company are being conducted in a manner prejudicial to public interest. In the present case, the company concerned is BPSL, arrayed as Respondent No. 76.

134. It was submitted that the scope of inquiry in the present petition concerns the alleged fraudulent conduct of affairs of Respondent No. 76 (the company), the other entities have been arrayed as Respondents on the basis of their alleged roles in the fraudulent conduct of business of Respondent No. 76 i.e. BPSL.

135. It was submitted that the Petitioner does not allege that affairs of all the entities arrayed as Respondents were conducted in a manner prejudicial to public interest. The Petitioner's case is that the affairs of BPSL (the company) were run in a manner prejudicial to public interest and the other entities arrayed were parties to the fraudulent conduct of business of BPSL for which reason they have been impleaded to the captioned Company Petition.

136. It was further argued that if the Respondent's contention were accepted, the Central Government could implead only the company whose affairs were allegedly conducted in a manner prejudicial to public interest in a petition under Section 241 of the Act, while entities which aided or facilitated the alleged fraudulent conduct of business, or were beneficiaries thereof, could not be impleaded. Ld. Counsel submitted that the Tribunal's powers under Section 241 are not intended to operate in such a manner.

137. Ld. Counsel further relied on the judgement of the NCLAT in **Union of India v. Gitanjali Gems Limited (supra)** which according to the submissions, recognises that in a petition under Section 241 read with Sections 246 and 339 of the Act concerning one company, the Petitioner may seek relief against other companies which were parties to the fraudulent conduct of the business of the company concerned. Relevant paragraphs of the judgement in **Union of India v. Gitanjali Gems Limited** are as follows:

29. The questions arise for consideration are as follows :

"(i) Whether in a petition under sections 221, 222, 241, 242, 246 and 339 of the Companies Act, 2013, the Tribunal has jurisdiction to

injunct the respondents and other companies, LLPs, Trusts and individuals' from removal, transfer or disposal of funds, assets and properties of the entities and individuals until further orders, as has been ordered on February 23, 2018 ? and ;

(ii) Whether the impugned order dated April 2, 2018 vacating the order(s) of restraint dated February 23, 2018 in respect of Mr. Sujal Shah (respondent No. 43) ; Mr. Gopal Krishnan Nair (respondent No. 44) ; Mr. Suresh Senapathy (respondent No. 51) ; Mr. Gautam Mukkavilli (respondent No. 52) and Mr. Sanjay Rishi (respondent No. 53) on the ground that there is no material to negate the statement made by the respondents is legal or not ?"

30. Chapter XIV of the Companies Act, 2013 relates to "Inspection, Inquiry and Investigation".

Section 210 empowers the Central Government to investigate into the affairs of a company/(companies), if it is of the opinion that such investigation is necessary for the reasons mentioned therein, including public interest. For the purpose of the said provision, the Central Government may appoint one or more persons as inspectors to investigate into the affairs of the company and to report thereon in such manner as the Central Government may direct. The SFIO has been established under section 211 of the Companies Act, 2013, which has jurisdiction to investigate into the company/(companies), where the Central Government is of the opinion that it is necessary to investigate into the affairs of a company by the SFIO for different reasons, including the public interest. Where any case has been assigned by the Central Government to the SFIO for investigation under the Act, no other investigating agency of the Central Government or any State Government can proceed with investigation in such case in respect of any offence under the Companies Act and other cases before such agency are required to transfer the relevant documents and records in respect of such offences under the Companies Act to the SFIO. Sub-section (8) of section 211 empowers certain officers of the SFIO

to arrest any person, if on the basis of material in his possession there is to believe, which is to be recorded in writing, that any person has been guilty of any offence punishable under sub-section (6) of section 212 of the Companies Act, 2013.

31. Investigation into company's affairs in other cases can also be done under section 213 on an application made by the eligible members as mentioned in clause (a) of section 213 or on an application made by any other person or otherwise, if it is satisfied that there are circumstances suggesting that the business of the company, etc., has been conducted with intent to defraud its creditors, members, etc., as mentioned in clause (b) of section 213, relevant portion of which reads as follows :

"213. Investigation into company's affairs in other cases.—.. . (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."

32. From the aforesaid provisions, it is clear that the Tribunal on an application made to it or "otherwise", if satisfied that there are circumstances suggesting that the business of the company is being conducted with intent to defraud its creditors, members, etc., as mentioned in clause (b) of section 213, after giving a reasonable opportunity of being heard to the parties, direct the Central Government to investigate.

36. *36. "Liability for fraudulent conduct of business" is punishable under section 339 of the Companies Act, 2013, as quoted below :*

"339. Liability for fraudulent conduct of business.—(1) If in the course of the winding up of a company, it appears that any business of the company has been carried on with intent to defraud creditors of the company or any other persons or for any fraudulent purpose, the Tribunal, on the application of the official liquidator, or the company liquidator or

any creditor or contributory of the company, may, if it thinks it proper so to do, declare that any person, who is or has been a director, manager, or officer of the company or any persons who were knowingly parties to the carrying on of the business in the manner aforesaid shall be personally responsible, without any limitation of liability, for all or any of the debts or other liabilities of the company as the Tribunal may direct :

Provided that on the hearing of an application under this sub- section, the official liquidator or the company liquidator, as the case may be, may himself give evidence or call witnesses.

(2) Where the Tribunal makes any such declaration, it may give such further directions as it thinks proper for the purpose of giving effect to that declaration and, in particular,—

(a) make provision for making the liability of any such person under the declaration a charge on any debt or obligation due from the company to him, or on any mortgage or charge or any interest in any mortgage or charge on any assets of the company held by or vested in him, or any person on his behalf, or any person claiming as assignee from or through the person liable or any person acting on his behalf ;

(b) make such further order as may be necessary for the purpose of enforcing any charge imposed under this sub-section.

(3) Where any business of a company is carried on with such intent or for such purpose as is mentioned in sub-section (1), every person who was knowingly a party to the carrying on of the business in the manner aforesaid, shall be liable for action under section 447.

(4) This section shall apply, notwithstanding that the person concerned may be punishable under any other law for the time being in force in respect of the matters on the ground of which the declaration is to be made.

Explanation.—For the purposes of this section,—

(a) the expression 'assignee' includes any person to whom or in whose favour, by the directions of the person liable, the debt, obligation, mortgage or charge was created, issued or transferred or the interest was created, but does not include an assignee for valuable consideration, not including consideration by way of marriage, given in good faith and without notice of any of the matters on the ground of which the declaration is made ;

(b) the expression 'officer' includes any person in accordance with whose directions or instructions the directors of the company have been accustomed to act."

37. In the present case, the Central Government by letter dated February 17, 2018 has directed the SFIO to investigate into the affairs of the respondent- company, among other 114 entities. The investigation is currently undergoing and as such, as on date, being satisfied if so required, it is always open to the Central Government to file application under sections 241(2) read with section 242 of the Companies Act, 2013 before the Tribunal.

38. In the interest of regulating the conduct of the company's affairs the interim order cannot be restrictive to any particular or individual person, including the company/companies, existing or erstwhile officers and employees of the companies if investigation for alleged fraud is pending.

39. For the purpose of passing interim order the Tribunal cannot fix the personal liability of delinquent directors or managers or officers or other employees in absence of any specific evidence. Therefore, during the process of investigation and pendency of an application under section 241(2) read with section 242 of the Companies Act, 2013 and in view of powers conferred under section 221, the Tribunal is not only empowered to pass appropriate interim order against the company but also against any person or individual, including the order to desist.

40. Chapter XVI relates to "Prevention of oppression and mismanagement". An application to the Tribunal for relief in cases of oppression, etc., can be made by any eligible member(s) of the company under sub-section (1) of section 241 of the Companies Act, 2013, who complains about the

oppression and mismanagement as stipulated in clauses (a) and (b) of sub-section (1).

41. On the other hand, 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 under sub-section (2) of section 241 for an order under Chapter XVI of the Companies Act, 2013.

42. The power of the Tribunal is wide enough as is evident from sub-section (1) of section 242 in terms of which "it may make such order as it thinks fit", with a view to bringing to an end the matters complained of.

43. Sub-section (2) of section 242 is inclusive power without prejudice to the generality of the powers under sub-section (1), which includes regulation of conduct of affairs of the company in future ; the purchase of shares or interests ; restrictions on the transfer or allotment of the shares of the company ; termination, setting aside or modification, of any agreement, etc.

44. Sub-section (4) of section 242 empowers the Tribunal, on the application of any party to the proceeding to make any interim order which it thinks fit for regulating the conduct of the company's affairs upon such terms and conditions as appears to it to be just and equitable.

45. From the aforesaid provisions, it is clear that on an application made by the Central Government alleging affairs of the company are being conducted in a manner prejudicial to public interest, the Tribunal can pass any order in terms of Chapter XVI, which includes section 242 and other provisions under the said Chapter.

46. Section 246 is part of Chapter XVI, the provisions mentioned therein will be also covered by sub-section (2) of section 241. Therefore, in an application made by the Central Government alleging conduct of the company in a manner prejudicial to public interest, the provisions of sections 337 to 341 will be also applicable mutatis mutandis to an application made to the Tribunal under section 241 or section 245."

138. It was further submitted that in **Union of India v. IL&FS & Ors.,** the NCLAT has passed orders from time to time in respect of IL&FS and its subsidiaries. Pertinently, the NCLAT passed orders dated October 15, 2018 and March 12, 2020 granting a moratorium in respect of companies in the IL&FS Group and approved a resolution framework to resolve the IL&FS Group as a whole, respectively.

139. It was further submitted that the language of Section 339 and 340 is amply clear and contemplates a Petition where more than one party is a company (other than the company concerned). It is reiterated that the Petition doesn't pertain to the fraudulent conduct of business of any company other than BPSL.

140. With regard to the contention advanced by Ld. Counsel Mr. Rishav Banerjee appearing on behalf of Respondent Nos. 38 and 39, that the Investigation Report pertains to the fraud in companies other than BPSL by the mere use of the word "and" in the petition, it was submitted that such an argument is superficial. It was contended that one look at the contents of the Investigation Report would make it clear that the fraud described therein pertains to the manner in which the assets and funds derived from BPSL were siphoned. It alleges a fraud in the conduct of business of BPSL. The prime reason for including other entities in the investigation order was solely to follow the money trail etc. and ascertain the role played by them in the fraud pertaining to BPSL. Even the letter dated May 19, 2022 in naming parties other than BPSL only seeks to set out the parties on whom liability and accountability will be affixed in terms of Section 339 of the Act.

ISSUE 2: WHETHER THE CENTRAL GOVERNMENT FORMED THE OPINION REQUIRED UNDER SECTION 241(2)?

Submissions on behalf of the Applicants

141. It was argued that for invoking the jurisdiction of this Tribunal, the formation of an opinion by the Central Government is a mandatory jurisdictional pre-condition and is *pari materia* with the statutory

requirement applicable under other provisions where the exercise of power is conditioned upon the competent authority forming an independent opinion.

142. It was submitted that such an opinion cannot be mechanical, borrowed or founded merely upon the conclusions of the SFIO. It was submitted that the Central Government is required to independently apply its mind to the material placed before it and arrive at its own satisfaction that the affairs of the company are being conducted in a manner prejudicial to public interest, warranting invocation of Section 241(2). In the absence of such independent application of mind and formation of opinion, the very assumption of jurisdiction under Section 241(2) is vitiated, rendering the proceedings liable to be dismissed at the threshold.

143. Reliance was placed on the judgement of the NCLAT in **Major Atul Dev (Retd.) and Others v. Union of India 2024 SCC OnLine NCLAT 1193** and **Barium Chemicals Ltd. v. Company Law Board, AIR 1967 SC 295** to contend that for a petition to be maintainable under Section 241, the conditions precedent needs to be satisfied. It was contended that the opinion cannot be a mechanical rubber-stamping of an investigating agency's recommendations. Relevant extract of the judgement in **Major Atul Dev (Retd.) and Others (*supra*)** is as follows:

*"29. The expression "**is of the opinion**" occurring in Section 241(2) of the 2013 Act denotes a subjective satisfaction of the Central Government and the opinion has to be formed "that the affairs of the Company are being conducted in a manner prejudicial to the public interest" are conditions precedent for applying for an order to the Tribunal under Section 241 of the 2013 Act. There are various other provisions in the Companies Act, 1956 which contemplate formation of opinion by the Central Government or satisfaction by the Central Government for initiating action. Reference is made to Section 396 of the Companies Act, 1956 which provides for power of the Central Government to provide for amalgamation of the company in public interest. The expression used in sub-section (1) of*

Section 396 is "if the Central Government is satisfied that it is essential in the public interest". Hon'ble the Supreme Court had occasion to consider the provisions of Section 396 of the Companies Act, 1956 in the case of ***63 Moons Technologies Limited v. Union of India reported in (2019) 18 SCC 401****. The expression "whether the Central Government is satisfied" came to be dealt with by Hon'ble the Supreme Court in the said judgment. In the judgment Hon'ble the Supreme Court has also considered its earlier two judgments i.e. in the case of* ***Barium Chemical Limited v. The Company Law Board reported in AIR 1963 SC 295*** *and in the case of* ***Rohtas Inudstries Limited v. S.D. Agarwal reported in (1969) 1 SCC 325*** *where the expression "****in the opinion of****" came for consideration. Hon'ble the Supreme Court in paragraph 70 of the said judgment held as under:—*

> ***"70.*** *With regard to similar language that is contained in Section 237(b) of the Companies Act, 1956, this Court, in Barium Chemicals [Barium Chemicals Ltd. v. Company Law Board, 1966 Supp SCR 311 : AIR 1967 SC 295], contained separate opinions as to what the phrase "in the opinion of" contained in Section 237(b) meant. In Rohtas Industries [Rohtas Industries Ltd. v. S.D. Agarwal, (1969) 1 SCC 325 : (1969) 3 SCR 108], this Court adopted the test laid down by Hidayatullah, J. (as he then was) and Shelat, J. as follows : (Rohtas Industries case [Rohtas Industries Ltd. v. S.D. Agarwal, (1969) 1 SCC 325 : (1969) 3 SCR 108], SCC pp. 333-35 & 340-41, paras 5-6 & 11 : SCR pp. 119-121 & 128-29)*
>
> *"5. Before taking action under Sections 237(b)(i) and (ii), the Central Government has to form an opinion that there are circumstances suggesting that 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 in a manner oppressive to any member or that the company was formed for any fraudulent or unlawful purpose or that the persons concerned in the formation 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.

From the facts placed before us, it is clear that the Government had not bestowed sufficient attention to the material before it before passing the impugned order. It seems to have been oppressed by the opinion that it had formed about Shri S.P. Jain. From the arguments advanced by Mr Attorney, it is clear that but for the association of Mr S.P. Jain with the appellant company, the investigation in question, in all probabilities would not have been ordered. Hence, it is clear that in making the impugned order irrelevant considerations have played an important part.

The power under Sections 235 to 237 has been conferred on the Central Government on the faith that it will be exercised in a reasonable manner. The department of the Central Government which deals with companies is presumed to be an expert body in company law matters. Therefore, the standard that is prescribed under Section 237(b) is not the standard required of an ordinary citizen but that of an expert. The learned Attorney did not dispute the position that if we come to the conclusion that no reasonable authority would have passed the impugned order on the material before it, then the same is liable to be struck down. This position is also clear from the decision of this Court in Barium Chemicals Ltd. v. Company Law Board [Barium Chemicals Ltd. v. Company Law Board, 1966 Supp SCR 311 : AIR 1967 SC 295]

….

6. The decision of this Court in Barium Chemicals case [Barium Chemicals Ltd. v. Company Law Board, 1966 Supp SCR 311 : AIR 1967 SC 295] which considered the scope of Section 237(b) illustrates that difficulty. In that case Hidayatullah, J., (our present Chief Justice) and Shelat, J., came to the conclusion that though the power under Section 237(b) is a discretionary power the first requirement for its exercise is the honest formation of an opinion that the investigation is necessary and the further requirement is that "there are circumstances

suggesting" the inference set out in the section; an action not based on circumstances suggesting an inference of the enumerated kind will not be valid; the formation of the opinion is subjective but the existence of the circumstances relevant to the inference as the sine qua non for action must be demonstratable; if their existence is questioned, it has to be proved at least prime facie; it is not sufficient to assert that those 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. In other words they held that although the formation of opinion by the Central Government is a purely subjective process and such an opinion cannot be challenged in a court on the ground of propriety, reasonableness or sufficiency, the authority concerned is nevertheless required to arrive at such an opinion from circumstances suggesting the conclusion set out in sub-clauses (i), (ii) and (iii) of Section 237(b) and the expression "circumstances suggesting" cannot support the construction that even the existence of circumstances is a matter of subjective opinion. Shelat, J., further observed that it is hard to contemplate that the legislature could have left to the subjective process both the formation of opinion and also the existence of circumstances on which it is to be founded; it is also not reasonable to say that the clause permitted the authority to say that it has formed the opinion on circumstances which in its opinion exist and which in its opinion suggest an intent to defraud or a fraudulent or unlawful purpose.

On the other hand Sarkar, C.J., and Mudholkar, J., held that the power conferred on the Central Government under Section 237(b) is a discretionary power and no facet of that power is open to judicial review. Our Brother Bachawat, J., the other learned Judge in that Bench did not express any opinion on this aspect of the case. Under these circumstances it has become necessary for us to sort out the requirements of Section 237(b) and to see which of the two contradictory conclusions reached in Barium Chemicals case [Barium

Chemicals Ltd. v. Company Law Board, 1966 Supp SCR 311 : AIR 1967 SC 295] is in our judgment, according to law. But before proceeding to analyse Section 237(b) we should like to refer to certain decisions cited at the bar bearing on the question under consideration.

***

11. Coming back to Section 237(b), in finding out its true scope we have to bear in mind that that section is a part of the scheme referred to earlier and therefore the said provision takes its colour from Sections 235 and 236. In finding out the legislative intent we cannot ignore the requirements of those sections. In interpreting Section 237(b) we cannot ignore the adverse effect of the investigation on the company. Finally we must also remember that the section in question is an inroad on the powers of the company to carry on its trade or business and thereby an infraction of the fundamental right guaranteed to its shareholders under Article 19(1)(g) and its validity cannot be upheld unless it is considered that the power in question is a reasonable restriction in the interest of the general public. In fact the vires of that provision was upheld by majority of the Judges constituting the Bench in Barium Chemicals case [Barium Chemicals Ltd. v. Company Law Board, 1966 Supp SCR 311 : AIR 1967 SC 295] principally on the ground that the power conferred on the Central Government is not an arbitrary power and the same has to be exercised in accordance with the restraints imposed by law. For the reasons stated earlier we agree with the conclusion reached by Hidayatullah and Shelat, JJ. in Barium Chemicals case [Barium Chemicals Ltd. v. Company Law Board, 1966 Supp SCR 311 : AIR 1967 SC 295] that the existence of circumstances suggesting that the company's business was being conducted as laid down in sub-clause (1) or the persons mentioned in sub-clause (2) were guilty of fraud or misfeasance or other misconduct towards the company or towards any of its members is a condition precedent for the Government to form the required opinion and if the existence of those conditions is challenged, the courts are entitled to examine whether those circumstances were existing when the order was made.

In other words, the existence of the circumstances in question are open to judicial review though the opinion formed by the Government is not amenable to review by the courts. As held earlier the required circumstances did not exist in this case."

(emphasis in original)

30. *The judgment of Hon'ble the Supreme Court in the case of Rohtas Industries Limited (supra) was quoted with approval in the case of 63 Moons Technologies Limited (supra). Its ratio is as extracted above.*

31. *In the case of* ***63 Moons Technologies Limited (supra)****, after noticing several earlier judgments, Hon'ble the Supreme Court laid down the following in paragraph 78:—*

*"****78. Thus, at the very least, it is clear that the Central Government's satisfaction must be as to the conditions precedent mentioned in the section as correctly understood in law, and must be based on facts that have been gathered by the Central Government to show that the conditions precedent exist when the order of the Central Government is made. There must be facts on which a reasonable body of persons properly instructed in law may hold that it is essential in public interest to amalgamate two or more companies. The formation of satisfaction cannot be on irrelevant or imaginary grounds, as that would vitiate the exercise of power.****"*

32. *The ratio of the above judgment is that the Central Government satisfaction must be as per the conditions mentioned in the section and must be based on the fact that has been gathered by the Central Government to show that the conditions precedent exist in the order of the Central Government.*

33. In view of the foregoing discussion, we conclude that to enable the Central Government to apply for an order under Section 241, the conditions precedent i.e. (i) the Central Government is of the opinion; and (ii) that the affairs of the Company are being conducted in a manner prejudicial to the

public interest, need to be satisfied. On fulfilment of the above two conditions, an application can be filed by the Central Government under Section 241 of the 2013 Act for an order.”

144. It was submitted that, in the present case, there is nothing on record to demonstrate that the Central Government independently formed the opinion mandated under Section 241(2) of the Act. On the contrary, a bare perusal of paragraph 3 of the letter dated 19.05.2022 demonstrates that it was SFIO which had recommended initiation of proceedings under Sections 241, 242, 246 and 339 of the Act, and that the Central Government thereafter purportedly authorised SFIO to institute the proceedings. For the sake of formation of opinion, the Central Government has merely used the term “accordingly”. It is most respectfully submitted that the mere use of the expression “accordingly” in the letter dated 19.05.2022 cannot, by itself, be construed as the formation of the statutory opinion contemplated under Section 241(2) of the Act.

145. It was further argued that the captioned proceedings are solely based upon the Investigation Report dated 06.05.2022, which is nothing more than an opinion of the Investigating Officers whereas an Application under Section 241 (2) of the Act, the requisite opinion is to be of the Central Government and not of the SFIO. The contents of the Investigation Report are vague and premised upon assumptions and speculations. Further, the said Investigation Report is pending judicial scrutiny before the Special Court i.e., Ld. ASJ, Dwarka Courts, Delhi.

146. It was further submitted that SFIO has sought to justify the alleged formation of the requisite opinion by placing reliance upon the judgment passed by the NCLAT in **BSR & Associates LLP v. Serious Fraud Investigation Office & Anr. IL&FS Group of Companies**. In this regard it was submitted that, in the ILFS matter, the NCLAT has not considered the objection of opinion under Section 241(2) of the Act, as the sanction order

was passed under section 212(14)(A) of the Act and the same cannot be applied to facts wherein the investigation is by SFIO.

147. It was thus submitted that since no opinion has been formed by Central Government and SFIO has merely relied on the term "Accordingly", the same cannot satisfy the statutory requirements of Section 241(2) of the Act. A perusal of letter dated 19.05.2022 evidence that Central Government has merely acted as a rubber stamp and has approved the recommendation of SFIO, for filing of the captioned Petition. Accordingly, the captioned Petition is liable to be dismissed.

Submissions on behalf of the Respondent No. 76 (BPSL)

148. Ld. Sr. Advocate Mr. Gyanendra Kumar further relied on **Dr. H.C. Sathyan v. State of Karnataka 2017 SCC Online Kar,** on the interpretation of the sanction order. Relevant paragraphs of the aforenoted judgement, as relied on by the Ld. Counsel are as follows:

> ***27.*** *Before concluding, it is relevant to have in mind the object of granting the sanction. The object of granting sanction is only to protect the innocent person, who has been falsely implicated in crime or when prima facie offence is not all made-out on the basis of the materials on record and in spite of that prosecution was sought. This is not the only fact that should be looked into by the Courts. If any semblance of materials are available against the accused and about the satisfaction of the sanctioning authority, then in order to curb the corruption disease, the Courts have to magnanimously deal with the procedure contemplated in law for issue of Sanction Order.*
>
> ***28.*** *It is worth to note here that, the Anti-Corruption laws are intended to make effective provision for the prevention of bribe and corruption which is rampant among the public servants. It is undisputedly a Social Legislation in order to curb the illegal activities of the public servants and it is designed to be liberally construed so as to advance its objects, otherwise, if the Court goes too meticulously with reference to each and*

every word or sentence of the Sanction Order or the evidence led by the prosecution, it would create a deadlock and no case can conclude protecting the object of P.C. Act. When a social legislation is designed to combat an evil like bribe to the Society, Courts should be alive, very careful and mindful of the object of the legislation while interpreting the facts and legal aspects involved in such cases in order to maintain the public health, and safety of the Society. The Courts have to strive to interpret, protect and advance the real object and purpose of the enactment. Any narrow or too hyper-technical analysis of facts and interpretation of the provisions would defeat the very legislative policy. It should also be borne in mind that we may reach a stage of total destruction of public health and reconstruction may become an impossible task.

29. *Therefore what the Courts have to do is, on overall looking into the materials on record placed before the Court, even though some small doubts or confusions are here and there, which are not sufficient to totally up-root the Sanction Order, such order has to be accepted. The Court has to look into the overall circumstances and find out that, really the Sanctioning Authority had occasion to peruse and has perused the materials against the accused and then applied its mind and thereafter accorded sanction. It is too much to expect from the sanctioning authority to use any specific words like, "I have perused the entire records and satisfied myself and then accorded sanction", but, if the circumstances, are sufficient to show that in fact the records were seen and after satisfaction, the order is passed mere non-mentioning some specific words, is not sufficient to hold that such Sanction Order is an invalid order. In my opinion, in this case on looking to the legality, competency and application of mind by the Sanctioning Authority, it can be inferred that, he has issued the Order after due compliance of all legal requirements, which is amply established by the prosecution. Hence no interference is called for.*

Submissions on behalf of the SFIO

149. Ld. Counsel submitted that the objection regarding the absence of an opinion formed by the Central Government under Section 241(2) of the Companies Act, 2013 is factually incorrect. It is submitted that the SFIO, upon completion of its investigation, submitted the investigation report dated May 6, 2022, concerning BPSL, along with the underlying documents, to the Central Government. The Central Government thereafter considered the BPSL Report and its findings and issued a letter dated May 19, 2022, authorising the SFIO to institute the proceedings.

150. Ld. Counsel submitted that the letter dated May 19, 2022 issued by the Central Government to the Director, SFIO, commences with the words, *"I am directed to refer to the subject cited above and to convey the sanction of the competent authority for prosecution on the basis of your report as under…".* It was submitted that the said letter thereafter sets out the charges arising from the report, sanctions prosecution under various provisions of the Act and, upon considering the SFIO's recommendation, specifically authorizes the SFIO to file an application under Sections 241, 242, 246 and 339 of the Act, arraying the persons and entities charged under Section 447 of the Act in the said report. The letter concludes with the words *"This issues with the approval of competent authority."*

151. It was submitted on behalf of the Petitioner/Non-Applicant, in reply to the reliance placed on **Atul Dev (*supra*)** that the very same judgment in the subsequent paragraphs militates against the Applicant's contention. Pertinently, in the said judgement, one of the issues considered by the NCLAT was whether a letter issued by the Central Government (similar to the letter dated May 19, 2022, in the present case) authorising/directing the institution of a Petition under Section 241(2) of the Act constitutes an opinion. It was submitted that the NCLAT noted that the said authorization letter (which is similar to the letter dated May 19,

2022, in the present case) was issued on a consideration of inspection reports under Section 206/208 of the Act.

152. It was submitted that in the said judgement, the Central Government had ordered an inspection and then a supplementary inspection under Section 206 of the Act. The inspection reports contained a recommendation to file a Petition under Section 241(2) of the Act which was endorsed by the Regional Director while submitting the same to the Ministry of Corporate Affairs. Further, the ministry of corporate affairs on considering the said reports and recommendations issued an authorization letter similar to the one in the present case.

153. It was submitted that at paragraph 41 of the said judgement, the NCLAT held that the formation of opinion was evidenced by the letter issued by the Central Government, having regard to the following circumstances:

i. the inspection reports and the recommendation to file a Petition under Section 241(2) of the Act was before the Central Government;
ii. all material record underlying the inspection report was before the Central Government; and
iii. the letter from the Central Government in that case clearly stated that it was issued with the approval of the competent authority.

154. It was submitted that the aforesaid circumstances are also present in the instant case, as the BPSL Report and the material underlying the same were placed before the Central Government, and the letter dated May 19, 2022, expressly records that it was issued with the approval of the competent authority.

155. It was submitted that the contention that the letter dated May 19, 2022 is not reflective of formation of the opinion by the Central Government ought not to be accepted as the said letter clearly records *"I am directed to refer to the subject cited above and convey the sanction of the competent*

authority…". It was submitted that the said letter sets out the charges from the report sanctioning prosecution under various provisions of the Act, considers SFIO's recommendation to file a Petition under Section 241(2), 242 read with Section 246 and 339 of the Act and authorises the SFIO to file the proceedings. According to the Ld. Counsel, the captioned petition was filed pursuant to the said authorisation, and it is, therefore, incorrect to contend that the proceedings were instituted by the SFIO without reference to the Central Government.

156. Ld. Counsel submitted that the SFIO had submitted the BPSL Report and the underlying material to the Central Government and had not independently taken the decision to institute Company Petition No. 105 of 2023. It was further submitted that the Central Government, upon receipt and consideration of the said material, formed the requisite opinion and authorised the filing of the Petition. Ld. Counsel also pointed out that the Petition describes the Union of India, and not the SFIO, as the Petitioner.

157. In view of the aforesaid submissions, Ld. Counsel submitted that the opinion required under Section 241(2) of the Act was formed by the Central Government and that the decision to institute the proceedings was also taken by the Central Government. It was therefore submitted that the Respondent's contention that there is no formation of opinion and/or that the letter dated May 19, 2022, does not demonstrate formation of opinion is untenable and ought to be dismissed.

ISSUE 2(A): WHETHER THE PETITION HAS BEEN INSTITUTED BY THE CENTRAL GOVERNMENT "ITSELF", OR REQUIRED DELEGATION UNDER SECTION 458?

Submissions on behalf of the Applicants

158. It was argued that Section 241(2) permits only the Central Government to institute proceedings for oppressions and mismanagement, however, the present petition has been filed through SFIO and has been signed and

verified by Mr. Anand Kumar, Assistant Director, SFIO, purportedly acting on behalf of the Central Government. Such institution of proceedings is contrary to the statutory mandate.

159. It was submitted that Section 241(2) of the Act, expressly vests the jurisdiction to institute proceedings thereunder in the Central Government. Section 241(2) of the Act provides that the Central Government 'may itself apply' to the Tribunal. The statutory pre-condition is that the Central Government itself forms the requisite opinion that the affairs of the company are being conducted in a manner prejudicial to public interest and, upon formation of such opinion, makes an application before this Tribunal. The requirement that the application be instituted by the Central Government is substantive and jurisdictional in nature. It is not a mere procedural formality as to who signs or presents the petition.

160. The distinction between the Central Government and the SFIO is fundamental. The SFIO is a statutory investigating agency constituted under Section 211 of the Act. Its statutory functions primarily concern investigation into the affairs of companies where such investigation is assigned to it in accordance with the Act. The SFIO, notwithstanding its statutory status and its functioning under the administrative control of the MCA, does not thereby become synonymous with the Central Government. The SFIO derives only such powers as are expressly conferred upon it under the Act and, unless specifically authorised by law or by a valid statutory delegation, cannot exercise powers which the Act vests exclusively in the Central Government.

161. In the present case, no such statutory delegation has been demonstrated. The purported authority relied upon by the Petitioner is the Authorisation Letter/Order dated 16.07.2022, under which Mr. Anand Kumar, Assistant Director, SFIO, is stated to have been authorised to sign and institute proceedings on behalf of the SFIO. The said authorisation, even on its own terms, does not constitute an authorisation by the Central Government

under Section 241(2) of the Act. It neither records that the Central Government has delegated its power under Section 241(2) of the Act to the SFIO nor confers upon Mr. Anand Kumar the authority to form or act upon the statutory opinion of the Central Government contemplated under Section 241(2) of the Act. It was further submitted that the said authorisation pertains only to the filing of prosecution complaints before the Special Court for offences under the Companies Act, 2013, and cannot be construed as an authorisation to invoke the jurisdiction under Sections 241 and 242 of the Act.

162. It is further submitted that the requirement of a valid delegation assumes significance in view of Section 458 of the Act. Where a statutory power is vested in the Central Government and is sought to be exercised by another authority or officer, such exercise must be traceable to a valid delegation made in the manner contemplated by the Act. Section 458 of the Act specifically contemplates delegation of the powers of the Central Government by notification published in the Official Gazette. In the present case, there is no notification published in the Official Gazette delegating the powers of the Central Government under Section 241(2) of the Act to the SFIO or to an officer of the SFIO.

163. It was further submitted that the only relevant notification issued under Section 458 is the notification dated 31.12.2015, whereby certain powers were delegated to the Regional Directors. **No corresponding notification conferring the power under Section 241(2) upon the SFIO has ever been issued or published in the Official Gazette.**

164. It was submitted that, in the absence of a valid statutory delegation under Section 458, the SFIO lacks the legal competence to institute or maintain proceedings under Section 241(2) of the Act. Consequently, the present Petition, having been instituted by an authority not empowered under the statute, is without jurisdiction, *non-est* in the eyes of law, and liable to be dismissed on this ground alone.



Section 241(2) of the 2013 Act v. Section 401 of the 1956 Act

165. The statutory scheme under the Act, marks a material departure from the corresponding provision contained in the Companies Act, 1956. Under the Companies Act, 1956, Parliament had expressly empowered the Central Government not only to itself institute proceedings for oppression and mismanagement, but also to "cause an application to be made to the Tribunal for such an order by any person authorised by it in this behalf." Section 401 of the Companies Act, 1956 expressly recognised such power of authorisation.

166. The said enabling language has, however, been consciously omitted in the Companies Act, 2013. Section 241(2) of the Companies Act, 2013 provides: "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." The expression "may itself apply" is materially different from the language employed in Section 401 of the Companies Act, 1956, which expressly permitted the Central Government to "cause an application to be made" by a person authorised by it.

167. For ease of reference section 241(2) of the 2013 Act and Section 401 of the 1956 Act is reproduced hereunder,

"241. (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.

....."

Section 401, Companies Act, 1956 — Right of Central Government to apply under sections 397 and 398

401. The Central Government may itself apply to the Tribunal for an order under section 397 or 398, ***or*** *cause an application to be made to the Tribunal for such an order by any person authorised by it in this behalf.*

168. It was submitted that the SFIO has contended that the captioned Petition is filed by Union of India and SFIO is performing a perfunctory act/ mechanical role. The said contention is wholly incorrect in the facts of the present case, as Central Government through its letter dated 19.05.2022, purportedly authorised to file the captioned Petition against all the Respondent entities except BPSL (Respondent No. 76), the SFIO at its own whims has arrayed BPSL as a Respondent. Thus, the same cannot be a perfunctory act or a mechanical role. Further, the captioned Petition has been drafted on instruction of SFIO and not Union of India.

169. Reliance in this regard is placed upon **M/s. Mandvi Co-Op Bank Ltd. versus Nimesh B. Thakore Crl. Appeal No. 72 of 2010 dated 11.01.2010 (Ref. para 30 to 36** *and* **Union of India and Anr. vs. Deoki Nandan Aggarwal, 1992 Supp. (1) SCC 323,** wherein the Supreme Court, sounded the note of caution against the court usurping the role of legislator in the guise of interpretation and held that in the guise of interpretation it is not permissible for the court to make additions in the law and to read into it something that is just not there. Assuming there is a defect or an omission in the words used by the legislature the court could not go to its aid to correct or make up the deficiency. Courts shall decide what the law is and not what it should be. Relevant paragraphs of the said judgement in **M/s. Mandvi Co-Op Bank Ltd. versus Nimesh B. Thakore (*supra*)** are as follows:

"49. *Coming back to the first error in the High Court's reasoning, in the guise of interpretation it is not permissible for the Court to make additions in the law and to read into it something that is just not there. In Union of India v. Deoki Nandan Aggarwal [1992 Supp (1) SCC 323 : 1992 SCC (L&S) 248 : (1992) 19 ATC 219] this Court sounded the note of caution against the court usurping the role of legislator in the guise of interpretation. The Court observed: (SCC p. 332, para 14)*

"14. … It is not the duty of the court either to enlarge the scope of the legislation or the intention of the legislature when the language of the

provision is plain and unambiguous. The court cannot rewrite, recast or reframe the legislation for the very good reason that it has no power to legislate. The power to legislate has not been conferred on the courts. The court cannot add words to a statute or read words into it which are not there. Assuming there is a defect or an omission in the words used by the legislature the court could not go to its aid to correct or make up the deficiency. Courts shall decide what the law is and not what it should be. The court of course adopts a construction which will carry out the obvious intention of the legislature but could not legislate itself. But to invoke judicial activism to set at naught the legislative judgment is subversive of the constitutional harmony and comity of instrumentalities."

50. *In Raghunath Rai Bareja v. Punjab National Bank [(2007) 2 SCC 230] while observing that it is the task of the elected representatives of the people to legislate and not that of the Judge even if it results in hardship or inconvenience, the Supreme Court quoted in affirmation, the observation of Justice Frankfurter of the US Supreme Court which is as follows: (SCC p. 244, para 41)*

"41. As stated by Justice Frankfurter of the US Supreme Court (see 'Of Law and Men: Papers and Addresses of Felix Frankfurter'):

'Even within their area of choice the courts are not at large. They are confined by the nature and scope of the judicial function in its particular exercise in the field of interpretation. They are under the constraints imposed by the judicial function in our democratic society. As a matter of verbal recognition certainly, no one will gainsay that the function in construing a statute is to ascertain the meaning of words used by the legislature. To go beyond it is to usurp a power which our democracy has lodged in its elected legislature. The great Judges have constantly admonished their brethren of the need for discipline in observing the limitations. A Judge must not rewrite a statute, neither to enlarge nor to contract it. Whatever temptations the statesmanship of policy-making might wisely suggest, construction

must eschew interpolation and evisceration. He must not read in by way of creation. He must not read out except to avoid patent nonsense or internal contradiction.' "

51. *In Duport Steels Ltd. v. Sirs [(1980) 1 WLR 142 : (1980) 1 All ER 529 (HL)] Lord Scarman expounded the legal position in the following words: (WLR p. 168 G-H : All ER p. 534)*

"But in the field of statute law the Judge must be obedient to the will of Parliament as expressed in its enactments. In this field Parliament makes, and unmakes, the law: the Judge's duty is to interpret and to apply the law, not to change it to meet the Judge's idea of what justice requires. Interpretation does, of course, imply in the interpreter a power of choice where differing constructions are possible. But our law requires the Judge to choose the construction which in his judgment best meets the legislative purpose of the enactment. If the result be unjust but inevitable, the Judge may say so and invite Parliament to reconsider its provision. But he must not deny the statute.""

170. Relevant paragraphs of the said judgement in **Union of India and Anr. vs. Deoki Nandan Aggarwal** are as follows:

"14. *We are at a loss to understand the reasoning of the learned Judges in reading down the provisions in paragraph 2 in force prior to November 1, 1986 as "more than five years" and as "more than four years" in the same paragraph for the period subsequent to November 1, 1986. It is not the duty of the court either to enlarge the scope of the legislation or the intention of the legislature when the language of the provision is plain and unambiguous. The court cannot rewrite, recast or reframe the legislation for the very good reason that it has no power to legislate. The power to legislate has not been conferred on the courts. The court cannot add words to a statute or read words into it which are not there. Assuming there is a defect or an omission in the words used by the legislature the court could not go to its aid to correct or make up the deficiency. Courts shall decide*

what the law is and not what it should be. The court of course adopts a construction which will carry out the obvious intention of the legislature but could not legislate itself. But to invoke judicial activism to set at naught legislative judgment is subversive of the constitutional harmony and comity of instrumentalities. Vide P.K. Unni v. Nirmala Industries [(1990) 2 SCC 378, 383-84 : (1990) 1 SCR 482, 488] , Mangilal v. Suganchand Rathi [(1964) 5 SCR 239 : AIR 1965 SC 101] , Sri Ram Ram Narain Medhi v. State of Bombay [1959 Supp 1 SCR 489 : AIR 1959 SC 459] , Hira Devi (Smt) v. District Board, Shahjahanpur [(1952) 2 SCC 154 : 1952 SCR 1122, 1131 : AIR 1952 SC 362] , Nalinakhya Bysack v. Shyam Sunder Haldar [(1953) 1 SCC 167 : 1953 SCR 533, 545 : AIR 1953 SC 148] , Gujarat Steel Tubes Ltd. v. Gujarat Steel Tubes Mazdoor Sabha [(1980) 2 SCC 593 : 1980 SCC (L&S) 197 : (1980) 2 SCR 146] , G. Narayanaswami v. G. Pannerselvam [(1972) 3 SCC 717 : (1973) 1 SCR 172, 182] , N.S. Vardachari v. G. Vasantha Pai [(1972) 2 SCC 594 : (1973) 1 SCR 886] , Union of India v. Sankal Chand Himatlal Sheth [(1977) 4 SCC 193 : 1977 SCC (L&S) 435 : (1978) 1 SCR 423] and CST v. Auriaya Chamber of Commerce, Allahabad [(1986) 3 SCC 50, 55 : 1986 SCC (Tax) 449 : (1986) 2 SCR 430, 438] . Modifying and altering the scheme and applying it to others who are not otherwise entitled to under the scheme, will not also come under the principle of affirmative action adopted by courts sometimes in order to avoid discrimination. If we may say so, what the High Court has done in this case is a clear and naked usurpation of legislative power."

171. It was further submitted that, even under the Companies Act, 2013, wherever Parliament intended any function or power vested in the Central Government to be exercised through another person by way of authorisation, the same has been expressly provided for in the statute. Illustratively, Sections 212(6), 212(8), 224(2), 271, 272, 439(2) and 441 of the Act contain express provisions permitting the Central Government to act through, or cause an act to be undertaken by, a person authorised by it. The legislature has thus demonstrated that, where it intended to permit

such mode of exercise, it has employed specific enabling language to that effect.

172. Further, Section 224(2) expressly permits the Central Government to have a Section 241 petition presented before the Tribunal through a person authorised by it. In contrast, Section 224(5), while empowering the Central Government to approach the Tribunal, merely states that the Central Government may file the application and contains no provision permitting filing through an authorised person. The deliberate difference in wording indicates that Parliament intended to permit authorised filing under Section 224(2), but not under Section 224(5).

173. Therefore, the distinction between "authorisation" and "delegation" is crucial in the present case. An authorisation merely purporting to permit an officer to act on behalf of the Central Government cannot confer upon such officer a statutory power which has been vested exclusively in the Central Government. More importantly, the Central Government itself cannot circumvent the statutory scheme by doing indirectly, through an administrative authorisation, what the Act requires to be done by way of a valid statutory delegation. Reliance in this regard is placed upon ***A*.K. Roy and Anr. v. State of Punjab and Anr. 1986 4 SCC 326,** wherein the Supreme Court, held that where a power is given to do a certain thing in a certain way, the thing must be done in that way or not at all. Other modes of performance are necessarily forbidden. Thus, the power vested in the Central Government under Section 241(2) of the Act can be exercised by any other authority only upon a valid delegation of such power and function by the Central Government under Section 458 of the Act, and strictly in accordance with the procedure prescribed thereunder. Relevant paragraphs of the said judgement in **A.K. Roy and Anr. v. State of Punjab and Anr. (*supra*)** are as follows:

"9. *It is common ground that the prosecution in the instant case has not been launched either by or with the written consent of the Central Government or the State Government. It therefore becomes necessary to ascertain whether the Food Inspector, Faridkot was duly authorised to launch a prosecution. The Food Inspector had been conferred powers of the State Government under Section 20(1) of the Act viz. to initiate prosecutions for an offence under the Act, by the Food (Health) Authority i.e. the Director of Health Services. A mere perusal of the impugned notification dated September 7, 1972 makes it manifest that it was the Director of Health Services and not the State Government who had authorised the Food Inspector to launch prosecutions for an offence under the Act. It is therefore clear that the Food Inspector is not a person who has been authorised by any general or special order issued by the Central Government or the State Government. There would be no problem if the State Government were to issue a notification under Section 20(1) of the Act conferring authority on the Food Inspector, Faridkot under Section 20(1) to launch prosecutions for an offence under the Act as is the practice in the other States.*

10. *A careful analysis of the language of Section 20(1) of the Act clearly shows that it inhibits institution of prosecutions for an offence under the Act except on fulfilment of one or the other of the two conditions. Either the prosecutions must be instituted by the Central Government or the State Government or a person authorised in that behalf by the Central Government or the State Government, or the prosecutions should be instituted with the written consent of any of the four specified categories of authorities or persons. If either of these two conditions is satisfied, there would be sufficient authority for the institution of such a prosecution for an offence under the Act. The provision contained in Section 20(1) of the Act does not contemplate the institution of a prosecution by any person other than those designated. The terms of Section 20(1) do not envisage further delegation of powers by the person authorised, except that such prosecution may be instituted with the written consent of the Central Government or the State Government or the person authorised. The use of*

the negative words in Section 20(1) "No prosecution for an offence under this Act ⋯ shall be instituted except by or with the written consent of" plainly make the requirements of the section imperative. That conclusion of ours must necessarily follow from the well-known rule of construction of inference to be drawn from the negative language used in a statute stated by Craies on Statute Law, 6th Edn., p. 263 in his own terse language:

"If the requirements of a statute which prescribes the manner in which something is to be done are expressed in negative language, that is to say, if the statute enacts that it shall be done in such a manner and in no other manner, it has been laid down that those requirements are in all cases absolute, and that neglect to attend to them will invalidate the whole proceeding."

(emphasis supplied)

Where a power is given to do a certain thing in a certain way, the thing must be done in that way or not at all. Other modes of performance are necessarily forbidden. The intention of the legislature in enacting Section 20(1) was to confer a power on the authorities specified therein which power had to be exercised in the manner provided and not otherwise.

***11.** The first part of Section 20(1) of the Act lays down the manner of launching prosecutions for an offence under the Act, not being an offence under Section 14 or Section 14-A. The second part provides for delegation of powers by the Central Government or the State Government. It enables that prosecutions for an offence under the Act can also be instituted with the written consent of the Central Government or the State Government or by a person authorised in that behalf, by a general or special order issued by the Central Government or the State Government. The use of the words "in this behalf" in Section 20(1) of the Act shows that the delegation of such power by the Central Government or the State Government by general or special order must be for a specific purpose, to authorise a designated*

person to institute such prosecutions on their behalf. The terms of Section 20(1) of the Act do not postulate further delegation by the person so authorised; he can only give his consent in writing when he is satisfied that a prima facie case exists in the facts of a particular case and records his reasons for the launching of such prosecution in the public interest.

12. *In the case of statutory powers the important question is whether on a true construction of the Act, it is intended that a power conferred upon A may be exercised on A's authority by B. The maxim delegatus non potest delegare merely indicates that this is not normally allowable but the legislature can always provide for sub-delegation of powers. The provision contained in Section 24(2)(e) enables the State Government to frame a rule for delegation of powers and functions under the Act but it clearly does not envisage any sub-delegation. That apart, a rule framed under Section 24(2)(e) can only provide for delegation of minor administrative functions e.g. appointment of Food Inspectors, Food (Health) Authority etc. In the case of important executive functions like the one contained in Section 20(1) of the Act to authorise launching of prosecutions for an offence under the Act which is in the nature of a safeguard, the courts may be disposed to construe general powers of delegation restrictively. Keeping in view the language of Sections 20(1) and 24(2)(e) of the Act, Rule 3 of the Punjab Rules can be treated to be a general order issued by the State Government to authorise the Food (Health) Authority i.e. the Director of Health Services to institute prosecutions for an offence under the Act. Unfortunately, the draftsmen of Rule 3 more or less employed the language of Section 20(1) of the Act. If Rule 3 were to be literally interpreted, the words "to authorise the, launching of prosecutions" may lead to the consequent that the Food (Health) Authority who had been delegated the power of the State Government under Section 20(1) of the Act could, in his turn, sub-delegate his powers to the Food Inspector. Such a consequence is not envisaged by Section 20(1) of the Act. It is well settled that rules framed pursuant to a power conferred by a statute cannot proceed or go against the specific provisions of the statute. It must therefore follow as a logical consequence*

that Rule 3 of the Prevention of Food Adulteration (Punjab) Rules, 1958 must be read subject to the provisions contained in Section 20(1) of the Prevention of Food Adulteration Act, 1954 and cannot be construed to authorise sub-delegation of powers by the Food (Health) Authority, Punjab to the Food Inspector, Faridkot. If so construed, as it must, it would mean that the Food (Health) Authority was the person authorised by the State Government to initiate prosecutions. It was also permissible for the Food (Health) Authority being the person authorised under Section 20(1) of the Act to give his written consent for the institution of such prosecutions by the Food Inspector, Faridkot as laid down by this Court in State of Bombay v. Parshottam Kanaiyalal [(AIR 1961 SC 1: 1961) 1 SCR 458: 1961 (1) Cri LJ 170] and Corpn. of Calcutta v. Md. Omer Ali [(1976) 4 SCC 527 : 1977 SCC (Cri) 31] .

13. *In the premises, the impugned notification dated September 7, 1972 issued by the Food (Health) Authority must be declared as ultra vires the Food (Health) Authority insofar as he purported to delegate his powers to institute prosecutions for an offence under the Act under Section 20(1) to the Food Inspector, Faridkot. It must accordingly follow that the Food Inspector, Faridkot was not competent to lodge the complaint against the appellants for having committed an offence punishable under Section 16(1)(a)(ii) read with Section 9 of the Prevention of Food Adulteration Act, 1954.*

14. *In the result, the appeal must succeed and is allowed. The judgment and order passed by the High Court and that of the Sub-Divisional Judicial Magistrate, Moga are set aside."*

174. It was submitted that the principle of casus omissus is also attracted with considerable force. The Tribunal cannot supply or read into Section 241(2) of the Act, the words which Parliament has deliberately omitted. Reading an implied power of authorisation into Section 241(2) of the Act, would effectively amount to restoring the very language of Section 401 of the 1956 Act which Parliament consciously chose not to incorporate in the 2013 Act. It was submitted that, if the legislature has specifically taken away the

power of the Central Government to apply under Section 241(2) through an authorised person, the same cannot be introduced by this Tribunal even for the purpose of a harmonious construction.

175. In view of the aforesaid statutory scheme, the reliance placed by the SFIO upon the letter dated 19.05.2022 is wholly misplaced and misconceived. The Central Government could not, by way of a mere administrative letter or authorisation, confer upon the SFIO a substantive jurisdiction which Section 241(2) of the Act expressly vests in the Central Government and which, under the scheme of the 2013 Act, can be exercised by another authority only pursuant to a valid delegation in accordance with Section 458. The said letter, therefore, cannot constitute the source of jurisdiction for institution of the present proceedings.

Submissions on behalf of the SFIO

176. Ld. Counsel, appearing on behalf of the SFIO, submitted that the present petition has been instituted by the Central Government itself and that no question of delegation of powers arises in the present case.

177. It was submitted that the contention of the Respondents regarding the delegation is factually and legally misconceived, in view of the letter dated May 19, 2022 issued by the Central Government whereby, pursuant to its decision to institute the proceedings, the SFIO was authorised to execute and file the Petition. Ld. Counsel submitted that the contention that SFIO independently decided to institute the Petition is, therefore, factually incorrect.

178. It was further argued that the decision to file the captioned petition was solely taken by the Central Government, as it is evident from the letter dated May 19, 2022. It was submitted that the petition has been filed in the name of the Central Government, namely the Union of India and is a consequence of the exercise of power by the Central Government and not by the SFIO. In this regard, reliance is placed on Section 79 read with Order

XXVII Rule 1 of the Code of Civil Procedure, 1908, to submit that proceedings by the Central Government are brought in the name of the Union of India, which, according to the Ld. Counsel, also demonstrates that no delegation of powers to the SFIO has taken place.

179. Ld. Counsel further relies upon **Union of India through SFIO v. IL&FS Securities Services Limited CA No. 234 of 2025,** and submitted that the appeal preferred against the said judgement was dismissed. It was submitted that the NCLT, Mumbai has in the aforesaid matter, considered an identical objection by concerning the authority of the SFIO to present a petition under Section 212(14A) read with Section 241, 246 and 339 of the Act. While rejecting the objection regarding the maintainability of the application on the grounds of lack of locus on the part of the SFIO and non-compliance with Section 458 of the Act, the NCLT Mumbai held that the application filed by the SFIO was maintainable. Relevant paragraphs of the aforenoted judgement as cited by the Ld. Counsel are as follows:

"3. After completion of the investigation into the affairs of ISSL, the Investigation Report dated 14.07.2023 was submitted to the MCA. After examination of the Investigation report, ***MCA vide order bearing reference {F. No. 35/18/2023 Legal} dated 26.09.2023 gave necessary directions to SFIO to file Investigation Report on record to seek attachment & disgorgement proceedings against the person/ entities charged for the offences under Section 447 of the Companies Act, 2013 before this Tribunal.***

4. Pursuant to the directions, A Company Application bearing No. 396 of 2021 was filed on behalf of Union of India through the Serious Fraud Investigation Office ('SFIO') by Sh. V. Apparao, Sr. Assistant Director, SFIO, who is a Pairvi Officer in respect of IL&FS and its Subsidiary Companies claiming to be competent and authorized to file the application on behalf of the Applicant i.e., the Union of India through the Serious Fraud Investigation Office against 22 proposed Respondents before this Tribunal

seeking, inter alia, freezing of assets of the Respondents based on material available during the course of investigation.

7. ***The proposed Respondents raised a preliminary ground that the Serious Fraud Investigation Office ("SFIO") has no locus standi or statutory authority to institute and maintain CA 234/2025 in the present proceedings,*** *and the Ld. Counsel appearing for the Statutory Auditors and engagement/signing Partners as well as third person proposed to impleaded vide amendment sought in present application as well CA 294 of 2022 & CA 396 of 2021. Accordingly, the Ld. Counsel for the Applicant i.e., Union of India as well as for contesting Respondents on this issue were heard to decide the jurisdictional issue first.*

9. Indubitably, the CP 3638 of 2018 is filed by Union of India in terms of Section 241(2) of the Companies Act, 2013 which vests powers in the Central Government (Union of India) to do so if it is of the opinion that the affairs of the company are being conducted in a manner prejudicial to public interest. Further, Section 212(14A) of the Companies Act, 2013 provides that ***"Where the report under sub-section (11) or sub-section (12) states that fraud has taken place in a company and due to such fraud any director, key managerial personnel, other officer of the company or any other person or entity, has taken undue advantage or benefit, whether in the form of any asset, property or cash or in any other manner, the Central Government may file an application before the Tribunal for appropriate orders with regard to disgorgement of such asset, property or cash and also for holding such director, key managerial personnel, other officer or any other person liable personally without any limitation of liability.".*** *It is clear from the bare reading of aforesaid provision that the power to file an application in terms of section 212(14A) is vested in the Central Government.*

10. ***Rule 2 of Government of India (Allocation of Business) Rules, 1961 provides that "The business of the Government of India shall be transacted in the Ministries, Departments, Secretariats and Offices specified in the First Schedule to these rules (all of which***



are hereinafter referred to as "department")." Entry 8A of the First Schedule lists 'Ministry of Corporate Affairs' as one of the ministries.

11. ***Further, Rule 3(1) thereof provides that "The distribution of subjects among the departments shall be as specified in the Second Schedule to these Rules and shall include all attached and subordinate offices or other organisations including Public Sector Undertakings concerned with their subjects and Sub-rules (2), (3) and (4) of this Rule". The Second Schedule names 'Ministry of Corporate Affairs' for Administration of the Companies Act, 1956' and puts 'Serious Frauds Investigation Office' under the Ministry of Corporate Affairs.***

12. ***The Rule 3(3) further provides that Where sanction for the prosecution of any person for any offence is required to be accorded in any other case, by the Department which administers the Act under which the alleged offence is committed."***

13. ***From the perusal of Allocation of Business Rules, it is abundantly clear that the power vested in Central Government under Companies Act, 2013 are to be exercised by the Ministry of Corporate Affairs.***

14. ***Further, Rule 3 of the Government of India (Transaction of Business) Rules 1961 providing for the manner in which the business is to be transacted by concerned department/ministry provides that "Subject to the provisions of these Rules in regard to consultation with other departments and submission of cases to the Prime Minister, the Cabinet and its Committees and the President, all business allotted to a department under the Government of India (Allocation of Business) Rules, 1961, shall be disposed of by, or under the general or special directions of, the Minister in-charge." Further, the Rule 11 of the said Rules provides that "In each department, the Secretary (which term includes the Special Secretary or Additional Secretary or Joint Secretary in independent charge) shall be the administrative head thereof, and***

shall be responsible for the proper transaction of business and the careful observance of these rules in that department."

15. ***From the perusal of Transaction of Business Rules, it is abundantly clear that the power of administration vested in MCA under Companies Act, 2013 are to be exercised by Hon'ble Minister of Corporate Affairs under general or special order, and the Secretary (which term includes the Special Secretary or Additional Secretary or Joint Secretary in independent charge) shall be the administrative head thereof, Ministry of Corporate Affairs.***

16. Indubitably, these rules are notified, and ***Director SFIO is equivalent to Joint Secretary and above. In view of above rules, the powers exercisable by the Central Government can be exercised by Hon'ble Minister by general or special order, and Secretary, including the Special Secretary or Additional Secretary or Joint Secretary in independent charge is administrative head of the Ministry of Corporate Affairs. Further, it is noted that SFIO Director holds independent charge, hence, he assumes the role of administrative head of SFIO, however, SFIO falls within Ministry of Corporate Affairs.***

17. ***It is noted that Letter dated 26.09.2023 was issued by Ministry of Corporate Affairs with approval of the competent authority, which is Hon'ble Minister of Corporate Affairs, who is authorised to issue special directions for all business allotted to Ministry of Corporate Affairs, and the powers vested in Central Government under Companies Act, 2013/1956 is one of business allotted to it. It is further noted that administration of SFIO as well as Companies Act, 2013 falls within its domain and it is vested with authority to issue directions to any of the officer under the department to discharge necessary functions representing Central Government. In view of this, we do not find that the Central Government could not have authorised Director, SFIO to file the present application in terms of Section 212(14A) of the Companies Act, 2013 merely because SFIO, as independent department under***

the said ministry, is vested with powers under section 212(14) of the Companies Act, 2013 or any other provision of the Companies Act, 2013 to institute certain proceedings on its own. *In our considered view, section 212(14) and 212(14A) are distinct provisions and power vested in SFIO to institute proceedings u/s 212(14) does not bar authorisation of any administrative head of the department (which is SFIO in present case) by the Ministry to act on behalf of Central Government under Section 212(14A) of the Companies Act, 2013, and both of these provisions, namely 212(14) and 212(14A) vests distinct power, one which can be exercised by SFIO in its own name, and power under 212(14A) which is exercisable by department head under the ministry on behalf of central government in terms of specific administrative order(s) or general delegation in terms of Transaction of Business Rules.*

18. ***In the present case, the application has been filed by legal officer in department of SFIO, who has been authorised to do so by Hon'ble Minister under a specific order issued to Director SFIO, who holds a post equivalent to Joint Secretary as head of an independent department under the Ministry and said direction is in consonance with Rule 3 of Transaction of Business Rules. Further, the direction vide said letter clearly requires the Director SFIO to place the investigation report before the Hon'ble NCLT, Mumbai and attachment and disgorgement proceedings be sought against the person/ entities charged under Section 447 of the Companies Act, 2013.***

19. ***It is also contended that, even if the delegation of power to SFIO is permissible, such delegation of power by Central Government can only be done by issuance of a notification and such notification is required to be laid before each House of Parliament as provided under section 458 of the Companies Act, 2013.***

20. As noted above, ***the Allocation of Business Rules and Transaction of Business Rules provide for the manner in which the powers vested in Central Government are to be exercised by the constituents of the Government. There is no dispute that these***

Rules are either not notified, or if notified were not laid before each house of parliament after notification. It is further noted that the Hon'ble Minister Corporate Affairs, vested with power to administer provisions of Companies Act, has directed Director SFIO to institute proceedings on behalf of Central Government in accordance with Allocation of Business Rules and Transaction of Business Rules, and such directions are merely administrative in nature. The delegation, as referred in Section 458 of the Companies Act, 2013, does not apply to administrative order(s) requiring the departmental head to do some act on behalf of central government, as the delegation of powers vested in Central Government occurred when the powers of Central Government are allocated in terms of Allocation of Business Rules and Transaction of Business Rules, and no delegation can said to have taken place from Hon'ble Minister to one of department head as such direction is merely an administrative in nature.

21. ***It is pertinent to note that the present application has been filed on behalf of Union of India by SFIO, and not by SFIO in its independent capacity, indicating clearly that the said application is filed by Union of India through one of its authorised person in the concerned ministry.***

22. It is also contended that section 212(14A) cannot be applied retrospectively to alleged acts of commission and omission by chartered accountants for the period prior to 2019, however, we consider it appropriate to deal with at later stage as the arguments were restricted to the maintainability of this application on the ground that it has been filed by SFIO and not Union of India.

23. ***In view of the aforesaid discussion, we hold that the contention of contesting respondents that the present application is not maintainable on ground of lack of locus on part of SFIO or non-compliance with section 458 of the Companies Act, 2013 is not sustainable."***

180. Ld. Counsel submitted that the argument of the Respondents that there ought to have been a delegation for the SFIO to file is also wrong. It was submitted that delegation entails conferment of power to the delegate or the sub-delegate to act, and in this case, the formation of opinion and decision to file was taken by the Central Government, it authorized and directed the Director, SFIO to only undertake the act of filing with the Central Government as the Petitioner. The authorization/direction to file was not a delegation of power but instead a simple authorization to undertake a ministerial/administrative or clerical act of presenting a petition. Reliance was placed on the judgements of **Union of India v. P.K. Roy 1967 SCC Online SC 23 and Sidhartha Sarawgi v. Board of Trustees for the Port of Kolkata & Ors. (2014) 16 SCC 248.** Relevant paragraphs of the said judgement in **Union of India v. P.K. Roy (*supra*)** as relied upon are as follows:

*"11. … The principle of the maxim "**delegates non protest delegare**" has therefore no application to the present case. **The maxim deals with the extent to which a statutory authority may permit another to exercise a discretion entrusted by the statute to itself. It is true that delegation in its general sense does not imply a parting with statutory powers by the authority which grants the delegation, but points rather to the conferring of an authority to do things which otherwise that administrative authority would have to do for itself. If, however, the administrative authority named in the statute has and retains in its hands general control over the activities of the person to whom it has entrusted in part the exercise of its statutory power and the control exercised by the administrative authority is of a substantial degree, there is in the eye of law no "delegation" at all and the maxim "delegatus non potest delegare" does not apply [See Fowler (John) & Co. (Leeds) v. Duncan)**. In other words, **if a statutory authority empowers a delegate to undertake preparatory work and to take an initial decision in matters entrusted to it but retains in its own hands the power to approve or disapprove the decision after it has been taken, the decision will be held to have been validly made***

if the degree of control maintained by the authority is close enough for the decision to be regarded as the authority's own. *In the context of the facts found in the present case we are of opinion that the High Court was in error in holding that there has been an improper delegation of its statutory powers and duties by the Central Government and that the final gradation list dated April 6, 1962 was therefore ultra vires and illegal. Even on the assumption that the task of integration was exclusively entrusted Central Government, we are of the opinion that the steps taken by the Central Government in the present case in the matter of integration did not amount to any delegation of its essential statutory functions. There is nothing in Sections 115 or 117 of the said Act which prohibits the Central Government in any way from taking the aid and assistance of the State Government in the matter of effecting the integration of the services. So long as the act of ultimate integration is done with the sanction and approval of the Central Government and so long as the Central Government exercises general control over the activities of the State Government in the matter it cannot be held that there has been any violation of the principle "**delegatus non potest delegare**". For instance, it was observed by this Court in **Pradvat Kumar Bose v. Hon'ble the Chief Justice of Calcutta High Court**:*

> *"It is well-recognised that a statutory functionary exercising such a power cannot be said to have delegated his functions merely by deputing a responsible and competent official to enquire and report. That is the ordinary mode of exercise of any administrative power. What cannot be delegated except where the law specifically so provides is the ultimate responsibility for the exercise of such power."*

As pointed out by the House of Lords in Board of Education v. Rice, a functionary who has to decide an administrative matter, of the nature involved in this case, can obtain the material on which he is to act in such manner as may be feasible and convenient, provided only the affected party "has a fair opportunity to correct or contradict any relevant and prejudicial material". The same principle was reiterated by Lord Chancellor in Local Government Board v. Arlidge in the following passage:

"My Lords, I concur in this view of the position of an administrative body to which the decision of a question in dispute between parties has been entrusted. The result of its enquiry must, as I have said, be taken, in the absence of directions in the statute to the contrary, to be intended to be reached by its ordinary procedure. In the case of the Local Government Board it is not doubtful what this procedure is. The Minister at the head of the Board is directly responsible to Parliament like other Ministers. He is responsible not only for what he himself does but for all that is done in his department. The volume of work entrusted to him is very great and he cannot do the great bulk of it himself. He is expected to obtain his materials vicariously through his officials, and he has discharged his duty if he sees that they obtain these materials for him properly. To try to extend his duty beyond this and to insist that he and other members of the Board should do everything personally would be to impair his efficiency. Unlike a Judge in a court he is not only at liberty but is compelled to rely on the assistance of his staff."

We accordingly reject the argument of Mr. Asoke Sen on this aspect of the case and hold that the High Court was in error in holding that there was an improper delegation of its statutory power by the Central Government under Section 115(5) of the said Act."

Relevant paragraphs of the said judgement in **Sidhartha Sarawgi v. Board of Trustees for the Port of Kolkata & Ors.** As relied upon are as follows:

"2. *Delegation is the act of making or commissioning a delegate. It generally means parting of powers by the person who grants the delegation and conferring of an authority to do things which otherwise that person would have to do himself. "Delegation" is defined in Black's Law Dictionary as:*

"The act of entrusting another with authority or empowering another to act as an agent or representative."

In P. Ramanatha Aiyar's The Law Lexicon, "delegation is the act of making or commissioning a delegate. Delegation generally means parting of

powers by the person who grants the delegation, but it also means conferring of an authority to do things which otherwise that person would have to do himself."

3. *Mathew, J. in Gwalior Rayon Silk Mfg. (Wvg.) Co. Ltd. v. CST [Gwalior Rayon Silk Mfg. (Wvg.) Co. Ltd. v. CST, (1974) 4 SCC 98 : 1974 SCC (Tax) 226] has succinctly discussed the concept of delegation. Para 37 reads as follows: (SCC p. 116)*

> *"37. … Delegation is not the complete handing over or transference of a power from one person or body of persons to another. Delegation may be defined as the entrusting, by a person or body of persons, of the exercise of a power residing in that person or body of persons, to another person or body of persons, with complete power of revocation or amendment remaining in the grantor or delegator. It is important to grasp the implications of this, for, much confusion of thought has unfortunately resulted from assuming that delegation involves or may involve, the complete abdication or abrogation of a power. This is precluded by the definition. Delegation often involves the granting of discretionary authority to another, but such authority is purely derivative. The ultimate power always remains in the delegator and is never renounced."*

4. *There is a subtle distinction between delegation of legislative powers and delegation of non-legislative/administrative powers. As far as delegation of power to legislate is concerned, the law is well settled: the said power cannot be sub-delegated. The legislature cannot delegate essential legislative functions which consist in the determination or choosing of the legislative policy and formally enacting that policy into a binding rule of conduct [Harishankar Bagla v. State of M.P., AIR 1954 SC 465 at p. 468, para 9 : 1954 Cri LJ 1322 : (1955) 1 SCR 380 at p. 388; Agricultural Market Committee v. Shalimar Chemical Works Ltd., (1997) 5 SCC 516 at p. 524, para 24] . Subordinate legislation which is generally in the realm of rules and regulations dealing with the procedure on implementation of plenary legislation is generally a task entrusted to a*

specified authority. Since the legislature need not spend its time for working out the details on implementation of the law, it has thought it fit to entrust the said task to an agency. That agency cannot entrust such task to its subordinates; it would be a breach of the confidence reposed on the delegate.

5. *Regarding delegation of non-legislative/administrative powers on a person or a body to do certain things, whether the delegate himself is to perform such functions or whether after taking decision as per the terms of the delegation, the said agency can authorise the implementation of the same on somebody else, is the question to be considered. Once the power is conferred, after exercising the said power, how to implement the decision taken in the process, is a matter of procedure. The legislature may, after laying down the legislative policy, confer discretion on an administrative agency as to the execution of the policy and leave it to the agency to work out the details within the framework of that policy [Khambhalia Municipality v. State of Gujarat, AIR 1967 SC 1048 at p. 1051, para 7] . So long as the essential function of decision making is performed by the delegate, the burden of performing the ancillary and clerical task need not be shouldered by the primary delegate. It is not necessary that the primary delegate himself should perform the ministerial acts as well. In furtherance of the implementation of the decision already taken by the primary delegate as per the delegation, ministerial or clerical tasks may be performed by authorised officers. The complexity of modern day administration and the expansion of functions of the State to the economic and social spheres have made it necessary that the legislature gives wide powers to various authorities when the situation requires it. Today's governmental functions are a lot more complex and the need for delegation of powers has become more compelling. It cannot be expected that the head of the administrative body performs each and every task himself.*

6. *The issue was considered by this Court in Jamal Uddin Ahmad v. Abu Saleh Najmuddin [Jamal Uddin Ahmad v. Abu Saleh Najmuddin, (2003) 4 SCC 257] in the context of the procedure for filing of the election petitions*

under Section 81 of the Representation of the People Act, 1951. It was held that the ministerial or administrative functions of the authority on whom the powers are conferred by the statute can be exercised by the authorised officers. It was held that: (SCC pp. 269-70, para 13)

> *"13. The functions discharged by a High Court can be divided broadly into judicial and administrative functions. The judicial functions are to be discharged essentially by the Judges as per the Rules of the Court and cannot be delegated. However, administrative functions need not necessarily be discharged by the Judges by themselves, whether individually or collectively or in a group of two or more, and may be delegated or entrusted by authorisation to subordinates unless there be some rule of law restraining such delegation or authorisation. Every High Court consists of some administrative and ministerial staff which is as much a part of the High Court as an institution and is meant to be entrusted with the responsibility of discharging administrative and ministerial functions. There can be 'delegation' as also there can be 'authorisation' in favour of the Registry and the officials therein by empowering or entrusting them with authority or by permitting a few things to be done by them for and on behalf of the Court so as to aid the Judges in discharge of their judicial functioning. Authorisation may take the form of formal conferral or sanction or may be by way of approval or countenance. Such delegation or authorisation is not a matter of mere convenience but a necessity at times. The Judges are already overburdened with the task of performing judicial functions and the constraints on their time and energy are so demanding that it is in public interest to allow them to devote time and energy as much as possible in discharging their judicial functions, relieving them of the need for diverting their limited resources of time and energy to such administrative or ministerial functions, which, on any principle of propriety, logic, or necessity are not required necessarily to be performed by the Judges. Receiving a cause or a document and making it presentable to a Judge for the purpose of hearing or trial and many a functions post-*

decision, which functions are administrative and ministerial in nature, can be and are generally entrusted or made over to be discharged by the staff of the High Court, often by making a provision in the Rules or under the orders of the Chief Justice or by issuing practice directions, and at times, in the absence of rules, by sheer practice. The practice gathers the strength of law and the older the practice the greater is the strength."

9. *The Constitution confers power and imposes duty on the legislature to make laws and the said functions cannot be delegated by the legislature to the executive. The legislature is constitutionally required to keep in its own hands the essential legislative functions which consist of the determination of legislative policy and its formulation as a binding rule of conduct. After the performance of the essential legislative function by the legislature and laying the guiding policy, the legislature may delegate to the executive or administrative authority, any ancillary or subordinate powers that are necessary for giving effect to the policy and purposes of the enactment. In construing the scope and extent of delegated power, the difference between the essential and non-essential functions of the delegate should also be borne in mind. While there cannot be sub-delegation of any essential functions, in order to achieve the intended object of the delegation, the non-essential functions can be sub-delegated to be performed under the authority and supervision of the delegate.*

10. *Sometimes, in the plenary legislation itself, the lawmakers may provide for such sub-delegation. That is what we see under Sections 21 and 34 of the Major Port Trusts Act, 1963, which we shall be discussing in more detail at a later part of this judgment.*

13. *Section 21 of the Act provides for delegation of powers of the Board with the approval of the Central Government on the Chairman and specification of exercise of such powers conferred on the Chairman by the Deputy Chairman or any other officer of the Board. The provision reads as follows:*

*"**21.Delegation of powers**.—A Board may, with the approval of the Central Government, specify—*

(a) the powers and duties conferred or imposed upon the Board by or under this Act, which may also be exercised or performed by the Chairman; and

(b) the powers and duties conferred or imposed on the Chairman by or under this Act, which may also be exercised or performed by the Deputy Chairman or any officer of the Board and the conditions and restrictions, if any, subject to which such powers and duties may be exercised and performed:

Provided that any powers and duties conferred or imposed upon the Deputy Chairman or any officer of the Board under clause (b) shall be exercised and performed by him subject to the supervision and control of the Chairman."

15. *In exercise of the power under Section 21 on delegation of powers, the Board of the Kolkata Port Trust passed Resolution No. 82 dated 26-5-1988 delegating the power to terminate any lease on the Chairman. The Chairman was also authorised by the said resolution to issue ejectment notices. The text of the resolution reads as follows:*

*"**Resolution No. 82**.—Resolved to sanction the proposal for delegation of powers to the Chairman by invocation of Section 21(a) of the Major Port Trusts Act, 1963, the power to terminate leases sanctioned by the trustees and to authorising him to issue ejectment notices, subject to the sanction of the Government."*

17. *The power that is delegated to the Chairman as per Resolution No. 82 is the power to terminate a lease. The decision to terminate has been taken by the Chairman only and there is no dispute in that regard. In implementation of the decision thus taken by the Chairman to terminate the leases, the Chairman has authorised the Land Manager to issue the ejectment notices. The issuance of such notices is a mere ministerial act for the implementation of a decision already taken by the Chairman as delegated by the Board. The Chairman having duly authorised the Land Manager in that regard, it cannot be said that the ejectment notice issued*

by the Land Manager is without jurisdiction. It is not a case of sub-delegation. It is merely a ministerial exercise of issuance of a notice in implementation of the decision, as per the specific authorisation in that regard."

181. It was submitted that there has been no delegation or mala fide delegation of powers in filing of the Petition. Reliance has been placed on the concept of delegation, on **Gwalior Rayon Silk Mfg. (Wvg) Co. Ltd. v. Asstt. CST (1974) 4 SCC 98**. The relevant paragraph of the said judgement is as follows:

"37. In this context it is necessary to have a clear idea of the concept of delegation. Delegation is not the complete handing over or transference of a power from one person or body of persons to another. Delegation may be defined as the entrusting, by a person or body of persons, of the exercise of a power residing in that person or body of persons, to another person or body of persons, with complete power of revocation or amendment remaining in the grantor or delegator. It is important to grasp the implications of this, for, much confusion of thought has unfortunately resulted from assuming that delegation involves or may involve, the complete abdication or abrogation of a power. This is precluded by the definition. Delegation often involves the granting of discretionary authority to another, but such authority is purely derivative. The ultimate power always remains in the delegator and is never renounced."

182. It was submitted that had there been delegation of the power under Section 241(2) of the Act, the Central Government would not have formed an opinion – it would have been the SFIO. So also, there would not have been submission of the BPSL Report to the Central Government. Further, the Petition would have been filed in the name of the SFIO independently and not in the name of the Central Government. Finally, were authority delegated by the Central Government, there would have been conferment of a discretion to file. That is not so in the present case. No discretion to file

was given – the Central Government authorized the filing of the Petition after exercising its discretion to file.

183. In this regard, it was submitted that in the case of **Sidhartha Sarawgi v. Board of Trustees for the Port of Kolkata (2014) 16 SCC 248**, the Supreme Court has specifically carved out a distinction between delegation and authorization to perform ministerial/clerical tasks. In this regard, the Supreme Court observed that once power or discretion or the essential decision-making authority is exercised by the holder of power as conferred by statute, it can leave/authorize the implementation of that decision to authorized officers. Relevant Paragraphs Nos. 4 and 5 of the said judgement are quoted above.

184. It was submitted that the NCLAT in the case of **BSR & Associates LLP v. SFIO & Ors. 2026 SCC OnLine NCLAT 1059** has considered this very issue that has been raised by the Respondents in the present case. Pertinently, in the said matter, a Petition under Section 241(2) of the Act was filed in the name of the Central Government by the SFIO who was authorized by way of an identical letter to present the Petition. In that matter too, it was the Central Government that considered the Investigation Report, the Central Government that formed the Opinion to file the Petition and authorized / directed the SFIO to present a Petition in its name. The Application was ultimately presented in the name of the Central Government through the SFIO. An issue was raised by the Appellants in the said matter that the SFIO was not empowered to file the Petition and that the same constituted delegation of powers without following Section 458 of the Act.

185. The NCLAT has, in **BSR & Associates (*supra*)**, while considering the circumstances above, held at paragraphs 12 to 15 of the said judgment that: (i) given the circumstances, the Application was filed by the Central Government; and (ii) once the decision to file is taken by the Central Government, it can authorize officers / the SFIO to present the Petition as

authorization is different from delegation of powers. Relevant paragraphs of the said judgement are extracted as follows:

12. Thus, from the above it is clear; ***(i)*** *the SFIO submitted the Investigation Report to the Central Government. It did not itself take a decision to file proceedings;* ***(ii)*** *The decision to file CA 234/2025 (and even for that matter CA 396 of 2021) after considering the material before it, was of the Central Government and not the SFIO. SFIO was merely authorized to file proceedings before the Ld. NCLT;* ***(iii)*** *The Petition was filed with the Applicant as the "Union of India" and not the SFIO. Section 79 of the Code of Civil Procedure, 1908 would be relevant here as the principle it expounds is a proceeding by the Central Government, the authority which is to be named as plaintiff/applicant is the Union of India.*

13. Therefore, the decision to file was of the Central Government and the proceeding too was filed with the Central Government as the applicant. The Director, SFIO/SFIO was merely authorized to present/execute the Petition that too in the name of Central Government in terms of the Allocation of Business Rules, 1961 and Transaction of Business Rules, 1961 under Article 77(3) of the Constitution of India. On a consideration of the matter, the Ld. NCLT in the impugned order has arrived at the same finding. Thus, the appellant's contention the proceeding has not been filed by the Central Government is incorrect.

14. The appellant's contention the filing of CA 234/2025 by SFIO constitutes delegation of powers without following the due procedure under Section 458 of the Companies Act, 2013 (Act) is also wrong. In "Sidhartha Sarawgi v. Board of Trustees for the Port of Kolkata", [(2014) 16 SCC 248], the Supreme Court considered whether an ejectment notice issued by the Land Manager in relation to a lease instead of the Chairman (who was the authority empowered by virtue of the provisions of the Major Port Trusts Act, 1963 read with the Board of the Kolkata Port Trust's resolution) was tenable in law. The Supreme Court while setting out the key features of the concept of delegation held that delegation involves conferment of power from the delegator to the delegate to exercise the same

discretion and/or power which the delegator would have otherwise done itself has carved out a distinction between delegation and authorization to perform ministerial/clerical tasks. In this regard, the Supreme Court observed once power or discretion or the essential decision-making authority is exercised by the holder of power conferred by statute, it can leave/authorize the implementation of decision to authorized officers. Thus, the Supreme Court found in the facts of "Sidhartha Sarawgi" (supra), the decision to terminate the lease and issue the ejectment notice was taken by the Chairman whereas the notice was issued under signatures of the Land Manager which was permissible and did not amount to sub-delegation/delegation.

15. This judgment squarely applies even in the present case. As set out above, the SFIO did not itself take a decision to file CA 234 of 2025. It placed the ISSL Report before the Central Government. It is the Central Government that then considered the relevant material before it and formed an opinion/decided to file CA No. 234 of 2025. It is thus the decision-making authority. It then conveyed the decision to the SFIO/Director, SFIO for implementation. No discretion or the decision-making power was transferred or assigned to the SFIO. So also, the eventual Application too was filed with the Central Government as the applicant and not by the SFIO in its own name. This as set out above in the decision of "Sidhartha Sarawgi" (supra) does not constitute delegation of powers but instead is simply authorization to implement its decision. Under the circumstances, the appellant's contention is incorrect and untenable."

186. Ld. Counsel submitted that the judgment would squarely apply to the present case. Under the circumstances, it is humbly submitted that the present Petition is validly presented by the Central Government. There is no question of delegation of powers in the present case, and it is simply an authorization to carry out an act which was decided by the Central Government. As such, there is no merit in the Respondent's contention to the contrary.

187. Ld. Counsel for the Applicants/Respondents, however countered the reliance placed upon the judgment of the NCLAT in **BSR & Associates LLP v. Serious Fraud Investigation Office & Anr.** And stated that the same is equally misplaced and does not advance the case of the SFIO. The factual and statutory context in the said proceedings is materially different from the present case and, more importantly, the specific statutory submissions now advanced by the Respondents concerning the deliberate omission of the power of authorisation under Section 241(2) of the Act, the distinction between authorisation and delegation, and the mandatory mechanism under Section 458, were neither raised nor considered by the NCLAT. The said judgment, therefore, cannot be relied upon as an adjudication of the precise issue arising for consideration in the present proceedings. A decision rendered without the specific statutory issue being raised, argued or adjudicated cannot be treated as having decided that issue by implication.

ISSUE 3: WHETHER SECTION 241(2) ("ARE BEING CONDUCTED") EXTENDS TO PAST TRANSACTIONS HAVING A CONTINUING EFFECT?

Submissions on behalf of the Applicants

188. It was argued that the very foundation for exercise of jurisdiction under Section 241(2) of the Act is absent in the present case. It was submitted that Section 241(2) does not empower the Central Government to approach the Tribunal merely on the basis of alleged acts or transactions which took place in the past and have since concluded. It was submitted that the statutory jurisdiction is attracted only where the Central Government "forms an opinion" that, "**the affairs of the company are being conducted in a manner prejudicial to public interest**". The legislature has consciously used the expressions "**forms an opinion**" and "**are being conducted**", i.e., the present continuous tense which is neither incidental nor without significance.

189. It was argued that this stands in marked contrast with Section 241(1), where a member may complain that the affairs "**have been or are being conducted**" in the manner complained of. The omission of the words "**have been**" from Section 241(2) is deliberate and cannot be ignored. Thus, parliament has recognised two distinct situations-past ("**have been conducted**") and continuing conduct ("**are being conducted**") in Section 241(1) of the Act. Reliance was also placed, in the short note filed on behalf of the Applicants in C.A. Nos. 223 and 228 of 2023 and C.A. No. 62 of 2024 (para 24), on the decision of the NCLAT in **Power Finance Corporation Ltd. v. Shree Maheshwar Hydel Power Corporation Ltd., Company Appeal (AT) No. 237 of 2017**, which, according to the Applicants, recognised the distinction between "have been" and "are being" and held that the latter refers to continuing conduct and not to concluded acts.

190. It was therefore submitted that the Parliament intended to confer jurisdiction upon the Central Government only in respect of continuing and existing acts prejudicial to public interest, and not completed historical transactions. It was submitted that the phrase "are being" necessarily imports:

i. A subsisting state of affairs;
ii. A continuing course of conduct;
iii. Oppression or mismanagement existing on the date of institution of proceedings.

191. It was further submitted, including in the short note of Respondent No. 54 dated 22.07.2026, that the present petition under Section 241(2) is belated and rests solely on transactions of 2017-18 executed by the erstwhile promoters. It was submitted that following the successful Corporate Insolvency Resolution Process (CIRP) of BPSL, the management of BPSL has been completely replaced and taken over by JSW Steel under a court-approved Resolution Plan, rendering its current management independent and decoupled from past owners.

192. It is therefore submitted that because the management has been completely replaced by the operation of law, the modern day-to-day operations of BPSL are completely transparent and lawful. It was submitted that there is no active or ongoing mismanagement within the company for this Tribunal to fix, change or regulate. For the historical acts of fraud allegedly committed in 2017-2018, separate criminal prosecutions are already actively pending before the Special Penal Courts. Reliance in this regard was placed on **Sangramsinh P. Gaekwad v. Shantadevi P. Gaekwad, (2005) 11 SCC 314 (para 195)** and **63 Moons Technologies Ltd. v. Union of India, Company Appeal (AT) Nos. 185-186 of 2018 (paras 8 and 49)**, to contend that Section 241(2) is a curative remedy directed at affairs which are presently being conducted in a prejudicial manner.

Comparison with Section 241(1) of the Act

Section 241(1) of the Act expressly provides that a member may approach the Tribunal where *"the affairs of the company 'have been' or 'are being conducted' in a manner prejudicial to the interests of the members or public interest"*. However, Section 241(2) expressly provides that Central Government may approach the Tribunal where *"the affairs of the company 'are being conducted' in a manner prejudicial to public interest"*. Thus, under Section 241(2), the legislature has categorically excluded the power of Central Government to approach the tribunal for 'past affairs' and 'affairs being conducted prejudicial to the interests of the members' and the scope of Central Government is only limited to "*affairs being conducted in present in a manner prejudicial to public interest."*

Legislative intent under the Companies Act, 1956 and the Companies Act, 2013

193. Ld. Counsel further drew our attention to the legislative intent under the provisions of the previous Companies Act of 1956 in contrast with the provisions of the present Act of 2013. It was stated that under the Companies Act, 1956 ("**Act, 1956**"), the legislature has only used the term "**are being"** for filing an application either by a Member (under section 397/398 of the 1956 Act) or the Central Government (under section 401 of



the 1956 Act). Further, in view of judicial pronouncements of various courts, where the courts have accepted and expressed that the term "are being" will include the past transactions having an effect in the present as well, the legislature thought it fit and accordingly, included the terms "have been" and "are being" under Section 241(1) of the Act, however, under Section 241(2), the legislature has only chosen to use the term "are being".

194. On the above premise it was argued that the said distinction reflects the clear intent of legislature and merely to suit the case of SFIO the intention of legislature cannot be surpassed under the guise of interpretation. Reliance in this regard was placed upon **M/s Newtech Promoters & Developers Private Limited vs. State of Uttar Pradesh & Ors. 2021: INSC 716** wherein the Supreme Court laid down that it is always advisable to interpret the legislative wisdom in the literal sense as being intended by the legislature and the Courts are not supposed to embark upon enquiry and find out the solution in substituting the legislative wisdom. Relevant paragraphs of **M/s Newtech Promoters & Developers Private Limited** (***supra***) is as follows:

"85. The provisions of which a detailed reference has been made, if we go with the literal rule of interpretation that when the words of the statute are clear, plain and unambiguous, the Courts are bound to give effect to that meaning regardless of its consequence. It leaves no manner of doubt and it is always advisable to interpret the legislative wisdom in the literary sense as being intended by the legislature and the Courts are not supposed to embark upon an inquiry and find out a solution in substituting the legislative wisdom which is always to be avoided."

195. It was submitted that in view of the aforesaid that the contention of SFIO, that the term 'are being' used in Section 241(2) must be given a harmonious interpretation is wholly incorrect and misplaced and would amount to rewriting the statute. Reliance in this regard is placed on **Mandvi Co-op Bank Ltd. and Deoki Nandan Aggarwal (*supra*)**, as noticed under Issue 2(A) above.

196. It was submitted that the allegations in the captioned Petition pertain exclusively to concluded historical transactions pre-dating 2018. Accordingly, Section 241(2) of the Act cannot be converted into an enquiry mechanism for past, concluded transactions where no continuing prejudicial conduct exists. Thus, the captioned Petition is liable to be dismissed. It was stated that SFIO has failed to show any act to evidence that the affairs of the Respondent Companies are being conducted in a manner prejudicial to public interest. A perusal of entire petition would evident that SFIO has not even averred that the affairs of Respondent No.1 to 35 are being conducted in a manner prejudicial to public interest. It was submitted that no oral argument can supplement the case of SFIO and the maintainability has to be tested on the basis of facts pleaded in the captioned Petition.

197. It was further submitted that where the creditors, in exercise of their commercial wisdom and upon due consideration of the financial position of the corporate debtor, have consciously resolved to accept a particular amount under the resolution plan and consequently, take a haircut in respect of their outstanding dues, such commercial decision cannot, by itself, be construed as an admission or indication of any fraud, misrepresentation or fraudulent conduct on the part of the Respondents. The mere fact that the amount ultimately realised under the approved resolution plan is substantially lower than the amount originally claimed or outstanding does not, in the absence of any independent material establishing fraud, render the unrecovered portion of the debt fraudulent or attributable to any fraudulent conduct of the Respondents.

198. It was submitted that the haircut represents the consequences of the statutory resolution process and the commercial assessment undertaken by the creditors regarding the amount capable of being recovered in the circumstances prevailing at the relevant time. Once the creditors, with full knowledge of the claims and financial circumstances of the Corporate Debtor, have voluntarily accepted the resolution plan and the

corresponding reduction in their claims, the resultant shortfall cannot subsequently be characterised as a fraudulent loss merely because the creditors were unable to recover the entirety of their admitted dues. Any allegation of fraud must be founded upon specific acts, omissions or transactions satisfying the applicable legal requirements and cannot be inferred merely from the quantum of the haircut or the difference between the original claims and the amount ultimately realised under the resolution plan.

199. It was submitted that if the case sought to be advanced by the SFIO is accepted, the mere fact that the creditors ultimately suffered a haircut on their admitted dues is being treated as indicative of a fraudulent act. Such an approach, it was argued, is inherently untenable. If the creditors had, instead, recovered their entire dues, the very same underlying transactions and conduct would, on SFIO's own reasoning, presumably not have constituted any fraudulent act. The existence or otherwise of fraud, however, cannot logically depend upon the quantum of recovery ultimately realised by the creditors.

Submissions on behalf of the SFIO

200. Ld. Counsel submitted that the contention of the Respondents that Section 241(2) of the Act is confined to cases where the affairs of a company are presently being conducted in a manner prejudicial to public interest, and does not extend to past transactions, was raised during the course of arguments and does not form part of the Respondents' pleadings.

201. It was submitted that the expression "are being" contained in Section 241(2) of the Act is not restricted to acts that are presently continuing, but also includes past and concluded acts which have a continuing effect. Ld. Counsel submitted that acts of fraud and diversion of funds, mis-statements and misappropriation of assets continue to have an effect until the funds and assets wrongfully held are returned, repaid or corrected,

since the creditors, who have been forced into massive haircuts, are deprived of the benefit of the value of such assets and have been compelled to accept substantial haircuts.

202. In this regard, Ld. Counsel submitted that Sections 241-242 of the Act are akin to Section 397, 398 and 402 of the erstwhile Companies Act, 1956 (1956 Act) as they pertain to oppression and mismanagement. It was submitted that Section 397 and 398 of the 1956 Act appeared under Chapter VI of the Companies Act, 1956. The said provisions pertained to cases of oppression and mismanagement respectively. Section 397 of the 1956 Act has been extracted hereunder:

> ***"397. APPLICATION TO TRIBUNAL FOR RELIEF IN CASES OF OPPRESSION***
> *(1) Any members of a company who complain that the affairs of the company are being conducted in a manner prejudicial to public interest or in a manner oppressive to any member or members (including any one or more of themselves) may apply to the Tribunal for an order under this section, provided such members have a right so to apply in virtue of section 399. (2) If, on any application under sub-section (1), the Tribunal is of opinion- (a) that the company's affairs are being conducted in a manner prejudicial to public interest or in a manner oppressive to any member or members ; and (b) that to wind up the company would unfairly prejudice such member or members, but that otherwise the facts would justify the making of a winding up order on the ground that it was just and equitable that the company should be wound up ; the Tribunal may, with a view to bringing to an end the matters complained of, make such order as it thinks fit."*

203. It was contended that, the provision provided for a remedy to approach the Company Law Board when the affairs of a company are being conducted in an oppressive manner. Section 398 of the 1956 Act is similar. The language in Section 397–398 of the 1956 Act in so far as it provides that a Petition can be filed when the affairs "are being" conducted in a manner prejudicial to

public interest is identical to Section 241(2) of the Act. It would thus be pertinent to understand the import of the words "are being". It was submitted that courts have determined the scope of the words "are being" and Section 397 of the Companies Act, 1956 in a catena of judgments. The question for consideration before these courts was whether a past act having a continuing effect or a single isolated past act having a continuing effect can be brought under the aegis of "are being". Considering the scope of Section 397 of the Companies Act, 1956, it was held that scope of said provision is of wide amplitude. These judgments then proceed to hold that past and concluded transactions prior to filing of the petition can be brought within the scope of a Petition under Section 397-398 of the 1956 Act especially if its effect was continuing.

204. Ld. Counsel relied upon **Tea Brokers (P) Ltd. v. Hemendra Prosad Barooah MANU/WB/0510/1974 (para 46)**, wherein Calcutta High Court considered the scope of Section 397 and 402 of the 1956 Act. At paragraph **46** of the judgment the Calcutta High Court first sets out inter alia the understanding of the provision of Section 397-398. It observes as follows:
"46.....The court, therefore, can pass appropriate orders under section 397 read with section 402, if it comes to the conclusion that the affairs of the company are being conducted in a manner oppressive to any member or members and that to wind up the company would unfairly prejudice such member or members, but the facts would otherwise justify the making of a winding up order on the ground that it was just and equitable that the company should be wound up."

205. It then proceeds in the same paragraph 46 to hold that a single past and concluded act if is of a continuing nature can constitute oppression and therefore within the boundary of "are being" prescribed under Section 397 of the Act. The relevant extract is as follows:
"46 .... Such an act may be even a single act done on one particular occasion, if the effect of such an act will be of a continuing nature and the member concerned is deprived of his rights and privileges for all time to

come in future. If the affairs of the company are so conducted as will result in this kind of oppression to any member or members, the affairs of the company must be considered to be as 'being conducted in a manner oppressive to any member or members' as laid down in section 397 of the Act. This view, on a proper construction of section 397 of the Act, to my mind, is clearly supported by decision of the Division Bench of this court in the case of Ramashankar Prasad and others v. Sindri Iron Foundry (P) Ltd. and others MANU/WB/0104/1966 : 70 CWN 520, where a single act which was persistent and persisting as also continuous and continuing was held to constitute an oppression."

206. Ld. Counsel further relied upon **In Re Sindri Foundry (P) Ltd (1964) 34 Comp Cas 510**, wherein the Calcutta High Court held that a single isolated past and concluded act if of a continuing nature can be brought within the scope of Section 397-398 of the 1956 Act and thus within the bounds of the words "are being" appearing therein. The relevant extract is as follows: *"In my view, the respondents' contention that in order to attract Section 397 of the Act, the oppressive act complained of, must be wrongful conduct which continues over a period of time, is not tenable. The wrongful act complained of in this case, is a single act of raid, but its effect, as I see it, is continuous and persistent oppression of the petitioners by the Prosad group."*

207. It was submitted that the said judgment was upheld by a division bench of the Calcutta High Court in **Ramshankar Prosad vs. Sindri Iron Foundry (p) Ltd. AIR 1966 Cal 512** (paragraph 55) which as set out above in the Tea Brokers (supra) judgment held that Section 397 of the 1956 Act (and therefore "are being") applies to past and concluded acts which have a continuing effect.

208. Ld. Counsel also placed reliance on **Surinder Singh Bindra & Ors. vs. Hindustan Fasteners & Ors. (1990) 69 Comp Cas 718** wherein the Delhi High Court considered the expression "are being", in the context of Section

397 and 398 of the 1956 Act, including while examining the limitation period for filing a petition. It was submitted that the court referred to **In Re: Sindri Iron Foundry (*supra*)** and recognised that a single isolated past or concluded transaction may fall within the scope of the said provisions where its effect continues. Reliance was also placed on **Micromeritics Engineers Pvt. Ltd. & Ors. vs. S. Munusamy (2004) 122 Comp Cas 150 (paragraph 19 and 22)** wherein the Madras High Court referred to **Tea Brokers (*supra*)** with approval, as well as **Gurpratap Singh & Anr. v. Vista Hospitality P. Ltd. & Ors. (2014) 186 Comp Cas 202**.

On the basis of the aforesaid decisions, Ld. Counsel submitted that the interpretation accorded to the expression "are being" under Sections 397 and 398 of the 1956 Act applies equally to Section 241(2) of the Act, in view of the identical language employed therein. It was further submitted that the expression "have been or are being" in Section 241(1) of the Act is broader, whereas Section 241(2) would nevertheless extend to past and concluded transactions whose effects continue, including the transactions complained of in the present Petition.

209. Ld. Counsel further submitted that under Sections 397 and 398 of the Companies Act, 1956, the Tribunal was empowered to grant relief, including recovery of undue gains, which would necessarily relate to gains made in the past. It was contended that undue gains, siphoning of funds and diversion or misappropriation of assets may be treated as continuing wrongs for the purposes of interpreting the expression "are being". According to Ld. Counsel, the inquiry continues until the amounts rightfully belonging to the creditors are repaid.

210. In support of the contention concerning siphoning of funds and assets, Ld. Counsel relied on **Surender Singh v. SFIO CRM M 41761 of 2019** decided on November 13, 2019 by the Punjab and Haryana High Court. It was submitted that, while considering the allegations of siphoning of funds and assets in criminal proceedings under Section 447 of the Companies Act, the court considered the effect of such siphoning and held it to constitute

fraud and a continuing offence, continuing even where the money is not repaid or the asset is not returned. Ld. Counsel further submitted that the explanation to this section defines "Fraud" for the purposes of that section, may be relied upon in construing the expression appearing in Section 339 of the Act.

211. Applying the aforesaid submissions to the present case, Ld. Counsel submitted that the transactions forming the basis of the reliefs sought in the Petition involve alleged fraud resulting in the diversion of BPSL's assets and funds borrowed from the banks and financial institutions. It was submitted that the creditors were deprived of the value of such assets and funds, and that the alleged fraud came to light upon the emergence of the investigation report concerning Bhushan Power & Steel Limited. Ld. Counsel submitted that the creditors, being unaware of the alleged fraud, were constrained to accept substantial haircuts in the CIRP and that the effects of the alleged siphoning and misappropriation continue until the amounts are repaid.

212. Ld. Counsel further submitted that the Respondents reliance upon the completion of the CIRP and the approval of the Resolution Plan does not render the transactions complained of incapable of consideration under Section 241(2) of the Act. In this regard, reference was made to the sequence of orders concerning the resolution plan of BPSL, including the order dated October 14, 2019, passed by the NCLAT staying the approval of the resolution plan, subsequent modifications to the plan and the proceedings before the Supreme Court; and the orders passed by the Supreme Court on 02.05.2025, 31.07.2025 and 26.09.2025 concerning the setting aside, recall and final approval of the resolution plan respectively. It was submitted that the Petition was filed in April 2023 and according to the Petitioner, the resolution plan had not attained finality at the time of filing of the Petition. Ld. Counsel further submitted that Section 32A of the Code and the CIRP Process do not bar the return and application of assets alleged to have been diverted from the Corporate Debtor.

213. In arguendo, it was submitted that Section 246 of the Act makes Section 339 of the Act applicable to an application under Section 241(2) of the Act (see Issue 4 below), and the wording of Section 339(1), extracted above, is relevant in this regard.

214. Ld. Counsel further argued that, the language employed in Section 339 of the Act is "has been". Section 339 of the Act applies, therefore when it is shown that the business of a company "has been" carried on with intent to defraud creditors or others. This implies past and concluded conduct. Section 339 of the Act is read into and applies to / is available for an application under Section 241(2) of the Act as well. That being the case, in a Petition under Section 241(2) of the Act, the Central Government is entitled to present a complaint or a case that the affairs of a company "has been" carried on in a fraudulent manner.

215. Ld. Counsel further relied upon the judgment of **KDM Municipal Corporation v. Sanjay Gharat & Anr. [2022] 4 SCR 453**, in support of the submission that the provisions of a statute are required to be read in conjunction with, and with reference to, its other provisions. It was submitted that Sections 241(2), 246 and 339 of the Act are required to be read together while considering whether past and concluded fraudulent conduct may be the subject matter of a Petition under Section 241(2) of the Act.

216. Therefore, the Respondents' contention that Section 241(2) of the Act does not take into its fold past concluded acts and that the CIRP process as well as the resolution plan wipes away the fraudulent diversion of funds is untenable in any reading of the law and facts. Therefore, the Respondent's objection ought to be rejected.

ISSUE 4: INVOCATION OF SECTIONS 246 AND 339, AND THE SCOPE OF THE TRIBUNAL'S POWERS UNDER SECTION 242

Submissions on behalf of the Applicants

217. During the course of the hearing, and in the short note of Respondent No. 54 dated 22.07.2026, it was submitted that Section 242 is purely remedial and contingent upon a valid petition under Section 241; since the threshold of Section 241(2) is unsatisfied, its machinery cannot operate in a vacuum. Likewise, Section 246 cannot be used as a statutory backdoor to distort or expand the clear prerequisites of Section 339.

218. It was argued that the Petitioner's reliance on Section 339 of the Act, 2013 within a proceeding under Section 241(2) is a patent error of law, as the statutory text of Section 339(1) makes its invocation contingent upon a company being in winding up or liquidation. The legislature has deliberately confined Section 339 to piercing the corporate veil only in the context of dissolution, for pooling personal assets to satisfy creditors, and it cannot be extended to live companies or civil remedies under Section 241.

219. It was further submitted that the Respondent no. 76, Bhushan Power & Steel Limited (BPSL), has explicitly not been ordered to be wound up, nor is it undergoing liquidation. On the contrary, the company was successfully resolved as a going concern through the CIRP mechanism under the Insolvency and Bankruptcy Code, 2016, and is operating dynamically under the independent management of JSW Steel Limited.

220. It was argued that Section 241(2) is a prospective rescue remedy confined to regulating ongoing mismanagement, whereas Section 339 is a retrospective tool triggered only upon winding-up or liquidation. Since no active winding-up exists, the invocation of Section 339 is structurally unsatisfied, legally untenable, and must be struck out.

221. It was argued that the phrase "**in the course of winding up**" in Section 339(1) cannot be deleted or bypassed through mutatis mutandis application. To allow such use would collapse the distinct schemes of Chapter XVI (Oppression/Mismanagement) and Chapter XX (Winding Up), rendering the petition structurally flawed, legally untenable, and liable to dismissal.

222. The contention of the Respondents is that Section 339 of the Act cannot be imported via Section 246, into Section 241(2) of the Act because Section 339 can apply only where a winding up is sought in a petition under Section 241 and since, under Section 339, only an official or company liquidator may move such an application and BPSL has not been liquidated but has undergone CIRP and resolution, the Central Government cannot seek Section 339 reliefs in this petition.

223. It is further submitted that Sections 241 and 242 operate in an entirely different statutory field. Section 241 concerns the circumstances in which the affairs of a company are being conducted in a manner prejudicial to the interests of members or the public interest, and Section 242 confers powers upon the Tribunal to make such orders as it considers appropriate with a view to bringing an end to the matters complained of, if the Tribunal feels that winding up of the company should not be directed.

224. The reliance of SFIO upon Section 339, read with Section 246, is equally misconceived. Section 339 is concerned with liability for fraudulent conduct of business and enables the Tribunal, in the circumstances contemplated therein, to declare persons to be personally responsible without limitation of liability for the debts or other liabilities of the company. Section 339 cannot, however, be treated as an independent and omnibus provision authorising the Tribunal to grant every form of monetary or restitutionary relief merely because an allegation of fraud has been raised. The provision operates within the statutory framework in which it is situated and cannot be employed to circumvent the specific mechanism

enacted by Parliament for disgorgement pursuant to an SFIO Investigation Report.

225. It is a fundamental principle of statutory interpretation that where the legislature has specifically dealt with a particular subject matter by enacting a special provision, the statutory scheme cannot be defeated by resorting to a general or incidental provision to achieve the same result.

226. It was also submitted that this Tribunal cannot grant the reliefs as sought in the Petition as they are beyond the scope of the reliefs as enumerated in Section 242(2) of the Act.

Submissions on behalf of the SFIO

227. Ld. Counsel appearing on behalf of the Petitioner submitted that Section 246 of the Act expressly makes the provisions of Sections 337 to 341 applicable, *mutatis mutandis*, to proceedings under Sections 241 to 245 of the Act. Accordingly, the present Petition has been instituted under Sections 241, 242, 246 and 339 of the Act. It was submitted that the expression "*mutatis mutandis*" denotes application with necessary changes in points of detail as explained by the Supreme Court in **Prahlad Sharma v. State of U.P. & Ors., (2004) 4 SCC 113**. Ld. Counsel submitted that when Section 339 is applied to Section 241, its underlying principle- **an inquiry into fraudulent conduct of business** remains intact, but operates even in the absence of a winding up and is available to any person or authority entitled to seek relief under Section 241. It is thus submitted that the Petitioner is entitled to invoke Section 339 in this petition, and the Respondents' objections are unsustainable.

228. It was further submitted that the contention that reliefs under Section 339 of the Act, can be sought only after satisfying the requirements of Section 241(2), or that a separate Petition under Section 339 is necessary, or that relief under Section 339 is available only in the course of winding up, is



contrary to the law laid down by the NCLAT in **Union of India v. Gitanjali Gems Limited & Ors. Company Appeal (AT) No. 103 of 2018.**

229. Ld. Counsel submitted that Section 242 of the Act prescribes the powers of this Tribunal. Under Section 242(1) of the Act, this Tribunal is empowered to, on considering a Petition under Section 241(2) of the Act "make such orders as it thinks fit" to bring "to an end the matters complained of". it was submitted that the expression "as it thinks fit" confers jurisdiction of wide amplitude, subject to the statutory provisions governing the Tribunal and the object sought to be achieved by the exercise of such powers. Reliance was placed on **Narendra Singh vs. Chhotey Singh 1983 (4) SCC 131 and Clariant International Limited vs. SEBI 2004 (8) SCC 524 and V.C. Rangadurai vs. D. Gopalan (1979) 1 SCC 308**.

230. Ld. Counsel submitted that Section 242(2) of the Act proceeds further and prescribes a list of illustrative powers "without prejudice" to the generality of powers available to this Tribunal under Section 242(1) of the Act. it was submitted that these include the power to disgorge ill-gotten gains and also the powers to pass order which are just and equitable. The jurisdiction of this Tribunal under Section 241-242 of the Act is therefore a wide just and equitable jurisdiction. Directed towards bringing to an end the matters complained of. Reliance was placed on **Bennett Coleman & Co. Ltd. vs. UOI 1973 SCC OnLine Bom 41.** Relevant paragraph of the said judgement in **Bennett Coleman & Co. Ltd. vs. UOI** as relied upon by the Petitioner are as follows:

"16. *Considerable emphasis was laid by Mr. Sen on the fact that there was absence of a non-obstante clause in any of the relevant sections, viz., sections 397, 398 and 402. His contention was that whenever the legislature intended that any of the provisions of the Act should be overridden and the legislature has clearly expressed its intention by using appropriate language, namely, by user of a non-obstante clause and since there was no non-obstante clause in section 397 or section 398 read with*

section 402 of the Act, the court's powers thereunder could not override the other provisions of the Act but would be subject to such provisions. In the first place, like a deeming provision which is sometimes made with a view to make explicit what is obvious, a non-obstante clause is also used at times ex abundanti cautela to make explicit what is obvious and, therefore, the absence of that clause would not necessarily lead to an inference suggested by Mr. Sen. Secondly, normally, such non-obstante clause becomes necessary when the enacted provision or enacted clause is necessarily going in conflict with the other provisions of the Act and if there would be no such conflict, then there would be no necessity to use a non-obstante clause and we shall indicate presently that there is no necessary conflict between the provisions of section 397 and section 398 read with section 402 and the provisions of section 255 of the Act and, therefore, the non-obstante clause must not have been used while enacting the relevant sections. By the very nature the provisions contained in sections 397 and 398 read with section 402 have been enacted to meet emergent situations and extraordinary circumstances while section 255 contains provisions which would operate when the normal corporate management of a company is being run. Normally, the two sets of circumstances in which the two sets of provisions would operate be mutually exclusive. Therefore, there is no question of a conflict necessarily arising between these two provisions and this, in our view, sufficiently explains the absence of a non-obstante clause in sections 397, 398 and 402 of the Act. It is true that while conferring powers on the Central Government to prevent oppression or mismanagement under section 408 a non-obstante clause has been used. But, indisputably, there is substantial difference between the powers conferred upon the court under section 397 or 398 read with section 402 and the powers conferred upon the Central Government under section 408, inasmuch as on the powers of the court no restrictions or limitations of any kind have been put while restrictions and limitations have been placed on the Government's power to grant relief in cases of oppression and mismanagement. Even the manner in which, the extent to which and the period for which relief could be granted by the Government

has been indicated and on account of this the provisions of section 408 would necessarily come in conflict with the other provisions of the Act dealing with corporate management including section 255 and, therefore, a non-obstante clause was used at the commencement of section 408. We are, therefore, inclined to take the view that the absence of a non-obstante clause in sections 397, 398 and 402 does not lead to the inference suggested by Mr. Sen. Moreover, as we have already indicated, there is neither a non-obstante clause contained in any of these sections nor is there language to indicate that the court's powers under these sections are to be exercised subject to any of the other provisions of the Act. In such a situation the ambit of the court's powers must be determined by the scheme of Part VI in which all the concerned sections appear, the language employed in these relevant sections and the objects sought to be achieved by them and in this context it would be useful to refer to the rule of construction enunciated in Maxwell on the Interpretation of Statutes, 12th edition, page 45, to which our attention was invited by Mr. Phadke. The relevant rule of construction has been stated thus:

> *"If the choice is between two interpretations, the narrower of which would fail to achieve the manifest purpose of the legislation, we should avoid a construction which would reduce the legislation to futility and should rather accept the bolder construction based on the view that Parliament would legislate only for the purpose of bringing about an effective result."*

231. Ld. Counsel submitted that the powers available to the NCLT (earlier CLB) under Section 242 of the Act (earlier Sections 397-398 and Section 402 of the Companies Act, 1956) have been recognised by the Courts as being of wide amplitude. It was submitted that the exercise of such powers is limited by the requirement of a nexus between the order passed and the object sought to be achieved under the relevant provisions, as well as by reliefs that are barred by law.

232. Ld. Counsel submitted that read together, Sections 241(2), 242, 246 and 339 of the Act empower the Tribunal to consider material demonstrating that the affairs of a company are being conducted in a manner prejudicial to public interest or that its business has been carried on fraudulently and to pass appropriate orders within the scope of the aforesaid provisions. It was submitted that the reliefs sought in the present Petition are within the powers conferred upon this Tribunal under these provisions, including the power to pass orders directed towards preventing prejudice to public interest and further prejudice to the creditors of BPSL.

233. Ld. Counsel further submitted that neither the Act nor any Rules framed under the Act prescribe any limitation on the nature of the material that may form the basis of a Petition under Section 241(2) read with Sections 246 and 339 of the Act. It was submitted that such material may comprise an investigation report, an inspection report or otherwise. Accordingly, to hold that an investigation report submitted under Section 212(12) of the Act cannot form the basis of a Petition under Section 241(2) read with Sections 246 and 339, would either imply that such a report does not constitute material demonstrating fraud, or that words must be read into the relevant provisions to exclude an investigation report from consideration.

234. Ld. Counsel submitted that such an interpretation would be contrary to the settled principles of statutory interpretation, according to which Courts and Tribunals should be slow to adopt a restrictive interpretation of a provision couched in wide terms and should not attempt to supply words or modify the provisions enacted by the legislature.

ISSUE 5: WHETHER SECTION 212(14A) IS A SPECIAL REMEDY THAT BARS THE PRESENT PETITION?

Submissions on behalf of the Applicants

235. Ld. Counsel submitted that Section 212(14A) of the Act cannot, in any event, be invoked in the facts of the present case, as the provision was

introduced with effect from 15.08.2019, whereas the entire substratum of the allegations in the captioned Petition pertains to acts, transactions and events which are alleged to have occurred prior thereto and stand concluded.

236. It was submitted that the Petitioner, having failed to institute a petition under section 212(14A) within the prescribed limitation, has belatedly instituted the present petition choosing a general over special remedy. It was submitted that the amendment in 2019 has specifically been brought to empower the central government to file petitions against fraudulent conduct of the affairs of a company, and thus when there is a special remedy carved out in the statute itself, the Petitioner could not have instituted the same under Section 241(2). It was further contended that Section 212(14A) is specific to proceedings founded on an investigation report and, on the principle *generalia specialibus non derogant*, prevails over the general power under Section 241(2), which has been resorted to only to circumvent the position arising from the introduction of Section 212(14A) in 2019.

237. It is further submitted that the SFIO has sought to place reliance upon the judgment passed by the High Court of Delhi in **Shriraj Investment & Finance Ltd. & Ors. v. Union of India, 2021 SCC Online Del 4361**. At the outset, it is respectfully submitted that reliance upon the said judgment is wholly misplaced, particularly when the judgment is presently under challenge before the Supreme Court. Accordingly, the legal position arising from the said judgment is presently sub judice before the Supreme Court and cannot be treated as conclusively settling the issue in question. The said judgment, therefore, cannot be relied upon as an unqualified or final pronouncement to overcome the specific objections raised herein.

Submissions on behalf of the Respondent No. 76 (BPSL)

238. Ld. Senior Advocate Mr. Gyanendra Kumar further submitted that the remedy under Sections 241, 242 and 246 read with Section 339 is independent of Section 212(14A), and relied on the following judgement:

On the point that the Petitioner/Non-Applicant should have approached this Tribunal under Section 212(14A) and the invocation of Section 241 is belated and to surpass the limitation, it was argued that the remedy under Section 241 is independent of the remedy under Section 212(14A). It is argued that the remedy under Sections 241, 242 and 246 read with Section 339 is independent of Section 212 and it is not dependent on an SFIO report. It was argued that the relief of disgorgement is available de hors the Section 212(14A) amendment because it is a civil and equitable relief, not a penal one. Reliance is placed on the judgement of **Shriraj Investment and Finance Ltd. v. Union of India (2021) 228 Comp Cas 260 : 2021 SCC Online Del 4361.** Relevant paragraphs of the aforenoted judgement are as follows:

19. Even otherwise, a bare perusal of sections 241, 242, 246 read with section 339 would reveal they are not dependent upon even filing of a SFIO report under section 212(12) of the Act. The Central Government, at any stage, on basis of any material before it, form an opinion to file petition under sections 241, 242, 246 read with section 339 of the Companies Act. In the present case, though the Central Government has decided to file the same after receipt of SFIO report, however, the Act puts no fetters upon the Central Government to await a SFIO report, to form its opinion that the affairs of the company are being conducted in a manner prejudicial to the public interest and of the company.

20. The power vested in the Central Government under section 241 of the Act is predicated on the protection of "public interest". *This*

is evident from the reading of the provision itself. Section 241(2) provides that:

"(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."

21. It is verily important and critical to note that section 242 is a natural corollary and sequitir to the substantive provisions of section 241, which mandates the Central Government, in case affairs of a company have been or are conducted in a manner prejudicial to public interest, the Central Government then may itself apply for an order under this Chapter XVI of the Companies Act. *The Act has to be read in consonance and uniformity to further the effect of the legislative intent.*

22. The reliefs for disgorgement can even be sought under sections 241 and 242(1)(l) and (m) de hors section 212(14A) amendment. The Central Government can authorize initiation of proceedings and the relief of freezing assets and disgorgement of property under section 241, section 242 read with section 246, and section 339/447 of the Companies Act inasmuch as disgorgement is a civil action in nature of an equitable relief and not a penal action. In Karvy Stock Broking Ltd. v. Securities and Exchange Board of India MANU/SB/0064/2008 it has been held that:

*"**Disgorgement is a monetary equitable remedy that is designed to prevent a wrongdoer from unjustly enriching himself as a result of his illegal conduct.** It is not a punishment nor is it concerned with the damages sustained by the victims of the unlawful conduct. Disgorgement of ill-gotten gains may be ordered against one who has violated the securities laws/regulations but it is not every violator who could be asked to disgorge. Only such wrongdoers who have made gains as a result of their illegal act(s) could be asked to do so. Since the chief purpose of ordering disgorgement is to make sure that the wrongdoers do not profit*

from their wrongdoing, it would follow that the disgorgement amount should not exceed the total profits realized as the result of the unlawful activity."

23. *Thereafter, again in* ***Shadilal Chopra v. Securities and Exchange Board of India, the SAT, Mumbai in Appeal No. 201 of 2009****, decided on February 2, 2009 held that:*

*"****Disgorgement is the forced giving up of profits obtained by illegal or unethical acts. It is a repayment of ill-gotten gains that is imposed on wrongdoers. It is a monetary equitable remedy that is designed to prevent a wrongdoer from unjustly enriching himself as a result of his illegal conduct. It is not a punishment. In this view of the matter, no fault can be found with the impugned order passed by the whole- time member.****"*

24. Disgorgement occurring in section 212(14A) cannot be read in blissful isolation whereas, the length and breadth of the Act, Chapter and verse bespeaks of such properties/shares/debentures, to be frozen/liquidated/disposal/sold for utilization in furtherance of public interest by way of sale, recovery of undue gains to alleviate the wrong done to persons/financial institutions.

Submissions on behalf of the SFIO

239. Ld. Counsel for the Petitioner/Non-Applicant submitted that the question as to whether an investigation report of the SFIO can form the basis of a Petition under Section 241(2) read with Section 246 and 339 of the Act is no longer res integra. The Delhi High Court in **Shriraj Investment & Finance Limited & Others v. Union of India 2021 SCC Online Del 4361** and the NCLAT in **BSR & Associates LLP v. SFIO & Ors. Company Appeal (AT) No. 182 of 2026 (judgment dated August 25, 2026) (paragraphs 17 and 18)** have considered this question and have very clearly held that both provisions i.e. Section 212(14A) of the Act and provisions of Section 241(2) read with Section 246 and 339 of the Act empower the Central Government

to apply to the NCLT for disgorgement of assets/imposition of liability consequent to the determination of fraud in the business of a company.

240. Ld. Counsel further submitted that the Respondents have sought to distinguish the judgment of **BSR & Associates (*supra*)** on the ground that, the Central Government had invoked Section 212(14A) of the Act and not Section 241(2) of the Act. It was submitted that this contention proceeds on a misreading of the judgement. It was further submitted that although the Appellants in that matter had contended that the proceedings before the NCLT were under Section 212(14A) of the Act, the NCLAT, upon considering the submissions held that the Appellants had mischaracterised the provisions invoked by the Central Government. Reliance was placed on paragraphs 17 & 18 of the said judgement.

241. Ld. Counsel further submitted that **BSR & Associates (*supra*)** recognises that Section 212(14A) and/or Sections 241(2), 246 and 339 of the Act may be invoked to seek relief in respect of the fraudulent conduct of the business of a company on the basis of an investigation report of the SFIO.

242. Ld. Counsel further submitted that the Respondents' contention that Section 212(14A) constitutes a special provision which excludes recourse to Section 241(2) read with Sections 246 and 339 of the Act, is contrary to the decisions in **Shriraj Investment (*supra*)** and **BSR & Associates (*supra*)**. It was submitted that the principle "*generalia specialibus non derogant*" under which a special provision prevails over a general provision, does not apply where the statute provides for plural or alternative remedies.

243. In support of the aforesaid submission, Ld. Counsel relied upon the judgement of **Power Machines India Limited v. State of Madhya Pradesh 2017 (7) SCC 323**, wherein the Supreme Court considered a question as to whether the provisions of the MSME Rules or the Arbitration & Conciliation Act, 1996 would be available for recovering an amount under an arbitration award by an MSME.It was submitted that the Supreme Court

considered the provisions of both Acts, the principle of *Generalia specialibus non derogant* and approved the principle that the rule of a special provision excluding or prevailing over the general provision does not apply where the two provisions provide alternative remedies.

244. Ld. Counsel also relied upon the judgement of **Bihar State Cooperative Marketing Union Limited v. Uma Shankar Sharan (1992) 4 SCC 196** wherein the Supreme Court considered the application of two provisions both of which provided remedies in case of a dispute. Notably, one provision was specific whereas the other was general. It was submitted that the Supreme Court held that the principle of special provision prevailing over general would not apply where there are plural remedies provided. Relevant paragraphs of the said judgement are as follows:

5. *Section 40 pertaining to surcharge, provides that if as a result of an audit or inquiry it appears to the Registrar that any person who has taken part in the organisation or management of the society or any past or present officer of the society has either made a payment contrary to law or has been guilty of misappropriation or of having committed similar acts detailed therein, the Registrar may inquire into the matter and make an order requiring him to contribute an appropriate sum by way of compensation to the assets of the society. The second proviso to sub-section (1) of the said section says that no such order shall be passed in respect of any act or omission which had occurred more than six years earlier. The provisions of sub-section (1) of Section 48 (omitting the Explanations which are not relevant for the present issue) dealing with disputes are in the following terms:*

> *48. Disputes.— (1) If any dispute touching the business of a registered society (other than a dispute regarding disciplinary action taken by the society or its managing committee against a paid servant of the society) arises—*
>
> *(a) amongst members, past members, persons claiming through members, past members or deceased members, and sureties of*

members, past members or deceased members, whether such sureties are members or non-members; or

(b) between a member, past member, persons claiming through a member, past member or deceased member, or sureties of members, past members or deceased members, whether such sureties are members or non-members, and the society, its managing committee or any officer, agent or servant of the society; or

(c) between the society or its managing committee and any past or present officer, agent or servant of the society; or

(d) between the society and any other registered society; or

(e) between a financing bank authorised under the provisions of sub-section (1) of Section 16 and a person who is not a member of a registered society;

such dispute shall be referred to the Registrar:

Provided that no claim against a past member or the estate of a deceased member shall be treated as a dispute if the liability of the past member or of the estate of the deceased member has been extinguished by virtue of Section 32 or Section 63."

The claim of the appellant against respondent 1 is clearly covered by clause (c) of sub-section (1) above and, therefore, could have been validly referred to the Registrar under Section 48. The argument, however, is that since the matter is covered by Section 40, Section 48 should be held to be inapplicable. The High Court agreed and made the following observations:

"It is a well-known proposition of law that when a matter falls under any specific provision then it must be governed by that provision and not by general provisions (generalia specialibus non derogant)."

The High Court has in its judgment assumed that whenever a specific remedy is made available in law the other remedy, more general in nature, necessarily gets excluded.

6. *Validity of plural remedies, if available under the law, cannot be doubted. If any standard book on the subject is examined, it will be found that the debate is directed to the application of the principle of election, where two or more remedies are available to a person. Even if the two remedies happen to be inconsistent, they continue for the person*

concerned to choose from, until he elects one of them, commencing an action accordingly. In the present case there is no such problem as no steps under Section 40 were ever taken by the appellant. The provisions of Section 48 must, therefore, be held to be available to the appellant for recovery of the loss.

7. *Our view that a matter which may attract Section 40 of the Act will continue to be governed by Section 48 also if the necessary conditions are fulfilled, is consistent with the decision of this Court in Prem Jeet Kumar v. Surender Gandotra [1991 Supp (2) SCC 215] arising under the Delhi Co-operative Societies Act, 1972. The two Acts are similar and Sections 40 and 48 of the Bihar Act and Sections 59 and 60 of the Delhi Act are in pari materia. The reported judgment followed an earlier decision of this Court in Pentakota Srirakulu v. Co-operative Marketing Society Ltd. [(1965) 1 SCR 186 : AIR 1965 SC 621 : (1965) 2 Mad LJ 111] We accordingly hold that the High Court was in error in assuming that the application of provisions of Section 48 of the Bihar Act could not be applied to the present case for the reason that Section 40 was attracted."*

245. Ld. Counsel further submitted that the contention that Section 212(14A) of the Act was introduced vide an amendment in 2019 and to circumvent this void, the Central Government filed the Petition under Section 241(2) of the Act, is also wrong. Again, this is so since: (i) in light of the above, it is clear that both Section 241(2) of the Act and 212(14A) of the Act present a remedy to the Central Government in larger public interest on the basis of an Investigation Report of the SFIO. Apart from that, Section 212(14A) of the Act was introduced in 2019 whereas the BPSL Report was submitted in 2022. It was accordingly submitted that both, Section 212(14A) and Section 241(2) of the Act were available to the Central Government and that the present Petition was not instituted to overcome any absence of a remedy.

ISSUE 6: PENDENCY OF PROCEEDINGS BEFORE THE HIGH COURT OF DELHI

Submissions on behalf of the Applicants

246. It was submitted that certain Respondents have challenged the veracity of the captioned Petition as well as the basis on which the captioned Petition

has been filed before the High Court of Delhi. The details of the same are as under:

S. No.	Particulars	Challenge	Status
1.	**W.P. (C) No. 8239 of 2024** **Rail Track India Pvt. Ltd. v. UOI & Anr.**	Any relief of disgorgement as sought in the Captioned Proceedings can only be granted pursuant to the determination of guilt, if any, by Special Court, Dwarka. Action of disgorgement by SFIO on the basis of investigation report can be initiated under section 212 14A only, as section 212 is a complete code in itself.	Pleadings are complete. NDOH: 03.02.2027
2.	**W.P. (Crl.) No. 3497 of 2023** **Shree Ankleshwar Commercial Co. Pvt. Ltd. and Ors. V. UOI**	Investigation by SFIO for offences under IPC is bad in law, accordingly, the sanction letter 19.05.2022 is liable to be set aside. No allegation of any offence committed under the Companies Act.	Pleadings are complete. NDOH: 16.10.2026
3.	**W.P. (Crl.) No. 3697 of 2023** **BSN Enterprises v. UOI**	Assignment of Investigation by Central Government to SFIO u/s 212(1)(c) of the Companies Act, 2013, was without any formation of opinion, thus, the letter dated 03.05.2016 is bad in law and liable to be set aside, consequently, the sanction letter dated 19.05.2022 and other actions are liable to be set aside.	Pleadings are complete. NDOH: 16.10.2026

247. It was contended that it is material that all three aforesaid proceedings raise substantial and foundational questions concerning the jurisdiction of SFIO, the validity of the assignment and sanction for investigation, and the authority of SFIO to seek consequential reliefs, including disgorgement, on the basis of its investigation report. The outcome of these proceedings would therefore have a direct bearing upon the legality and maintainability of the proceedings and reliefs sought in the captioned Petition. The issues are presently *sub judice* before the High Court of Delhi and, with the pleadings having been completed in all three matters, the same are awaiting

adjudication. In view of the aforesaid issues pending consideration before the High Court, the captioned Petition cannot be proceeded with and is liable to be dismissed.

248. Per contra, it was submitted on behalf of Respondent No. 76 and the SFIO that the challenge to the Investigation Report, the sanction and the summoning order in W.P. (Crl.) No. 1891 of 2023 (R.K. Gupta & Ors. v. Union of India) was dismissed by the High Court of Delhi on 21.12.2023 and the SLP therefrom was dismissed by the Supreme Court on 16.01.2024. It was further submitted that, by order dated 15.07.2024 in LPA Nos. 492 and 493 of 2024 arising out of W.P. (C) No. 8239 of 2024, the Division Bench of the High Court of Delhi set aside, by consent, the order of the learned Single Judge dated 31.05.2024 staying these proceedings and clarified that this Tribunal is at liberty to proceed with the hearing of the Petition, the orders of this Tribunal remaining subject to further directions of the learned Single Judge in the writ petitions. Reliance was also placed on **Tayabbhai M. Bagasarwalla v. Hind Rubber Industries (P) Ltd., (1997) 3 SCC 443**, to submit that the mere raising of a jurisdictional objection does not disable the Tribunal from proceeding.

ISSUE 7: LIMITATION

Submissions on behalf of the Applicants

249. Section 433 of the Act incorporates the Limitation Act, 1963. Since no specific period is prescribed under Chapter XVI, Article 137 of the Limitation Act applies, providing a limitation period of 3 years from the date when the right to apply accrues.

250. The underlying transactions occurred prior to 2018. Thus, the petition filed in April 2023 is hopelessly barred by time. An ongoing administrative investigation or the subsequent submission of a report in 2022 does not stop or extend the statutory limitation clock.

251. It was submitted that the Petitioner had knowledge of the fraud as far back as in 2016 which is clear from the investigation order dated 03.05.2016. It was submitted that the Petitioner ought to have instituted a petition under Section 241(2) or Section 212(14A) then. A period of 3 years from 2016 ends in 2019 and therefore, the present petition is barred under law.

252. The petition contains only the assertion that it is not barred by limitation at page 43. It does not identify the date on which each alleged transaction was discovered, the material by which discovery occurred, why the facts could not have been discovered earlier despite the Ministry's investigation from May 2016, or how a completed transaction became a continuing wrong.

Submissions on behalf of the SFIO

253. It was submitted on behalf of the SFIO that the objection of limitation was not pleaded in the applications filed by the Respondents at all.

254. In response, it was submitted on behalf of the Petitioner that the contention that the present Petition is barred by limitation is untenable for the following reasons:

a. Ld. Counsel for the Petitioner relied upon the judgment of the Delhi High Court in **Union of India v. Shonk Technologies Limited 2023 SCC OnLine Del 277**. It was submitted that although, the said judgement concerns criminal prosecution, the High Court considered the question of when the Central Government could be imputed with knowledge of the fraud. In no uncertain terms, the Delhi High Court held that the date would be the date on which the investigation report was submitted. In the present case, BPSL Investigation report was submitted in 2022, whereas the captioned Petition was filed in April 2023 i.e., within the period of limitation. Relevant paragraph as relied upon is as follows:

"22. *It is therefore seen that the officer who has filed the complaint namely, Shri Giriraj Singh, Assistant Director, whose name is appearing*

at serial no. 10 of the complaint was already authorized in terms of notification dated 06.05.2005, which is admitted position in terms of paragraph No. 2 of the complaint. The commission of the offence came into the knowledge of the Central Government on 26.11.2007, i.e. the date on which SFIO submitted its report under Section 241 of the Companies Act. Therefore, the limitation for filing of the complaint commences from 26.11.2007."

b. Ld. Counsel further relies upon Section 17 of the Limitation Act, 1963 which according to the Petitioner/Non-Applicant, applies to the provisions of the Companies Act, 2013 by virtue of Section 433. It was submitted that in proceedings based on fraud, the period of limitation commences from the date on which the party obtains knowledge of the fraud. Reliance was placed on **Biman Chandra Datta v. Promotha Nath Ghose ILR (1922) 49 Cal 886**; and **UBS Switzerland AG v. DPP Securities Pvt. Ltd. 2025 SCC Online Cal 3993** in support of the submission that the relevant knowledge must be clear and definite knowledge of the facts constituting fraud or antecedents of fraud. It was contended that the Respondents have failed to demonstrate that the facts present in 2016 which constituted clear and definite knowledge of fraud. Relevant paragraph in the judgement of **Biman Chandra Datta v. Promotha Nath Ghose (*supra*)** as relied upon is as follows:

"Section 18, in so far as it applies to the case before us, provides that where any person having a right to institute a suit, has by means of fraud, been kept from the knowledge of such right or of the title on which it is founded, the time limited for instituting a suit against the person guilty of the fraud shall be computed from the time when the fraud first became known to the person injuriously affected thereby. It may be observed that this is not precisely identical with the provisions of section 26 of the Real Property Limitation Act, 1833, which makes time run from the date when the fraud is, or with reasonable diligence might have been, first known or discovered. This distinction was possibly not brought to the notice of the Court in Bibi Soloman v. Abdul Aziz [(1881) 8 C.L.R. 169.] . The principle

is, perhaps, best stated in the words of Westbury, L.C., in Rolfe v. Gregory [(1864) 4 De G.J. & S. 576, 579.] : "when the remedy is given on the ground of fraud, it is governed by this important principle, that the right of the party defrauded is not affected by lapse of time, or generally speaking, by anything done or omitted to be done so long as he remains, without any fault of his own, in ignorance of the fraud that has been committed." This was quoted with approval by Lord James in delivering the opinion of the Judicial Committee in Bulli Coal Mining Company v. Osborn [[1899] App. Cas. 351, 363.] where he added: "the contention on behalf of the appellants that the statute is a bar unless the wrongdoer is proved to have taken active measures in order to prevent, detection, is opposed to common sense as well as to the principles of equity." To this must be abided further the valuable statement by Lord Hob-house in Rahimboy v. Turner [(1892) I.L.R. 17 Bom. 341 : L.R. 20 I.A. 1.] : when a man has committed a fraud and has got property thereby, it is for him to show that the person injured by his fraud and suing to recover the property has had clear and definite knowledge of those facts which constitute the fraud, at a time which is too remote to allow him to firing the suit." The true position then is that where a suit is on the face of it barred, it is for the plaintiff to prove in the first instance the circumstances which would prevent the statute from having its ordinary effect. A person who, in such circumstances, desires to invoke the aid of section 18, must establish that there has been fraud and that by means of such fraud he has been kept from the knowledge of his right to sue or of the title whereon it is founded. Once this is established, the burden is shifted on to the other side to show that the plaintiff had knowledge of the transaction beyond the period of limitation. Such knowledge must be clear and definite knowledge of the facts constituting the particular fraud: as Lord Hobhouse points out, it is not sufficient for the defendant to show that the plaintiff had some clues and hints which perhaps, if vigorously and acutely followed up, might have led to a

complete knowledge of the fraud. These principles have been repeatedly applied as for instance in Natha Singh v. Jodha Singh [(1884) I.L.R. 6 All. 406.] , Narayan Sahu v. Mohant Damodar Das [(1912) 16 C.W.N. 894.] , Arjun v. Gunendra [(1913) 18 C.W.N. 1266.] , Jatindra Mohan v. Brojendra Kambr [(1914) 19 C.W.N. 553.] and Lokenath v. Chintamoni [(1912) 16 I.C. 547.] . The cases must nearly in point are the decisions in Avancha v. Avancha [(1913) 25 Mad. L.J. 531 : 14 Mad. L.T. 325.] and Lakhpat v. Jung Bahadur [(1916) 40 I.C. 37.] , where the plaintiff had, without knowledge of the defendant, recovered from a stranger money jointly payable to the plaintiff and the defendant, and had concealed from the defendant the fact of such realisation. The only question is, what is the position of the parties in the present case when tested in the light of these principles."

c. Ld. Counsel for the Petitioner submits that the facts and documents on record demonstrate that the Central Government did not have clear and definite knowledge of the fraud, or the antecedent facts necessary to establish it in 2016. It is submitted that the investigation was ordered to unravel the modus operandi of the alleged fraud. In this regard, the following submissions were advanced:

i. the investigation order itself only specifies that there is a possibility of diversion of funds and irregularities not Fraud. It is for this reason that the matter was referred to SFIO for Investigation. This makes it ex facie clear that the antecedents or clear knowledge of fraud was unknown.

ii. Subsequently, in 2018 while conducting an investigation and in order to trace movement of funds from BPSL and accommodation entries qua BPSL, the SFIO applied and received approval from the Central Government for investigating other companies in the BPSL [See pg. 165, Petition, Volume I]. This was solely to determine the fraud in BPSL. This

makes it amply clear that even in 2018, the modus of the fraud, perpetrators and amounts siphoned off were not known.

iii. The Investigation Report i.e. the BPSL Report was submitted in 2022. The BPSL Report clearly establishes the siphoning of funds, the perpetrators of the fraud, the beneficiaries of fraud and the modus operandi used. Therefore, prior to this date, the Central Government did not have clear and definite knowledge of the fraud.

iv. Thus, on a bare reading of the Petition and the Investigation Report against the Investigation Order, it is clear that the Central Government was neither aware of the several fraudulent modus operandi nor the perpetrators or the pass-through entities.

d. Therefore, clear and definite knowledge of the fraud along with the antecedent facts to demonstrate fraud was uncovered only in 2022. As against this, the Petition was filed in 2023. This makes the Petition clearly within the period of limitation prescribed under law. Therefore, the Respondent's contention that the present Petition is barred by limitation is untenable and ought to be dismissed.

ISSUE 8: PARALLEL PROCEEDINGS UNDER THE IBC (DOUBLE JEOPARDY, RES SUB JUDICE AND LIS PENDENS)

Submissions on behalf of the Applicants

255. Ld. Counsel submitted that Bhushan Power and Steel Limited ("**BPSL**") was admitted into the corporate insolvency resolution process ("**CIRP**") by this Tribunal vide order dated 26.07.2017 in C.P. (IB) No. 202(PB) of 2017, on an application filed by Punjab National Bank. An Interim Resolution Professional was appointed for BPSL and was later confirmed as the Resolution Professional ("**RP**"). Following a forensic audit by Ernst & Young, the RP appointed BDO India LLP ("**BDO**") to review the transactions undertaken by BPSL between 27.07.2015 and 26.07.2017 which may fall

foul of Sections 43, 45, 49, 50 and 66 of the IBC. BDO submitted its Transactions Review Report dated 14.03.2018.

256. In discharge of his statutory duty under Section 25(2)(j) of the IBC, the RP filed, inter alia, the following applications before this Tribunal in respect of transactions of BPSL alleged to be fraudulent, preferential or undervalued:

a. C.A. No. 538/2018, titled **Mahender Kumar Khandelwal, RP v. Aarti Tubes Pvt. Ltd. & Ors.,** seeking directions under Sections 25(2)(j), 43 to 51 and 66 of the IBC in respect of certain suspect and fraudulent transactions involving BPSL;

b. C.A. No. 254(PB)/2019 (Old No. C.A. 284(PB)/2019), titled **Mahender Kumar Khandelwal, RP of Bhushan Power and Steel Ltd. v. Sanjay Singal & Ors.,** under Section 66 of the IBC, in respect of suspected fraudulent transactions relating to diversion of stock of BPSL; and

c. IA(IBC) 330/2018, titled **Mahender Kumar Khandelwal, RP v. Aarti Tubes Pvt. Ltd.**, under Section 45 of the IBC (undervalued transactions), in respect of setting aside of undervalued transactions.

257. The captioned Petition, filed on 11.04.2023, i.e., 5 years after the aforesaid applications, seeks disgorgement and restoration of monies and assets to BPSL on the similar allegations.

258. It was submitted that Section 238 of the IBC provides that the provisions of the Code shall have effect notwithstanding anything inconsistent therewith contained in any other law for the time being in force. The IBC is a complete code in itself as held in **Innoventive Industries Ltd. v. ICICI Bank, (2018) 1 SCC 407**, and Section 66 read with Section 60(5) specifically empowers this Tribunal, as the Adjudicating Authority, to direct persons knowingly party to the fraudulent conduct of the business of the corporate debtor to contribute to its assets. Once that remedy has been invoked and is pending, the same transactions cannot be subjected to a parallel adjudication under Sections 241, 242 and 339 of the Companies

Act, 2013, as that would be inconsistent with, and would defeat, the mechanism under the Code.

259. Allowing the captioned Petition would expose the Applicants to double jeopardy in the nature of recovery. The Applicants would be made to defend the same allegations twice, before two Benches of this Tribunal, at the instance of two different parties, with the attendant risk of conflicting findings on identical facts; and they could be directed to restore the same monies to BPSL twice over, once as contribution under Section 66 of the IBC and again as disgorgement under the Companies Act, 2013. This is impermissible in law.

260. Without prejudice to and irrespective of the overriding effect of the IBC, the applications under the IBC were filed in 2018 and 2019, much prior to the captioned Petition filed on 11.04.2023, and must be given priority. Where the same matter is already pending before a competent forum, a subsequent proceeding on it cannot be proceeded with (*res sub judice*), nor can anything be done that pre-empts the outcome of the pending lis (*lis pendens*). The captioned Petition seeks adjudication of the very transactions already pending before this Tribunal. It is therefore not maintainable in view of the doctrines of *res sub judice* and *lis pendens*.

Submissions on behalf of the Respondent No. 76 (BPSL)

261. Ld. Sr. Advocate Mr. Gyanendra Kumar submitted that the pendency of proceedings under Section 66 of the IBC has no bearing on other remedies, and relied on **Glukrich Capital Pvt. Ltd. v. State of West Bengal and Ors. 2023 SCC Online SC 1187.** Relevant paragraphs of the aforenoted judgement, as relied on by the Ld. Counsel are as follows:

8. *We may also observe that Tripura High Court has rightly relied upon the observations made by this court in a binding precedent, in Usha Ananthasubramanian v. Union of India*, which pertains to a matter under section 339(1) of the Companies Act, 2013 which is pari materia with Section 66 of the IBC. The High Court in the case of Smt. Sudipa Nath v. Union of India** has rightly observed that***:*

"That section 66(1) also directed towards making such persons personally liable for such fraudulent trading to recouping losses incurred thereby and to provide that the NCLT can pass order holding such persons liable to make such contributions to the assets of the corporate debtor as it may deem fit. No power has been conferred on the NCLT to pass such orders against other organizations / legal entities (other than the corporate debtors) with whom such business was carried out against any person responsible in such other organisations/legal entities for carrying on business with the corporate debtor. For the said purpose, the ratio of the judgement of the hon'ble Supreme Court in Usha Ananthasubramanian v. Union of India in the context of section 339(1) one of the companies Act, 2013 as extracted above would clearly apply even in the context of section 66(1) of the IBC. Accordingly, an application under section 66(1) by the resolution professional would not bar any civil action in accordance with law, either at the instance of the resolution professional or liquidator or by the corporate debtor in its new avatar on a successful CIRP for recovery of any dues payable to the corporate debtor by such organisation/legal entities. Such legal action is independent of section 66(1)."

9. *Learned counsel appearing for the respondents has pointed out to us that even the NCLT in other similar matters has taken the same view following the judgement of this court in Usha Ananthasubramanian v. Union of India. Reference has been made to the order dated February 9, 2023# passed in an application in C.P. (IB) No. 4258/(MB) of 2019.*

10. *We are of the considered that in such circumstances, it is for the resolution professional or the successful resolution applicant, as the case may be, to take such civil remedies against third party, for recovery of dues payable to the corporate debtor, which may be available in law. The remedy against third party, however, is not available under section 66 of the IBC, and the civil remedies which may be available in law, are independent of the said section."*

Submissions on behalf of the SFIO

262. Ld. Counsel for the SFIO submits that the objection concerning parallel proceedings under Section 66 of the Insolvency and Bankruptcy Code, 2016 was not pleaded in any of the applications and was raised across the Bar, despite involving a mixed question of fact and law. It is submitted that, pursuant to the directions of this Tribunal, the Petitioner has addressed the said objection.

263. Ld. Counsel further submits that none of the Respondents raising the objection placed on record a copy of the petition filed by the Resolution Professional under Section 66 of the IBC to demonstrate any overlap between the proceedings. It is contended that, in the absence of such material, the respondents have failed to establish any overlap between the proceedings and that, without any facts demonstrating such overlap, prejudice to the Respondents cannot be alleged.

264. It is further submitted that Section 66 of IBC and Section 339 of the Companies Act, 2013 are neither identical nor operate in the same field. In this regard, Ld. Counsel for the petitioner draws a distinction between the two provisions on the following grounds:

a. **First**, none of the Respondents who raised this contention even sought to place on record a copy of the Petition filed by the Resolution Professional under Section 66 of the IBC to demonstrate the overlap. The only reason for this is there infact is no overlap. Having failed to discharge their burden and suppressed facts, it is untenable to submit that there is any overlap whatsoever.
b. **Second**, it was submitted that absent any fact to demonstrate any overlap, it cannot be said that the Respondent's would be prejudiced.

c. **Third**, Section 66 of the IBC and 339 of the Act are neither identical nor operate in the same field for Section 66 of the IBC to prevail over Section 339 of the Act.

In this regard, it is settled law that for giving overriding effect to a statute or provision therein over another, there must be a very clear inconsistency otherwise the clear wide language of an enactment cannot be cut down [**RS Raghunath v. State of Karnataka (1991) Supp 1 SCR 387**]. This being the case there cannot be a case of a conflict between Section 66 of the IBC and Section 339 of the Act for the provisions of Section 66 of the IBC to prevail.

d. **Fourth**, when the IBC was enacted, the provisions of various statutes were amended to remove conflicting or overlapping provisions. Notably, the provisions of Section 339 of the Act were not amended. Had there been any apparent conflict between Section 66 of the IBC and Section 339 of the Act, the provisions of Section 339 of the Act would have been repealed or suitably modified. This makes it amply clear that there is no apparent conflict between the provisions of Section 66 of the IBC and Section 339 of the Act.

e. **Fifth**, it was submitted that the Supreme Court in the case of **Municipal Corporation of Greater Mumbai (MCGM) v. Abhilash Lal & Ors. [2019 (14) SCR 659** & **Macquaire Bank Ltd. v. Shilpi Cable Technologies Limited (2018) 2 SCC 674** while considering the provisions of the IBC and specifically Section 238 of the IBC which provides that the provisions of IBC shall prevail over other laws has very categorically held that the effort must first be to harmonize and not immediately hold to be subservient. In the present case, clearly, Section 339 of the Act is wider and confers a different power to this Tribunal.

265. Under the circumstances, it was submitted that to hold the proceedings under Section 66 of the IBC prevail and destroy the present proceedings without any pleadings from the Section 66 IBC Petition being placed before this Tribunal to actually see if any conflict exists or not would be a travesty

and an untenable position of law. It was further contended that the provisions of Section 339 of the Act present a different, distinct, and a wider public interest remedy against Section 66 IBC and therefore the Respondent's contention ought to be dismissed out rightly.

ANALYSIS AND FINDINGS

266. We have heard the Applicants, the SFIO and Respondent No. 76 at length on the maintainability of Company Petition No. 105 of 2023 and have perused the records including the Petition, the investigation report of the SFIO on BPSL (the BPSL Report), the letter dated 19.05.2022, the applications filed by the Respondents on maintainability, the replies thereto, the written submissions, and judgments relied upon by the parties.

267. It is apposite to mention that this order is confined to the threshold question of maintainability. Nothing recorded herein is an expression of opinion on the merits of the allegations of fraud, diversion of funds and siphoning made in the Petition.

268. Before moving ahead, we note that a challenge to the maintainability of a petition at the threshold must be decided on the averments of the petition and the documents relied upon by the petitioner, and not on the defense of the respondents or on facts which require evidence. The principle, evolved in the context of Order VII Rule 11 of the Code of Civil Procedure, 1908, is stated in **Dahiben v. Arvindbhai Kalyanji Bhanusali (2020) 7 SCC 366**, and is equally apposite to a preliminary objection of this nature. Where, however, an objection is one of pure law, or is apparent from the face of the Petition and undisputed documents, it is the duty of this Tribunal to decide it at the outset. Although this Tribunal is not bound by the procedure laid down in the Code of Civil Procedure, 1908 by virtue of Section 424(1) of the Companies Act, 2013, it is guided by the principles of natural justice and has the inherent power under Rule 11 of the NCLT Rules, 2016 to make such orders as are necessary to meet the ends of justice and prevent abuse of its process. We have kept both considerations in mind.

269. We now deal with each of the issues framed above. We have considered the submissions of the Applicants with the consideration that a challenge going to the root of the Petition demands. Each objection has been examined on the language of the statute, on settled principles of construction, and on the authorities cited by both sides, including those on which the Applicants say they are entitled to rely. Where we have declined to follow an authority relied on by a party, we have given our reasons.

270. Chapter XVI of the Companies Act, 2013 provides for the prevention of oppression and mismanagement. Section 241(1) reads as follows:

*(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.

(Emphasis Supplied)

271. Section 241(1) enables a member to approach this Tribunal where the affairs of the company "***have been or are being***" conducted in a manner



prejudicial to public interest or oppressive to members or prejudicial to the interest of the company.

272. Section 241(2), on the other hand, expressly enables the Central Government to file a Petition before this Tribunal, also the provision which is invoked by the Central Government through SFIO in the present case, reads as follows:

> *"(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."*

(Emphasis Supplied)

273. Section 242(1) provides as follows:

> *(1) If, on any application made under section 241, the* ***Tribunal is of the opinion****—*
>
> *(a) that the* ***company's affairs have been or are being conducted in a manner prejudicial or oppressive to any member or members or prejudicial to public interest or in a manner prejudicial to the interests of the company****; and*
>
> *(b) that to wind up the company would unfairly prejudice such member or members, but that otherwise the facts would justify the making of a winding-up order on the ground that it was just and equitable that the company should be wound up,*
>
> *the Tribunal may,* ***with a view to bringing to an end the matters complained of, make such order as it thinks fit****.*

(Emphasis Supplied)



274. Further, Section 242(2) enumerates, without prejudice to the generality of Section 242(1), the kinds of orders that may be made, **including the setting aside of fraudulent preferences**, **the removal of directors**, **the recovery of undue gains made during the period of oppression or mismanagement**, **the imposition of costs and the making of provision for any other matter which is just and equitable**.

275. In the present case the Petition has been filed under Section 241(2) read with Sections 242 and 246 and Section 339. Section 246 provides that Sections 337 to 341 "***shall apply mutatis mutandis, in relation to an application made to the Tribunal under section 241 or section 245***". Section 339(1), extracted earlier in this order, empowers the Tribunal to declare that persons who were knowingly parties to the carrying on of the business of a company with intent to defraud creditors or for any fraudulent purpose shall be personally responsible, without limitation of liability, for all or any of the debts or other liabilities of the company.

276. The Act separately provides for investigation by the Serious Fraud Investigation Office, established by the Central Government under Section 211. Where the Central Government assigns an investigation to the SFIO under Section 212(1), including "in the public interest" under clause (c), the SFIO submits its report to the Central Government under Section 212(12), and the Central Government, upon examining the report, may under Section 212(14) direct the SFIO to initiate prosecution. Section 212(14A), inserted by the Companies (Amendment) Act, 2019, further enables the Central Government, where the report states that fraud has taken place and that any person has taken undue advantage or benefit, to file an application before the Tribunal for disgorgement and for holding such person liable personally without limitation of liability.

ISSUE 1: TERRITORIAL JURISDICTION AND THE MAINTAINABILITY OF A SINGLE PETITION AGAINST MULTIPLE ENTITIES HAVING REGISTERED OFFICE IN DIFFERENT JURISDICTIONS OF THE COUNTRY

277. Section 419(1) of the Act provides for the constitution of Benches of the Tribunal, and the Central Government has, by notification dated 01.06.2016 (S.O. 1935(E), issued under Section 419(1) of the Act), specified the territories over which each Bench exercises jurisdiction. As held by the Appellate Tribunal in **63 Moons Technologies Limited v. Union of India (*supra*)**, neither the Act nor the Rules nor the notification confers territorial jurisdiction on the basis of where the cause of action arises. The relevant paragraphs of the aforenoted judgement are as follows:

"*18. There is no provision in the Companies Act, 2013 conferring any **territorial jurisdiction** on a High Court or any Bench of the NCLT on the basis of cause of action. In other words, there is no statutory enactment conferring **territorial jurisdiction** on the basis of where the cause of action has arisen.*

*19. The Notification dated 1st June 2016 merely prescribes the territories over which the different Benches of the NCLT will have **territorial jurisdiction.** It does not provide that such Benches will have **territorial jurisdiction** where cause of action has arisen within its territorial limits. There is no Rule in the NCLT Rules which provides that **territorial jurisdiction** of any Bench of the NCLT can be invoked on the basis of cause of action. In other words, the Benches of the NCLT within its territorial jurisdiction can only exercise jurisdiction over the concerned company which is present within its **territorial jurisdiction** i.e., where the company having its registered office.*"

278. The test is the location of the registered office of **the concerned company**. The Respondents themselves rely on that judgment and it is binding on this Tribunal. The decision of the Supreme Court in **63 Moons Technologies Ltd. v. Union of India, (2019) 18 SCC 401**, which was relied upon by the Respondents (through Major Atul Dev) for a different proposition, namely the nature of the Central Government's satisfaction, does not address, much less disturb, this proposition.

279. The expression "**concerned company**" is not a term of art, but its meaning is evident from the scheme of Chapter XVI. Section 241(2) is triggered by the Central Government's opinion about "***the affairs of the company***", and the orders contemplated by Section 242 are directed at bringing to an end "***the matters complained of***" in relation to that company. The concerned company is therefore the company whose affairs are alleged to have been conducted in a manner prejudicial to public interest. There can be no real dispute that, on the Petition as framed, that company is Bhushan Power & Steel Limited. The Petition is founded on the BPSL Report. It complains of the siphoning and diversion of the funds and assets of BPSL through a web of entities by way of accommodation entries and related transactions. The reliefs of disgorgement and personal liability are directed towards restoring value to BPSL and to meeting its debts. The Respondents' own contention, that the impugned transactions were those of the erstwhile management of BPSL before the CIRP, proceeds on the footing that the affairs complained of are those of BPSL. It is not disputed that the registered office of BPSL is in New Delhi and was so situated on the date of presentation of the Petition. This Bench therefore has territorial jurisdiction to hear and entertain the captioned petition.

280. The other entities are arrayed not because their own affairs are the subject of the Petition, but because of their alleged participation in the affairs of BPSL, alleged to be fraudulently conducted and/or alleged benefits received from the same. This alleged participation and benefit are the subject of a complaint concerning the affairs of BPSL which were being conducted in a manner prejudicial to public interest. The BPSL Report identifies these other Respondents as the conduits and beneficiaries of the funds diverted from BPSL, and as persons charged with offences under Section 447 in connection with that diversion. The fact that the registered offices of other Respondents are situated at places other than in Delhi does not determine, or affect, the jurisdiction of this Bench: Section 339 as made applicable, so far as may be, by Section 246, operates against "**any persons**" who were

knowingly parties, and jurisdiction over them is derivative of jurisdiction over the main subject matter of the Petition.

281. These other Respondents have been rightly impleaded in the same Petition as necessary and proper parties, as the order which may be passed by this Tribunal in respect of the affairs of BPSL, may also determine the rights and liabilities of the other Respondents, for the sake of disgorgement or otherwise. At this juncture, we also refer to the Principles of "**Joinder of Defendants**" prescribed under Order I Rule 3 of the Code of Civil Procedure, 1908 which, though not strictly binding on this Tribunal in view of Section 424(1) of the Act, embodies settled principles of convenience and fairness, and reads as under:

> ***"All persons may be joined in one suit as defendants*** *where-*
> *(a) any* ***right to relief in respect of, or arising out of, the same act or transaction or series of acts or transactions is alleged to exist against such persons, whether jointly, severally or in the alternative****; and*
>
> *(b) if separate suits were brought against such persons,* ***any common question of law*** *or* ***fact would arise****."*
>
> ***(Emphasis Supplied)***

282. The allegations at hand and the reliefs sought in the present case form a common chain of transactions, as identified in the report by the SFIO, and therefore, the above principle supports the validity of impleadment of all such conduits and beneficiaries of the diverted funds. The application of the above principle at this stage shall not be construed to advance the case of the Petitioner against all the Respondents on merits and this Tribunal nevertheless may direct the deletion of any Respondent from the array of parties at any stage.

283. The scheme of Chapter XVI itself contemplates orders that operate on persons other than the company and its members. Section 242(2)(f) empowers the Tribunal to terminate, set aside or modify any agreement, arrangement or understanding between the company and any person, and Section 242(2)(g) to set aside any transfer, delivery of goods, payment, execution or other act relating to property made or done by or against the company, as was pointed out on behalf of Respondent No. 76. Orders of that kind cannot be made without the counter-parties being before the Tribunal, wherever their registered offices may be. The joinder of such persons is therefore inherent in the jurisdiction under Section 242, and does not convert a petition concerning the affairs of one company into a petition concerning the affairs of each person joined.

284. In the above backdrop, the Respondents' argument that jurisdiction must be determined separately by reference to the registered office of each entity would, if accepted, require the Central Government to institute parallel petitions before different Benches, each of which would be called upon to adjudicate issues and reliefs arising from a common chain of transactions. The result would be a multiplicity of proceedings and a real risk of conflicting findings on the same set of facts which would be absurd and would defeat the public interest which the remedy is designed to serve. Such a construction producing absurd results is to be avoided where another is fairly open (**K.P. Varghese v. Income Tax Officer, (1981) 4 SCC 173; Franklin Templeton Trustee Services Pvt. Ltd. v. Amruta Garg, (2021) 6 SCC 736**). We are conscious that considerations of convenience cannot by themselves confer jurisdiction on a Bench. Our reliance on the purposive approach is limited to confirming that no additional territorial requirement is to be read into the provisions against persons who are joined in aid of the principal relief, once the text itself is satisfied in respect of the company whose affairs are complained of. The construction we adopt is not only fairly open; it is the one that follows from the text and from **63 Moons (*supra*)** itself.

285. Relevant paragraphs of the said judgement in **K.P. Varghese (***supra***)** are as follows:

"…

*5. …**The task of interpretation of a statutory enactment is not a mechanical task. It is more than a mere reading of mathematical formulae because few words possess the precision of mathematical symbols. It is an attempt to discover the intent of the legislature from the language used by it and it must always be remembered that language is at best an imperfect instrument for the expression of human thought and as pointed out by Lord Denning, it would be idle to expect every statutory provision to be "drafted with divine prescience and perfect clarity". We can do no better than repeat the famous words of Judge Learned Hand when he laid:***

> ***"… it is true that the words used, even in their literal sense, are the primary and ordinarily the most reliable, source of interpreting the meaning of any writing: be it a statute, a contract or anything else. But it is one of the surest indexes of a mature and developed jurisprudence not to make a fortress out of the dictionary; but to remember that statutes always have some purpose or object to accomplish, whose sympathetic and imaginative discovery is the surest guide to their meaning."***

We must not adopt a strictly literal interpretation of Section 52 sub-section (2) but we must construe its language having regard to the object and purpose which the legislature had in view in enacting that provision and in the context of the setting in which it occurs. We cannot ignore the context and the collocation of the provisions in which Section 52 sub-section (2) appears, because, as pointed out by Judge Learned Hand in most felicitous language:

> ***"… the meaning of a sentence may be more than that of the separate words, as a melody is more than the notes, and no***

degree of particularity can ever obviate recourse to the setting in which all appear, and which all collectively create."

Keeping these observations in mind we may now approach the construction of Section 52 sub-section (2).

…

*6. …**It is now a well-settled rule of construction that where the plain literal interpretation of a statutory provision produces a manifestly absurd and unjust result which could never have been intended by the legislature, the court may modify the language used by the legislature or even "do some violence" to it, so as to achieve the obvious intention of the legislature and produce a rational construction (vide Luke v. Inland Revenue Commissioner [(1963) AC 557]). The Court may also in such a case read into the statutory provision a condition which, though not expressed, is implicit as constituting the basic assumption underlying the statutory provision.***

…

*8. …**This is in accord with the recent trend in juristic thought not only in western countries but also in India that interpretation of a statute being an exercise in the ascertainment of meaning, everything which is logically relevant should be admissible. …"**.*

…

*11. …**The rule of construction by reference to contemporanea expositio is a well-established rule for interpreting a statute by reference to the exposition it has received from contemporary authority, though it must give way where the language of the statute is plain and unambiguous.** This rule has been succinctly and felicitously expressed in Crawford on Statutory Construction, (1940 Edn.) where it is stated in para 219 that "administrative construction (i.e. contemporaneous construction placed by administrative or executive officers charged with executing a statute) generally should be clearly wrong before it is overturned; such a construction, commonly referred to*

as practical construction, although non-controlling, is nevertheless entitled to considerable weight; it is highly persuasive".

The validity of this rule was also recognised in Baleshwar Bagarti v. Bhagirathi Dass [ILR 35 Cal. 701] where Mookerjee, J., stated the rule in these terms:

"It is a well-settled principle of interpretation that courts in construing a statute will give much weight to the interpretation put upon it, at the time of its enactment and since, by those whose duty it has been to construe, execute and apply it."

…

*17. … **It is a well-settled rule of interpretation that the court should as far as possible avoid that construction which attributes irrationality to the legislature.** …"*

286. In the same breath, we may also refer to a judgment of the Supreme Court, in the matter of **Arcadia Shipping Ltd. vs Tata Steel Limited and Others (2024) 9 SCC 374**, which on facts involved two transactions and it was argued by one of the defendants that it was involved only in the second transaction and carried on business in Mumbai, and therefore could not be impleaded in the suit before the Delhi High Court.

287. The Supreme Court rejected this compartmentalisation. The two transactions were intrinsically connected, and the defendants' respective roles were interdependent. It was held that the dispute over non-payment could not appropriately be adjudicated without considering the conduct of all of them. Further, applying Order I Rules 3 and 7 CPC, the Court held that the plaintiff could join all the defendants in one suit, even though their involvement and potential liability differed. The connected claims could be adjudicated together, and the extent of each defendant's liability can be determined in the same proceeding. (The references to "Bhushan Steel" in the extracted paragraphs are to Bhushan Steel & Strips Ltd., since merged with Tata Steel Limited, and not to BPSL.) The relevant paragraphs of the

said judgement in **Arcadia Shipping Ltd. vs Tata Steel Limited and Others** (*supra*) are as follows:

24. In our opinion, the contention raised by Arcadia has no merit. The transactions are intrinsically intertwined and cannot be compartmentalised into watertight silos.

…

26. Section 20(c) of the Code accords dominus litis to the plaintiff to institute a suit within local limits of whose jurisdiction the cause of action, wholly or in part arises. Every suit is based upon the cause of action, and the situs of the cause of action, even in part, will confer territorial jurisdiction on the court. The expression "cause of action" can be given either a restrictive or wide meaning. However, it is judicially read to mean – every fact that the plaintiff should prove to support their right to the judgment.

27. Order I Rule 3 of the Code states that the plaintiff may join as a defendant in one suit, all persons against whom, the plaintiff claims the right to relief in respect of, or arising out of, the same act or transaction or series of transactions. The claim viz. the defendants can be joint, several or in the alternative. Thus, it is permissible to file one civil suit, even when, separate suits can be brought against such persons, when common questions of law and fact arise.

28. Order I Rule 7 of the Code permits a plaintiff who is in doubt as to the person from whom they are entitled to obtain redress, to join two or more defendants in order that the question as to which of the defendants is liable, and to what extent, can be decided in one suit.

29. The supply order was placed in Delhi and the payment was to be released in Delhi. Accordingly, the cause of action arose in part at Delhi, in terms of Section 20(c) of the Code. As per Order I Rules 3 and 7 of the Code, it was permissible for Bhushan Steel to enjoin

in a single suit all the defendants, including Arcadia. Their claim of right to relief lies against all such defendants. Further, the relief claimed was in respect of or arising out of a series of transactions, the sale of goods and then their shipment, which transactions were connected and synchronised with the relief claimed. The cause of action could not have been adjudicated without impleading all the defendants as parties. Thus, in terms of Order I Rule 3, the relief claimed by Bhushan Steel lies against all the defendants, albeit to different extents and was "in respect of and arises out of a series of transactions". Thus, Bhushan Steel was within its rights to enjoin all the defendants under a single suit as per Order I Rule 7 of the Code such that the extent of liability of each defendant could be decided in the same suit."

288. From the above, it is patent that the cause of action and the relief sought in respect of every Respondent, may not be identical and may not arise from the very same transaction, but do arise from the same series of transactions, but still, the principle of "Joinder of defendants" entitles the Petitioner to join such number of respondents as are necessary or proper for the effective adjudication of the matter at hand, subject always to the power of this Tribunal to delete any party improperly joined. Sections 241 and 242 are couched with words having wide meaning. This tribunal under section 242 can pass necessary orders to bring the dispute to end, which may or may not include directions for all the respondents with identical obligations. The legal principle as it stands today, is that each and every person who is a necessary and a proper party may be impleaded, regardless of the fact that cause and relief sought against them may differ on the premise of varied degree of participation and the powers of this tribunal are wide enough to pass order fastening different liabilities upon such Respondents. **Arcadia Shipping** (***supra***) is referred to only for this limited proposition of joinder. It arose under Section 20(c) of the CPC and is not relied upon as a source of territorial jurisdiction here, which, as held in **63**

Moons (*supra*), is anchored in the registered office of BPSL and not in the situs of the cause of action.

289. We are also not persuaded by the submission that the exclusion of BPSL from the list of entities against whom disgorgement was recommended in the letter dated 19.05.2022 shows that jurisdiction has been "manufactured" by arraying BPSL as a proforma respondent. The letter, which is not the source of this Tribunal's jurisdiction, merely identifies the persons against whom liability is to be sought. It is entirely natural that BPSL, whose funds are alleged to have been diverted and which has since been through a CIRP, is not itself sought to be fastened with liability. That does not make BPSL a stranger to the Petition. BPSL is a necessary and a proper party, the conduct of whose affairs is in question. It is the company in respect of which the declaration under Section 339 and the consequential orders are sought and, as the orders under Section 242 operate on the company's affairs, it is a necessary party. Territorial jurisdiction depends on the substance of the Petition and not on the label attached to a party.

290. We are also conscious that Sections 242 and 339 can lead to personal liability, without limit, for all or any of the debts or other liabilities of the company, and that provisions with consequences of this gravity are not to be extended by implication beyond their terms. Reference can be made to the five-judge Bench decision of the Supreme Court in **Tolaram Relumal v. State of Bombay, AIR 1954 SC 496**, for the construction of provisions carrying penal consequences. M.C. Mahajan C.J., as he was then, taking the majority view, at para 8 of the said judgement, stated as follows:

"8. *The question that needs our determination in such a situation is whether Section 18(1) makes punishable receipt of money at a moment of time when the lease had not come into existence, and when there was a possibility that the contemplated lease might never come into existence.* ***It may be here observed that the provisions of Section 18(1) are penal in nature and it is a well-settled rule of construction of penal***

statutes that if two possible and reasonable constructions can be put upon a penal provision, the court must lean towards that construction which exempts the subject from penalty rather than the one which imposes penalty. It is not competent for the court to stretch the meaning of an expression used by the legislature in order to carry out the intention of the legislature. *As pointed out by Lord Macmillan in London & North Eastern Railway Co. v. Berriman [London & North Eastern Railway Co. v. Berriman, 1946 AC 278 at p. 295 (HL)] : (AC p. 295)*

> ***"... Where penalties for infringement are imposed it is not legitimate to stretch the language of a rule, however, beneficent its intention, beyond the fair and ordinary meaning of its language."***"

291. The constructions adopted below proceed from the text of Sections 241, 242, 246 and 339 and not from any assumption that the Petitioner must be assisted. Our conclusions go to whether the Petition may be heard on its merits. They do not lighten the burden that the Petitioner must discharge at that hearing.

292. The Respondents contended that, since the proviso to Section 241(2) requires applications in respect of "such company or class of companies, as may be prescribed" to be made before the Principal Bench, the Central Government must be taken to have been denied access to the Principal Bench in respect of all other companies. We do not read the proviso in this manner. The proviso is an enabling provision which centralizes the hearing of Central Government applications for a prescribed class of companies before the Principal Bench. It does not purport to limit the territorial jurisdiction which a Bench otherwise exercises over companies with their registered offices within its territory. Further, the proviso, inserted by the Companies (Amendment) Act, 2019 with effect from 15.08.2019, operates only in respect of such company or class of companies as may be prescribed, and it has not been shown to us that BPSL, or any class of

companies to which it belongs, has been so prescribed. It does not require that a petition concerning more than one entity be filed before each Bench separately. On the facts, the question does not even arise, because the registered office of BPSL is itself within the territorial jurisdiction of the Principal Bench at New Delhi.

293. The decision in **Manish Goel v. Nikhil Kumar Goel (*supra*)**, relied upon by the Respondents, was rendered in a petition by members under Section 241(1) and turned on its own facts. It does not hold that, in a petition by the Central Government in respect of the affairs of one company, jurisdiction must be separately established for each respondent who is alleged to have participated in the impugned conduct.

The Petition is not rendered non-maintainable by the use of the singular "the company"

294. The Respondents placed considerable reliance on the expressions "the company" in Section 241(2), and on the judgements **Union of India v. Hansoli Devi, (2002) 7 SCC 273**, and **Vijay Narayan Thatte v. State of Maharashtra, (2009) 9 SCC 92**, to contend that a petition may be directed against only one company.

295. We are of the considered view that the Petition is not, in substance, a composite petition about the affairs of many companies. It complains of the conduct of the affairs of one company. The other respondents are before this Tribunal as persons alleged to have been knowingly parties to that conduct, against whom orders under Section 339, applied by Section 246, are sought. Such reliefs cannot be adjudicated without hearing the other Respondents. Section 339(1) is not limited to officers or members of the company; it speaks of "any persons". The SFIO relies on the decision of the NCLAT in **Union of India v. Gitanjali Gems Limited, (2018) 209 Comp Cas 360**, which it describes as authority for the proposition that, in a petition under Section 241 read with Sections 246 and 339 in respect of a

company, reliefs can be sought against other persons and companies said to have been party to the conduct complained of. That proposition accords with the text of Section 339(1), and the SFIO has drawn our attention to petitions of this kind having been entertained by benches of this Tribunal, including in the **IL&FS group matters**, **Union of India v. Carnoustie Management (I) Pvt. Ltd. (CP No. 62 of 2022)** and **Union of India v. IL&FS Rail Limited (CA No. 257 of 2025)**.

296. Even if the Petition were regarded as one concerning more than one company, the singular does not exclude the plural. Section 13(2) of the General Clauses Act, 1897 provides that, unless there is anything repugnant in the subject or context, words in the singular include the plural. Nothing in Chapter XVI is repugnant to this rule. The rule, however, bears only on the number of persons who may be arrayed in one petition; it does not alter the test of territorial jurisdiction, which, as held above in the light of 63 Moons (supra), remains anchored in the registered office of the company whose affairs are complained of. We do not hold that a single Bench may adjudicate upon the affairs of several companies registered outside its territory merely because they belong to one group. Our conclusion is narrower: Section 241(2) does not prevent the Central Government from arraying, in one petition concerning the affairs of BPSL, the several persons and entities against whom relief is sought as alleged knowing participants in those affairs. The passages relied upon from **Hansoli Devi (*supra*)** and **Thatte (*supra*)**, which affirm that the plain meaning of statutory words governs, are of no assistance, because the plain meaning here is aided, not displaced, by the General Clauses Act. The decisions in **Mandvi Co-op Bank Ltd. (*supra*)** and **Deoki Nandan Aggarwal (*supra*)**, against judicial legislation, are equally not attracted: no word is added to Section 241(2).

297. Further, the plea of misjoinder of causes of action is not fatal to the Petition. The reliefs against the various respondents arise from the same series of transactions, concern a common question, namely whether BPSL's funds

were diverted and by whom, and are founded on a single investigation report. The principle reflected in Order I Rule 9 of the Code of Civil Procedure, which guides but does not bind this Tribunal in view of Section 424(1) of the Act, is that no proceeding is defeated by reason of the misjoinder of parties. Where the joinder genuinely causes embarrassment or delay, or prejudices any party, the remedy, as reflected in Order I Rules 2 and 10(2) and Order II Rule 6 of the Code and in the inherent powers of this Tribunal under Rule 11 of the National Company Law Tribunal Rules, 2016, lies in appropriate case management, separate trial or deletion of the party concerned, and not in dismissal of the Petition. No concrete prejudice has been demonstrated by any Respondent. Respondents are free to contend at the hearing that the case against them is distinct or unproved.

The reliance on Usha Ananthasubramanian and Glukrich Capital

298. Both sides invoked **Usha Ananthasubramanian v. Union of India, (2020) 4 SCC 122**, and we have considered it with particular care, because the Respondents read it as holding that no proceeding under Section 339 lies against a person or entity outside the management of the company, and because the passages from **Glukrich Capital Pvt. Ltd. v. State of West Bengal, 2023 SCC OnLine SC 1187**, extracted by Respondent No. 76, refer to it in the context of Section 339(1).

299. In *Usha Ananthasubramanian* (*supra*), the allegation against the appellant, who headed a different organization, was that she omitted to take preventive steps in the management of that organization and thereby aided the fraud. The Supreme Court, considering Section 241(2) read with Sections 246 and 339, held that the provisions require attention to the role played in the fraud in the company which is the subject matter of the petition, and not in any other company, and that the head of a different organization could not be roped in for a role in a company other than the one that is the subject of the petition. The ratio, as we read it, is that a person is within Section 339(1) only if he was knowingly a party to the

carrying on of the business of the company in question with intent to defraud. Liability cannot be fastened on someone merely because of an alleged failure of duty in the management of his own organization.

300. It does not follow that every person or entity not formally within the management of the company is outside Section 339(1). The words of the section are "***any persons who were knowingly parties***", not "***any officers***" or "***any members***", and Section 341 and the decision in **Gitanjali Gems (*supra*)** proceed on the same footing. A person or entity, whatever its formal relation to the company, which is alleged to have knowingly participated in the fraudulent carrying on of the company's business, for example by receiving, layering and routing the diverted funds through sham or accommodation transactions, is alleged to have played a role in the fraud "in the company which is the subject matter of the petition", which is precisely what Usha Ananthasubramanian requires. That is the case pleaded against the entities arrayed here on the strength of the BPSL Report. Whether each of them actually played that role is a matter of proof and not of maintainability, and the Petition cannot be thrown out against them at the threshold unless, on its face, it discloses no such role. On a prima facie reading of the averments of the Petition and of the BPSL Report, taken at their face value for the limited purpose of maintainability, we find that it does.

301. **Glukrich Capital (*supra*),** was an order passed on an application for clarification of an earlier order, in proceedings concerning the reach of Section 66 of the IBC, a provision invoked within the framework of the corporate insolvency process. It does not construe Section 339(1) read with Sections 241(2) and 246 of the Act, and it does not hold that persons alleged to have knowingly participated in the fraudulent conduct of a company's affairs are beyond the reach of Section 339(1). Even if Section 66 of the IBC is regarded as *pari materia*, the Respondents' reliance is of no assistance, because the Petition proceeds on the allegation of knowing participation in fraud and not on mere dealings with the company.

The submissions of Respondent No. 76

302. We also take note of the submissions of Respondent No. 76, that persons against whom personal allegations of fraud are levelled must be impleaded by name (**Dr. Brahma Deo v. Secretary, National Commission for Scheduled Castes, 2022 SCC OnLine Del 2613**; **DCM Hyundai Ltd. v. H.B. Stockholdings Ltd., 2016 SCC OnLine NCLAT 2**). The principle is an application of natural justice: a finding of personal liability for fraud cannot be recorded behind the back of the person concerned. That the Petition arrays the persons and entities charged in the BPSL Report is thus a necessity of fairness and not a defect. Relevant paragraph of the said judgement in **Dr. Brahma Deo (***supra***)** is as follows:

"4. ***It is well settled as held that persons, against whom personal allegations of malafides are levelled have to be impleaded personally by name.****"*

303. Relevant paragraphs of the said judgement in **DCM Hyundai Ltd. (***supra***)** are as follows:

7. After constitution of the Tribunal (since 1st June, 2016), when the matter was heard by the Tribunal, on hearing the parties, the Tribunal by impugned judgment observed as follows: —

"***There is also no dispute that grave and arguable allegations have been made by the applicant-petitioner against the DCM Hyundai in its CA No. 136 filed in the year 2008 and also in the civil suit. These allegations, inter-alia, talks about the role played by the DHL proposed Respondent No. 16 and Respondent No. 1 company in perpetuating a scam to use the R-1 own money to increase the promoters shareholding to the detriment of the other public shareholders. In this amendment petition, the merit of the allegations is not to be examined in detail* (K.K. Modi's case). *However, for proper and complete adjudication of these long pending allegations and also in***

view of the specific relief sought we are of the view that DHL is a proper party. It would help the Tribunal to have full picture of the complete transactions between R-1 company and DHL. If the transactions and dealings of DCM Hyundai are fair and clean, then there is nothing to be afraid of."

...

13. Having heard the Learned Counsel for the parties, we are not inclined to deliberate on such issue as the matter is pending before the Tribunal for its consideration. ***The fact is that there is an alleged transaction between the Appellant - M/s. DCM Hyundai Ltd. and the company M/s. DCM Shriram Industries Limited. Such transaction is genuine or illegal will be looked into and decided by the Tribunal. In case the Tribunal holds 'oppression and mismanagement' against the company or against any of its member or pass an appropriate order in regard to alleged transaction which may affect the appellant - M/s. DCM Hyundai Ltd. the Tribunal has rightly observed, "However, for proper and complete adjudication of this long pending allegations and also in view of the specific relief sought, we are of the view that DHL (Appellant - M/s. DCM Hyundai Ltd.) is a proper party."***

14. We find no reasons to interfere with the order insofar as it relates to impleadment of Appellant M/s. DCM Hyundai Ltd. as party-respondent IS concerned.

15. ***The other appellant M/s. AF Ferguson and Company has taken plea that it is a Chartered Accountancy firm and has nothing to do with the company's management. It is also submitted that except the performance of duty as a Chartered Accountant of the company, no specific role has been played by the Appellant. Ld. Counsel appearing on behalf of the Appellant M/s. AF Ferguson and Company submitted that the said Appellant is ready to disassociate itself from the***

company and therefore it should be deleted from the arena of respondent.

16. ***From the record we find that there are allegations levelled against the Appellant, M/s. AF Ferguson and Company about preparation of forged audit report etc. As this Appellate Tribunal at this stage cannot deliberate on such issue for coming to a conclusion whether the majority shareholders in collusion with the appellant have 'oppressed and mismanaged company', and if the Tribunal pass any observation with regard to the allegation as made against the appellant, which may affect the Appellant - M/s. AF Ferguson and Company, we find no reason to delete the appellant M/s. A.F. Ferguson and Company from the arena of Respondent.***

17. We find no merit in these appeals. They are accordingly dismissed. However, in the facts and circumstances of the case there shall be no order as to cost."

304. Petitioner cannot manipulate jurisdiction, do forum shopping or prefer a jurisdiction of its own choice. As per the judgement in **63 Moons (*supra*)**, the jurisdiction before a Bench of the NCLT is exclusively based on the registered office of the subject company, which herein is BPSL as on the date of presentation of the Petition. The registered office of a company is a matter of public record under Section 12 of the Act and can be verified from the records of the Registrar of Companies. Its shifting from one State to another requires confirmation by the Central Government under Section 13. The jurisdiction of this Bench therefore does not depend on how the Petitioner describes the parties. It depends on whether, on the averments of the Petition and the documents on which it is founded, the affairs complained of are those of a company whose registered office lies within the territory of this Bench.



305. Were it shown in any case that a company had been arrayed merely to attract the jurisdiction of a particular Bench, while the substance of the complaint was directed at the affairs of another company, this Tribunal would not hesitate to treat that as an abuse of its process and to act under Rule 11 of the National Company Law Tribunal Rules, 2016. No such case is made out here. The passages of the Petition to which the Respondents themselves drew our attention show that the funds and assets of BPSL were the object of the diversion alleged.

Finding on Issue 1

306. Considering the findings noted above, we hold that this Tribunal has territorial jurisdiction to entertain the Petition, since the affairs complained of are those of BPSL, whose registered office was within the territory of this Bench on the date the Petition was presented. Further, the Petition is not rendered non-maintainable on the ground that it arrays several entities and individuals as they are impleaded as alleged knowing participants in, or beneficiaries of, the conduct of BPSL's affairs, against whom relief is sought under Section 339 read with Sections 241(2), 242 and 246 of the Act, and neither the use of the singular "the company" nor Usha Ananthasubramanian (supra) bars such joinder, and that the plea of misjoinder is without merit because the reliefs arise from a common series of transactions founded on a single investigation report, wherein the other Respondents are alleged to be the beneficiaries of fraudulent conduct of the affairs of BPSL ("the concerned company"). Further, the proviso to Section 241(2) does not oust the jurisdiction of this Bench. These findings are confined to the question of maintainability and are without prejudice to the merits of the case against each Respondent.

ISSUE 2: WHETHER THE CENTRAL GOVERNMENT FORMED THE OPINION REQUIRED UNDER SECTION 241(2)?

The nature of the requirement

307. It is a common ground that the formation of the opinion by the Central Government is a condition precedent to the invocation of Section 241(2). The Supreme Court has long held that where a statute makes the existence of an opinion of the Government a pre-condition to the exercise of a statutory power, the opinion is subjective, but the Government must in fact have formed it, on relevant material, fairly and not arbitrarily. As held in **Barium Chemicals Ltd. v. Company Law Board, AIR 1967 SC 295**; and **Rohtas Industries Ltd. v. S.D. Agarwal, (1969) 1 SCC 325** the Court's jurisdiction is limited to examining whether the opinion was in fact formed and whether there was any relevant material before the Government, and does not extend to substituting its own view on the sufficiency of the material. The existence of the circumstances on which the opinion is founded is, however, open to judicial review if it is challenged, and an opinion formed on irrelevant considerations, or one which no reasonable authority could have formed on the material before it, is liable to be set aside (**Rohtas Industries, paras 5, 6 and 11**; **63 Moons Technologies Ltd. v. Union of India, (2019) 18 SCC 401, para 78**). These principles were applied to Section 241(2) by the NCLAT in **Major Atul Dev (Retd.) v. Union of India, 2024 SCC OnLine NCLAT 1193**, on which the Respondents rely. We apply them accordingly. Relevant paragraph of the said judgement in **Major Atul Dev (Retd.) v. Union of India (*supra*)** as relied upon by the Respondents has been extracted above.

308. What emerges from the law laid down in these matters is that directing an investigation into the affairs of a company, or moving this Tribunal under Section 241(2) in respect of those affairs, may have grave consequences on its business and reputation and, therefore, such a step cannot be instituted casually. Although the formation of an opinion is a subjective exercise, the existence of relevant circumstances must be objectively discernible from a prima facie examination of the pleadings and documents on record. Accordingly, the pleadings and supporting material must establish, with a reasonable degree of specificity, the existence of circumstances suggesting that the affairs of the company are being conducted in a manner prejudicial to

public interest, which is the statutory ground under Section 241(2); the "circumstances suggesting" test of Section 213(b), which corresponds to Section 237(b) of the 1956 Act considered in **Barium Chemicals and Rohtas Industries**, is applied here by analogy. Vague, unsubstantiated allegations unsupported by the requisite documentary material cannot, by themselves, justify the invocation of Section 241(2).

Whether an opinion was formed in the present case

309. The Respondents contended that the letter dated 19.05.2022 does not disclose any formation of opinion and that the Central Government merely acted as a "rubber stamp" on the recommendation of the SFIO. We are unable to accept this contention for the following reasons.

310. **First**, the sequence of events is documented above. The investigation was assigned by the Central Government in the public interest under Section 212(1)(c). The investigation was extended in 2018 with the Central Government's approval. The SFIO submitted the BPSL Report and the supporting documents to the Central Government on 06.05.2022, as Section 212(12) requires. It is on that material that the Central Government acted on 19.05.2022. That the Central Government acted on the report of the SFIO, a specialized investigating body established under Section 211, and agreed with its recommendation does not by itself indicate want of independent application of mind. In **Major Atul Dev**, the Ministry's order dated 18.03.2020 substantially reproduced the recommendations of the Inspecting Officer and recorded only that it was issued with the approval of the competent authority; the NCLAT nevertheless held that the opinion had been formed (paras 39 to 41).

311. **Second**, the letter dated 19.05.2022, on its face, demonstrates due application of mind. It begins by referring to the report and recording the sanction of the competent authority. It sets out the charges against the persons and entities concerned, considers the SFIO's recommendation that proceedings be initiated under Sections 241, 242, 246 and 339 and then,

by way of a decision and not a mere forwarding, authorizes the SFIO to file the application. It closes by stating that it is issued with the approval of the competent authority. A document of this kind, evidencing a decision by the Government on the basis of a report, with the approval of the competent authority, is the manner in which the Central Government, as an institution, records its opinion. There is no prescribed form in which the opinion under Section 241(2) is to be recorded (as held in Major Atul Dev, para 41, the statute does not contemplate any particular manner of formation of the opinion). It is sufficient if the overall circumstances show that the authority perused the material and applied its mind, and the absence of a particular formula of words does not vitiate the approval. The principle that the validity of an order must be assessed by examining its substance rather than insisting upon a particular form of words, recognised in the context of sanction orders in **Dr. H.C. Sathyan v. State of Karnataka, ILR 2017 KAR 3531**, on which Respondent No. 76 relied, applies by analogy in determining whether the Central Government has duly recorded its approval. We rely on that decision only by way of analogy; our conclusion rests principally on Major Atul Dev and on the record before us. Relevant paragraphs of the said judgement in **Dr. H.C. Sathyan v. State of Karnataka** (***supra***) as relied upon by Respondent No. 76 are as follows:

*"**27.** Before concluding, it is relevant to have in mind the object of granting the sanction.* ***The object of granting sanction is only to protect the innocent person, who has been falsely implicated in crime or when prima facie offence is not all made-out on the basis of the materials on record and in spite of that prosecution was sought. This is not the only fact that should be looked into by the Courts. If any semblance of materials are available against the accused and about the satisfaction of the sanctioning authority, then in order to curb the corruption disease, the Courts have to magnanimously***

deal with the procedure contemplated in law for issue of Sanction Order.

28. It is worth to note here that, the Anti-Corruption laws are intended to make effective provision for the prevention of bribe and corruption which is rampant among the public servants. It is undisputedly a Social Legislation in order to curb the illegal activities of the public servants and it is designed to be liberally construed so as to advance its objects, otherwise, if the Court goes too meticulously with reference to each and every word or sentence of the Sanction Order or the evidence led by the prosecution, it would create a deadlock and no case can conclude protecting the object of P.C. Act. When a social legislation is designed to combat an evil like bribe to the Society, Courts should be alive, very careful and mindful of the object of the legislation while interpreting the facts and legal aspects involved in such cases in order to maintain the public health, and safety of the Society. The Courts have to strive to interpret, protect and advance the real object and purpose of the enactment. Any narrow or too hyper-technical analysis of facts and interpretation of the provisions would defeat the very legislative policy. It should also be borne in mind that we may reach a stage of total destruction of public health and reconstruction may become an impossible task.

29. Therefore what the Courts have to do is, on overall looking into the materials on record placed before the Court, even though some small doubts or confusions are here and there, which are not sufficient to totally up-root the Sanction Order, such order has to be accepted. The Court has to look into the overall circumstances and find out that, really the Sanctioning Authority had occasion to peruse and has perused the materials against the accused and then applied its mind and thereafter accorded sanction. It is too much to expect from the sanctioning authority to use any specific words like, "I have perused the entire records and satisfied myself

and then accorded sanction", but, if the circumstances, are sufficient to show that in fact the records were seen and after satisfaction, the order is passed mere non-mentioning some specific words, is not sufficient to hold that such Sanction Order is an invalid order. In my opinion, in this case on looking to the legality, competency and application of mind by the Sanctioning Authority, it can be inferred that, he has issued the Order after due compliance of all legal requirements, which is amply established by the prosecution. Hence no interference is called for."

312. **Third**, the NCLAT in **Major Atul Dev (*supra*)** itself held, at paragraph 41, that an authorization letter issued by the Central Government, with the approval of the competent authority, after the inspection reports and the recommendation to file a petition under Section 241(2) had been placed before it, constituted evidence of the formation of the requisite opinion. The Respondents have relied on the earlier paragraphs of that judgment, which enunciate the general principles governing the formation of such an opinion. However, the application of those very principles in **Major Atul Dev** undermines, rather than supports, their contention. The letter dated 19.05.2022 is in all material respects similar to the authorization letter considered in that case, in that each follows a statutory report and recommendation and each records that it is issued with the approval of the competent authority. Further, the extracts from **Barium Chemicals** and **Rohtas Industries** quoted in **Major Atul Dev** were in the context of Section 237(b) of the 1956 Act, which required the existence of "circumstances suggesting" the matters specified therein. Those decisions articulate the principle that the formation of an opinion must be supported by relevant circumstances. They do not, however, prescribe any particular form or formula in which such an opinion must be recorded or evidenced. Even on the reasoning of those decisions, where the existence of the circumstances is questioned they must be demonstrable at least prima facie; that

requirement is met here by the BPSL Report and the supporting documents, which are on record.

313. **Fourth**, the burden of displacing the recorded approval lay on the Respondents, who impugn the opinion. Even on the footing that, once the existence of the relevant circumstances is questioned, the Central Government must demonstrate them at least prima facie (**Barium Chemicals, as approved in Rohtas Industries**), that requirement stands met by the BPSL Report and the letter dated 19.05.2022, both of which are on record. The Respondents have not placed any material before us from which it could be inferred that the Central Government did not consider the BPSL Report, or that the approval of the competent authority recited in the letter was not in fact given. In the absence of any such material, and in the face of a document recording the approval of the competent authority, the presumption that official acts have been regularly performed (Section 114, illustration (e), of the Indian Evidence Act, 1872, and the corresponding provision, namely Section 119, illustration (e), of the Bharatiya Sakshya Adhiniyam, 2023) applies. The presumption is rebuttable, but a bare allegation that the Government acted mechanically does not rebut it. We also note, without resting our conclusion upon it, that the written submissions filed on behalf of the Applicants in C.A. Nos. 223 and 228 of 2023 and C.A. No. 62 of 2024 mention (at paragraph 6.14) that "the Central Government has duly considered and analysed the report, before issuing the necessary directions".

314. **Fifth**, the Central Government's opinion under Section 241(2) is only the gateway to this Tribunal. The Tribunal must, under Section 242(1), form its own opinion on whether the affairs of the company have been or are being conducted in a manner prejudicial to public interest, and on what orders are required to bring the matters complained of to an end. The sufficiency of the material before the Government, the correctness of the SFIO's conclusions and the case against each respondent will be tested before this Tribunal on pleadings and evidence. The Respondents suffer no

prejudice because of the manner in which the Government recorded its opinion.

The decision in BSR & Associates LLP

315. The Respondents sought to distinguish the decision of the NCLAT in **BSR & Associates LLP v. Serious Fraud Investigation Office Company Appeal (AT) No. 182 of 2026, decided on 25.08.2026**, on the ground that the sanction there was under Section 212(14A) and not under Section 241(2). We are unable to accept that distinction. The enquiry in that case was how the Central Government, as an institution, takes a decision to institute proceedings in the NCLT on the basis of an SFIO report, and what is the role of the SFIO in the implementation of that decision. The NCLAT's answer, based on the manner in which the Government transacts its business, is not dependent on which provision of the Act is invoked. It applies equally to Section 241(2). The NCLAT also treated the SFIO, in filing the application, as the authorized representative of the Central Government and not as a body exercising a discretion of its own. The decision is, in any event, binding on this Tribunal.

316. We would add that the expression "public interest" in Section 241(2) is not defined and is not to be applied loosely. The expression takes colour from the context in which it is used and denotes the general interest of the community as distinguished from the private interest of an individual (**63 Moons Technologies Ltd. v. Union of India, (2019) 18 SCC 401, paras 80 and 81**, as applied to Section 241 in **Major Atul Dev**, paras 43 and 44). A grievance that is purely private, or the mere fact that creditors have suffered loss, does not make a matter one of public interest. We have therefore asked ourselves whether the Petition discloses a public dimension capable of supporting the Government's opinion. As pleaded, it does. The Petition alleges the diversion of funds and assets of a large borrower, in respect of which a public sector bank initiated the CIRP, and a resulting loss to the financial creditors, who were compelled to accept substantial

haircuts. A prejudice of that kind to the credit system and to lenders holding public money is a matter of public interest in the ordinary sense of that expression. The public dimension lies not in the quantum of the creditors' loss as such, but in the nature of the alleged conduct, namely the deliberate diversion of borrowed funds. For the same reason, the Respondents' submission that a haircut accepted by creditors in the exercise of their commercial wisdom cannot by itself evidence fraud is correct as far as it goes, but it does not assist them at this stage. The Petition does not infer fraud from the haircut; it alleges specific transactions of diversion. Whether those allegations are made out, and what part of the creditors' loss is attributable to them, are matters to be adjudicated while hearing the Company Petition No. 105 of 2023. We do not hold that the allegations are true. We hold only that, if they are, they concern public interest, and that the Central Government's opinion falls within what Section 241(2) contemplates.

317. The Respondents were right to remind us that the Government's opinion is not immune from scrutiny. Judicial review of such an opinion is narrow, but it is not non-existent. Where a respondent places material showing that the Government never applied its mind, or acted on extraneous considerations, the Tribunal is bound to examine it, and may, where warranted, call for the departmental file. No such material was placed before us. The finding below is recorded on the material presently on record; it is without prejudice to the Respondents' right, at the hearing, to rely on any fresh material that was not available to them earlier, which the Tribunal shall consider in the course of its enquiry under Section 242(1).

Finding on Issue 2

318. In view of the foregoing, this Adjudicating Authority holds that the Central Government did in fact form the opinion required under Section 241(2) of the Companies Act, 2013. That opinion rests on relevant material, namely the BPSL Report and the supporting documents submitted by the SFIO under Section 212(12), and it is duly recorded in the letter dated

19.05.2022, issued with the approval of the competent authority. The Respondents' contention that the Central Government acted mechanically, or as a "rubber stamp" on the SFIO's recommendation, is therefore rejected. The Petition, as pleaded, discloses circumstances bearing on public interest, and the statutory pre-condition for its institution is satisfied on the basis of the material available on record. The objection is, accordingly, rejected.

ISSUE 2(A): WHETHER THE PETITION HAS BEEN INSTITUTED BY THE CENTRAL GOVERNMENT "ITSELF", OR REQUIRES DELEGATION UNDER SECTION 458?

319. The Respondents contend that Section 241(2) vests the power to institute proceedings exclusively in the Central Government, that the SFIO is a distinct investigating agency which is not synonymous with the Central Government, that no notification under Section 458 has delegated the power to the SFIO, and that the omission of the words "any person authorized by it" which appeared in Section 401 of the Companies Act, 1956 is a deliberate legislative choice. The SFIO contends that the Petition has been filed by the Central Government, in the name of the Union of India, and that the SFIO has only been authorized to present it. The question is whether what has happened is a delegation of the Government's power or the authorization of an officer to carry out the Government's decision.

The distinction between delegation and authorisation

320. Delegation involves the conferment, on another, of the power to exercise the discretion or decision-making authority which the delegator would otherwise exercise, with the delegator retaining the power of revocation or amendment (cf. **Gwalior Rayon Silk Mfg. (Wvg) Co. Ltd. v. Assistant Commissioner of Sales Tax, (1974) 4 SCC 98**). Relevant paragraphs of the said judgement are as follows:

"***10.*** *... Hidayatullah, J., (as he then was) speaking for himself and Ramaswami, J., observed: (SCR p. 287C)*

> *"**Once it is established that the Legislature itself has willed that a particular thing be done and has merely left the execution of it to a chosen instrumentality (provided that it has not parted with its control) there can be no question of excessive delegation. If the delegate acts contrary to the wishes of the Legislature the Legislature can undo what the delegate has done.**"*
> *...".*

321. Where, however, the holder of a statutory power himself takes the essential decision, he may authorize an officer to implement it, and that is not a delegation or sub-delegation of the power. The distinction was explained by the Supreme Court in **Sidhartha Sarawgi v. Board of Trustees for the Port of Kolkata, (2014) 16 SCC 248**, and in **Union of India v. P.K. Roy AIR 1968 SC 850 : 1967 SCC Online SC 23**, on which the SFIO relied. In **Sidhartha Sarawgi (*supra*)**, the decision to terminate a lease was taken by the competent authority (the Chairman, being the authority empowered under the Major Port Trusts Act, 1963) and the ejectment notice was signed by a subordinate officer (the Land Manager), which was held to be permissible. The question in each case is who took the decision and whether any discretion has been transferred. Conversely, where the officer is left to take the essential decision or to exercise a discretion of his own, the arrangement amounts to delegation, which is permissible only where the statute so provides.

Application to the facts

322. As per the record before us, the Central Government took the decision. The SFIO placed the BPSL Report before the Central Government. The Central Government considered it and, by the letter dated 19.05.2022, decided that a petition should be filed against the persons and entities charged in the

report, and directed the SFIO to file it. The Petition is in the name of the Union of India, as the applicant, "through the SFIO". The SFIO did not decide to file the petition, did not decide against whom it should be filed, and has no discretion to depart from the Government's decision. The power conferred by Section 241(2) is the power to form the opinion that the affairs of the company are being conducted in a manner prejudicial to public interest and to decide that the Tribunal be moved; that power has been exercised by the Central Government. The signing, verification and presentation of the Petition are steps in the implementation of that decision. The Director, SFIO, as head of the office to which that direction was addressed, has, by the order dated 16.07.2022, designated an officer of the SFIO to sign and file the pleadings. That is the very kind of ministerial act which **Sidhartha Sarawgi (*supra*)** holds may be authorised without delegation. This is a case of simple authorisation and not delegation. It is consistent with the manner in which suits and proceedings by the Government are instituted as provided under Section 79 of the Code of Civil Procedure, 1908, which requires that, in a proceeding by the Central Government, the Union of India be named as the party, a principle which the NCLAT applied to a petition before the NCLT in **BSR & Associates LLP (*supra*)** and Order XXVII Rule 1 provides that the plaint or written statement be signed and verified by such person as the Government may, by general or special order, appoint in that behalf. Section 432 of the Act and Rule 45(3) and (4) of the National Company Law Tribunal Rules, 2016 likewise contemplate that a party, and in particular the Central Government, may act before this Tribunal through an officer authorised in writing.

323. The Applicants have, however, raised a distinct objection to the order dated 16.07.2022, namely that it emanates from the Director, SFIO and not from the Central Government, that it authorizes Mr. Anand Kumar to act on behalf of the SFIO, and that it pertains only to prosecutions for offences. We have examined that order. It records that Mr. Anand Kumar had already been authorized by the Central Government, vide MCA order dated

20.10.2020 under Sections 439 and 212(6) of the Act, for filing and conducting prosecutions, and it appoints him as Pairvi Officer in the matters of Bhushan Power & Steel Ltd. and Bhushan Steel Ltd. before the Courts and Forums "on behalf of the Central Government". It is true that its operative sentence speaks of pleadings "in respect of the offences for which the authorisation has been received from Central Government", and that it is not, in terms, an authorisation by the Ministry to present a petition under Section 241(2).

324. In the considered view of this Tribunal, that does not render the Petition non est. This is so because, **firstly**, the authority to institute the Petition does not flow from the order dated 16.07.2022. It flows from the decision of the Central Government recorded in the letter dated 19.05.2022, which directed the SFIO, an office of the Ministry headed by its Director, to file the application. The order dated 16.07.2022 is only the internal arrangement by which the head of that office designated the officer who would sign and verify the pleadings in implementation of that decision; once the essential decision has been taken by the Government, the designation of the officer who is to perform the ministerial act of signing and presenting is itself a ministerial matter (Sidhartha Sarawgi, supra). **Secondly**, the question who may sign and verify a pleading on behalf of a party is one of procedure. A defect in the signature, verification or authority of the person who presents a pleading is a curable irregularity and does not invalidate the proceeding, and the authority may be conferred or ratified subsequently and may be inferred from the conduct of the party (**United Bank of India v. Naresh Kumar, (1996) 6 SCC 660**). Here the Union of India has prosecuted the Petition for over three years, the letter dated 19.05.2022 required the SFIO to furnish an Action Taken Report to the Ministry within fifteen days, the order dated 16.07.2022 was copied to the Director (Legal and Prosecution) of the Ministry, and at no stage has the Central Government disowned the Petition. **Thirdly**, by way of abundant caution and to put the matter beyond controversy, we direct the Petitioner to place on record, within four weeks from the date of this order, an affidavit of a

competent officer of the Ministry of Corporate Affairs confirming the authority of the officer who has signed and verified the Petition and ratifying its institution and prosecution. Subject to that, the objection is rejected.

325. Further, there is nothing unusual in the Government acting through its officers and instrumentalities. Article 77(1) of the Constitution provides that all executive action of the Government of India is to be expressed to be taken in the name of the President, and Article 77(3) provides for the making of rules for the more convenient transaction of the business of the Government. Article 77(2) further provides that orders and other instruments made and executed in the name of the President shall be authenticated in the manner specified in the rules, and that the validity of an order so authenticated shall not be called in question on the ground that it is not an order made or executed by the President. It has been settled since **Ram Jawaya Kapur v. State of Punjab, AIR 1955 SC 549** and **Shamsher Singh v. State of Punjab, (1974) 2 SCC 831**, that the executive functions of the Government are, in substance, exercised by the Ministers and officers to whom the business is allocated under the Rules of Business, and that the acts of such officers are the acts of the Government. This is the principle of **Carltona Ltd. v. Commissioners of Works, (1943) 2 All ER 560**, recognized in our constitutional practice.

326. The Government of India (Allocation of Business) Rules, 1961 and the Government of India (Transaction of Business) Rules, 1961 allocate the administration of the Act to the Ministry of Corporate Affairs and provide for the exercise of its powers by the Minister and the Secretary (Rule 3(1) and the Second Schedule of the former, and Rules 3 and 11 of the latter). The SFIO is an office established by the Central Government under Section 211, forms part of the Ministry (it is listed under the Ministry in the Second Schedule to the Allocation of Business Rules) and is headed by a Director whose rank, as noticed in the decision of the NCLT Mumbai in **Union of India v. IL&FS Securities Services Ltd. (order in C.A. No. 234 of 2025 in C.P. No. 3638 of 2018)**, is equivalent to that of a Joint Secretary or

above. Relevant paragraphs of the said judgement in **Union of India v. IL&FS Securities Services Ltd. (*supra*)** as relied upon by SFIO are extracted above. The said order of the NCLT Mumbai was carried in appeal, and the appeal was dismissed by the NCLAT on 25.08.2026 in **BSR & Associates LLP v. Serious Fraud Investigation Office**.

327. The statute itself speaks to the SFIO's role. Section 212(14) contemplates that, after examining the report, the Central Government may direct the SFIO to initiate prosecution. If the SFIO can be directed to institute the more serious criminal proceedings on the Government's direction, there is no principle by which it cannot also be directed to present the civil petition under Sections 241 and 242 on the Government's direction. Section 212(14) is not relied upon as the source of the power to present the Petition; it is referred to only to show that the scheme of the Act contemplates the SFIO acting on the Central Government's direction once the Government has examined the report. Section 224(2) of the Act, to which the Respondents themselves referred, provides that where the Central Government acts on an inspector's report, an application under Section 241 may be presented to the Tribunal "by any person authorized by the Central Government in this behalf". Parliament has thus itself recognized that an application under Section 241 may be presented on behalf of the Central Government by an authorized person. We are conscious that Section 224(2) speaks of a report made by an inspector under Section 223, and that Section 223(5) provides that nothing in that section applies to the report referred to in Section 212. Section 224(2) is therefore not treated as the source of the SFIO's authority; it is referred to, as the Respondents themselves referred to it, only to show that Parliament, within the same Chapter, regarded the presentation of an application under Section 241 by a person authorized by the Central Government as consistent with the scheme of the Act. The contrast that the Respondents sought to draw between Sections 224(2) and 224(5) does not assist them: the words "may file an application" in the latter, and in Section 212(14A), identify the

Government as the party in whose name the application is made, and do not exclude its presentation by an authorized officer.

Section 458 is not attracted

328. Section 458 enables the Central Government, by notification, to delegate any of its powers or functions under the Act, other than the power to make rules, to such authority or officer as may be specified in the notification, and every such notification is to be laid before each House of Parliament. It is a mechanism for conferring powers on another authority to be exercised by that authority in its own right and discretion. It is not attracted where, as here, the Central Government itself exercises the power, and the officer merely acts on its behalf and in its name. Hence the absence of a notification under Section 458 in favor of the SFIO, and the existence of a notification dated 31.12.2015 delegating certain powers to the Regional Directors, are beside the point. In the present case, there has been no delegation. As the NCLT Mumbai noticed in the order referred to above, the Allocation of Business Rules and the Transaction of Business Rules themselves provide how the powers of the Central Government are to be exercised through the Ministry, and a direction by the Minister to the head of a department to act on the Government's behalf is administrative in nature and is not a delegation under Section 458. The NCLAT, in **BSR & Associates LLP (*supra*)**, rejected the contention that such an authorization required a notification under Section 458.

The omission of the words "any person authorised" from Section 241(2)

329. The submission that the omission from Section 241(2) of the words "any person authorized by it", which appeared in Section 401 of the 1956 Act, shows that Parliament intended that the Central Government alone must file, and that the principles against judicial legislation in **Mandvi Co-op Bank Ltd. (*supra*)** and **Deoki Nandan Aggarwal (*supra*)** debar this Tribunal from "reading in" authorization, are in our view misconceived. We are not reading any word into Section 241(2). Section 401 of the 1956 Act provided that the Central Government "may itself apply" to the Tribunal for

an order under Section 397 or 398, "or cause an application to be made" to the Tribunal for such an order "by any person authorized by it in this behalf". The word "itself" in Section 401 thus stood in contrast to the second limb, under which a person other than the Central Government was the applicant. Section 241(2) retains the first limb and omits the second. What Parliament omitted is the power of the Central Government to cause another person to apply as the applicant. Section 244(2), which empowers the Central Government to authorize members to apply, deals with a different situation, namely, a person other than the Government becoming the applicant. The word "itself" in Section 241(2) distinguishes the Central Government from the members and other classes of persons who may apply under Section 241(1) and Section 244. It identifies the applicant. It does not prescribe the manner in which the applicant, being the Government, must act. In every case, the Government can act only through natural persons. The question whether the 1956 Act formally allowed another person to be authorized as applicant in his own right, which Section 401 did, is different from the question whether the Government can, when it is itself the applicant, present the petition through an authorized officer. The latter is a matter of the Government's basic mode of functioning and requires no statutory authorization. There is no casus omissus.

330. The Respondents also argued that the letter dated 19.05.2022 is an administrative letter that cannot confer jurisdiction on the SFIO. The argument proceeds on a wrong premise. No jurisdiction or power is conferred, or claimed to be conferred, on the SFIO. The Petitioner is the Central Government, and the jurisdiction of this Tribunal is invoked by it under Section 241(2); the letter records the Central Government's decision to invoke that jurisdiction and its direction to the SFIO to present the Petition. The letter neither supplements nor enlarges any statutory power; it records the exercise of a power which the statute has already vested in the Central Government. The principle that executive instructions or the Rules of Business cannot override a statute, on which a similar argument was founded in **BSR & Associates LLP (*supra*)** (see **Sant Ram Sharma v.**

State of Rajasthan, 1967 SCC OnLine SC 16, and **State of Haryana v. P.C. Wadhwa**, (1987) 2 SCC 602), is therefore not attracted. The SFIO cannot act, and has not acted, without the authority of the Central Government. A letter expressed in the name of the President and authenticated as the Rules provide is, moreover, protected by Article 77(2) of the Constitution, and a similar letter of the Central Government directing the SFIO to initiate proceedings before the NCLT under Sections 241, 242 and 246 read with Section 339 of the Act was treated by the Delhi High Court as an executive order flowing from the statutory scheme (**Shriraj Investment & Finance Ltd. v. Union of India**, W.P.(Crl.) Nos. 1823 of 2020 and 1414 of 2021, decided on 14.09.2021).

Binding authority

331. The question has been decided by the NCLAT in **BSR & Associates LLP (*supra*)** on facts materially similar to those before us, the principal difference urged being that the application in that case was characterised as one under Section 212(14A), a characterisation which, according to the SFIO, the NCLAT itself did not accept (paragraphs 17 and 18 of that judgment). The NCLAT held that the decision to file was that of the Central Government after considering the SFIO's report, that the proceeding was filed by the Union of India as the Petitioner, that the SFIO or its Director was merely authorized to present the petition in the name of the Central Government in accordance with the Allocation of Business Rules and the Transaction of Business Rules framed under Article 77(3) of the Constitution, and that, following **Sidhartha Sarawgi (*supra*)**, such an authorization is distinct from a delegation requiring compliance with Section 458. The decision of the NCLT Mumbai in IL&FS Securities Services Limited, which the NCLAT upheld, took the same view. The NCLAT also relied on the decision of the Delhi High Court in **Shriraj Investment & Finance Ltd. v. Union of India**, W.P.(Crl.) Nos. 1823 of 2020 and 1414 of 2021 (decided on 14.09.2021), where the Central Government's direction to the SFIO to initiate proceedings before the NCLT under Sections 241,

242 and 246 read with Section 339 of the Act was held to be an executive order flowing from the statutory scheme, the Central Government being competent to authorize the initiation of such proceedings. The Respondents' effort to distinguish BSR as a decision under Section 212(14A) has been dealt with above, and the distinction is not material: what was decided in **BSR & Associates LLP (*supra*)** was not the construction of Section 212(14A) but whether the presentation of a petition by an authorized officer in the name of the Union of India amounts to a delegation requiring a notification under Section 458, and that question is identical here. That reasoning is dispositive of the point. Section 241(2) expressly confers the power upon the Central Government to apply to the Tribunal on the opinion formed by it. Nor is Section 212(14A) the only route to such reliefs: as the NCLAT noted in **BSR (*supra*)**, relying on **Shriraj Investment (*supra*)**, the absence of a particular remedy under one provision does not take away the jurisdiction available under another.

332. We have considered with care the force of the Respondents' submission. It is true that Parliament, in Section 224(2), speaks of an application being presented "by any person authorized by the Central Government in this behalf", while Section 241(2) uses the word "itself", and the contrast has been duly considered. We have not accepted it as decisive because the question before us is not whether the Government may authorize another person to be the applicant in his own right, which is what the words of Section 401 of the 1956 Act permitted. The question is whether the Government, which has itself taken the decision and is itself the applicant, may present its petition through an officer. On that second question the contrast between Sections 224(2) and 241(2) does not assist the Respondents, and it is the general law on how the Government acts, discussed above, that governs, as applied by the NCLAT in **BSR & Associates LLP (*supra*)**.

333. We are mindful that the principle in **Carltona (*supra*)** is not unlimited. It does not apply where the statute requires the personal satisfaction or decision of the Minister, or where the decision is in substance taken by the subordinate officer and not by the Government. Section 241(2) requires the opinion of "the Central Government" and not of a named Minister, and the record shows a decision at the level of the competent authority of the Ministry. No material has been placed before us, to show that the decision to file was in truth taken by the SFIO without reference to the competent authority of the Government. The record shows the contrary, and the objection is rejected.

334. We also observe that the Central Government, as a Petitioner in a proceeding concerned with public interest, is expected to conduct itself as a model litigant. The Central Government has, in the present case, placed on record the letter dated 19.05.2022 and the order dated 16.07.2022, and the affidavit directed above will complete the record of the authority under which its officer acts; and it is expected that it will do so in every such case.

Finding on Issue 2(A)

335. We hold that the Petition has been instituted by the Central Government under Section 241(2), in the name of the Union of India, on its own decision recorded in the letter dated 19.05.2022. The SFIO exercised no discretion; it merely presented the Petition through an authorized officer, which is a ministerial act. This is authorization, not delegation, so Section 458 is not attracted and no notification was required (BSR & Associates LLP, supra). Any defect in the order dated 16.07.2022 is a curable procedural irregularity. Subject to the affidavit directed in paragraph above, the objection is accordingly rejected.

ISSUE 3: WHETHER THE EXPRESSION "ARE BEING CONDUCTED" U/S 241(2) OF THE ACT EXTENDS TO PAST TRANSACTIONS HAVING A CONTINUING EFFECT?

336. The Respondents contend that the expression "are being conducted" in Section 241(2) is in the present continuous tense, that it excludes past and concluded transactions, and that the Petition, which rests on transactions of 2017-18 by the erstwhile management of BPSL, falls outside it. They emphasize the contrast with Section 241(1), which speaks of affairs that "have been or are being" conducted, and rely on **Power Finance Corporation Ltd. v. Shree Maheshwar Hydel Power Corporation Ltd.** and on the literal rule (**Newtech Promoters and Developers Pvt. Ltd. v. State of Uttar Pradesh, 2021 INSC 716**). The SFIO contends that the words include past acts having a continuing effect, that Sections 242(1) and 339 independently cover past conduct, and that the factual premise of the objection is wrong. Ld. Counsel for the SFIO also points out that this contention was advanced across the bar and is not part of the pleadings in the applications. Although that contention is not a part of the pleadings, it goes to the maintainability of the Petition and raises a pure question of law, and we have therefore considered it on merits.

Section 241(2) cannot be read in isolation from Sections 242 and 246

337. Section 241(2) is the gateway; Section 242 is the power. Section 242(1) provides that "on any application made under section 241", and so including an application by the Central Government, the Tribunal may act where it is of the opinion that the company's affairs "have been or are being" conducted in a manner prejudicial to public interest. Parliament has thus equipped the Tribunal, on a Central Government application, to deal with affairs that "have been" so conducted. Section 242(2) contemplates, among the orders that may be made, the recovery of undue gains made by any managing director, manager or director during the period of his appointment as such (Section 242(2)(i)), which is necessarily a past period. Clause (m) of the same sub-section further empowers the Tribunal to provide for any other matter which it considers just and equitable.

338. Section 246 further applies Sections 337 to 341 (both inclusive), mutatis mutandis, to an application under Section 241, and Section 339(1) operates where the business "has been carried on" with intent to defraud. If Section 241(2) were read to confine the Central Government to conduct which is happening at the very moment of the application, then in every petition by the Central Government Sections 242(2) and 339 would be deprived of much of their content.

339. The power conferred upon the Tribunal to pass an order under Section 242 itself includes the power to look into past acts, even on a Petition filed by the Central Government under Section 241(2). Section 241(2) thus cannot be read to narrow down the power of the NCLT under Section 242. The contrast which the Respondents draw with Section 241(1) does not assist them either. Section 241(2) merely identifies the Central Government as an applicant and the ground on which it may approach the Tribunal; once an application has been made, the Tribunal's jurisdiction and the orders it may pass are governed by Section 242, which applies to "any application made under section 241" and which uses the wider expression "have been or are being".

340. The maxim *expressio unius est exclusio alterius* is only an aid to construction and cannot be used to defeat the evident scheme of the Chapter. A statute is to be read as a whole so that its provisions work together, and a construction which would make a part of it ineffective is to be avoided as held by the Supreme Court in **Tinsukhia Electric Supply Co. Ltd. v. State of Assam, (1989) 3 SCC 709**. Relevant paragraphs of the said judgment in **Tinsukhia Electric Supply Co. Ltd. v. State of Assam (*supra*)** are as follows:

"118. The courts strongly lean against any construction which tends to reduce a statute to futility. The provision of a statute must be so construed as to make it effective and operative, on the principle "ut res magis valeat quam pereat". It is, no doubt, true

that if a statute is absolutely vague and its language wholly intractable and absolutely meaningless, the statute could be declared void for vagueness. This is not in judicial review by testing the law for arbitrariness or unreasonableness under Article 14; but what a court of construction, dealing with the language of a statute, does in order to ascertain from, and accord to, the statute the meaning and purpose which the legislature intended for it. *In Manchester Ship Canal Co. v. Manchester Racecourse Co. [(1904) 2 Ch 352: 16 TLR 429 : 83 LT 274] Farwell J. said: (pp. 360-61)*

> ***"Unless the words were so absolutely senseless that I could do nothing at all with them, I should be bound to find some meaning and not to declare them void for uncertainty."***

119. *In Fawcett Properties Ltd. v. Buckingham County Council [(1960) 3 All ER 503] Lord Denning approving the dictum of Farwell, J., said :(All ER p. 516)*

> ***"But when a Statute has some meaning, even though it is obscure, or several meanings, even though there is little to choose between them, the courts have to say what meaning the statute to bear rather than reject it as a nullity."***

120. It is, therefore, the court's duty to make what it can of the statute, knowing that the statutes are meant to be operative and not inept and the nothing short of impossibility should allow a court to declare a statute unworkable. *In Whitney v. IRC [1926 AC 37] Lord Dunedin said: (AC p. 52)*

> *"**A statute is designed to be workable, and the interpretation thereof by a court should be to secure that object, unless crucial omission or clear direction makes that end unattainable.**"*
>
> *…"*



341. In addition to the above, we may also appreciate that Section 241(3), inserted by the Companies (Amendment) Act, 2019 with effect from 15.08.2019, confers a further power on the Central Government to initiate a case before the Tribunal against any person concerned in the conduct and management of the affairs of a company who is or has been guilty of fraud or misfeasance, or who has managed the business of the company with the intent to defraud its creditors or otherwise for a fraudulent or unlawful purpose, so that the Tribunal may inquire into the case and decide whether such person is a fit and proper person to hold the office of director or any other office connected with the conduct and management of any company. Section 241(3) reads as follows:

"…
(3) Where in the opinion of the ***Central Government there exist circumstances*** *suggesting that*
*(a****) any person concerned in the conduct and management*** *of the affairs of a company* ***is or has been in connection therewith guilty*** *of* ***fraud, misfeasance, persistent negligence*** *or default in carrying out his obligations and functions under the law or of breach of trust;*
(b) the ***business*** *of a company* ***is not or has not been conducted*** *and managed by such person in accordance* ***with sound business*** *principle or prudent commercial practices;*
(c) a ***company is or has been conducted and managed*** *by such person in a* ***manner which likely to cause, or has caused, serious injury or damage to the interest of the trade, industry or business*** *to which such company pertains; or*
(d) the ***business of a company is or has been conducted*** *and managed by such person* ***with intent to defraud its creditors,*** *members or any other person or otherwise for a* ***fraudulent or unlawful purpose*** *or in a manner prejudicial to public interest,*
the ***Central Government may initiate a case against such person and refer the same to the Tribunal*** *with a request that the Tribunal may inquire into the case and record a decision as to whether or not such*

person is a fit and proper person to hold the office of director or any other office connected with the conduct and management of any company."

342. The language employed in Section 241(3), unlike Section 241(2), also refers to past acts of fraud, negligence, etc. carried out by the management concerned. If the words "are being" used in Section 241(2) were read literally, the scheme of Section 241 would become incongruous, because the Central Government could place past conduct before this Tribunal under Section 241(3) but not under Section 241(2). The Respondents say that the express reference to past conduct in Section 241(3) shows that Parliament deliberately omitted it from Section 241(2). We are unable to accept that submission. Sections 241(2) and 241(3) are distinct remedies: the former is directed at bringing to an end the matters complained of in the affairs of the company, and the latter at determining the fitness of persons to hold office. Section 241(3) was inserted by the Companies (Amendment) Act, 2019, together with Sections 242(4A) and 243(1A), and nothing in that amendment indicates an intention to withdraw from Section 241(2) the reach which Sections 242(1) and 242(2) already give in respect of past conduct whose effect continues. Indeed, it would be anomalous if the Central Government could invite this Tribunal to examine past conduct for the purpose of disqualifying the persons concerned, yet could not seek restoration of what that very conduct is alleged to have taken out of the company.

343. A person concerned with management under section 241(3) can be proceeded against also for the acts done in the past, as evident from the language, and this plain interpretation of 241(3) itself lends support to an extended and logical interpretation of the term "are being" used in Section 241(2), namely, that it includes past and concluded acts as well, where they have a live impact.

344. The difference in wording between Sections 241(1) and 241(2) is real, but, read with Sections 242 and 246, it cannot bear the weight which the Respondents place on it. The Respondents' reliance on the literal rule does not help them either: the literal rule requires that the words of the statute be given their plain meaning in their context, and here the context includes Sections 242(1), 242(2) and 246. Further, a literal meaning cannot be adopted if it produces an absurd result, and a statute must be construed so as to make it workable and to avoid reducing it to futility (**K.P. Varghese v. ITO, (1981) 4 SCC 173**; **Reserve Bank of India v. Peerless General Finance and Investment Co. Ltd., (1987) 1 SCC 424**). Excluding past and concluded transactions with continuing effect from the purview of Section 241(2) will also take away the power of this Tribunal in terms of Section 242, which would be rather absurd.

The construction of "are being" under the 1956 Act

345. The words "are being conducted" in Section 241(2) were not newly coined. They appear in Section 397(1) of the Companies Act, 1956, and for decades before the 2013 Act the High Courts construed them as embracing a single wrongful act or a course of conduct commenced in the past whose effect is continuing: **In re Sindhri Iron Foundry (P) Ltd., (1964) 34 Comp Cas 510**, affirmed in **Ramshankar Prosad v. Sindri Iron Foundry (P) Ltd., AIR 1966 Cal 512**; **Surinder Singh Bindra v. Hindustan Fasteners, (1990) 69 Comp Cas 718 (Del)**; **Micromeritics Engineers Pvt. Ltd. v. S. Munusamy, (2004) 122 Comp Cas 150 (Mad)**; and **Gurpratap Singh v. Vista Hospitality P. Ltd., (2014) 186 Comp Cas 202**. The decisions under the 1956 Act which insist that oppression must be a continuing course of conduct up to the date of the petition, beginning with **Shanti Prasad Jain v. Kalinga Tubes Ltd., AIR 1965 SC 1535**, are not to the contrary. They require continuity of the wrong and not its repetition on the date of the petition, and a series of wrongful acts may, in the context, be treated as parts of one transaction of oppression (**Needle Industries (India) Ltd. v. Needle Industries Newey (India) Holdings Ltd., (1981) 3 SCC 333**). Benches of this Tribunal have taken the same view of the words "are being

conducted" in Section 241(2) in the context of fraudulent transactions: **Union of India v. Videocon Industries Ltd., NCLT, Mumbai Bench, order dated 31.08.2021**. Parliament, in enacting the 2013 Act with the same expression, must be taken to have been aware of this settled judicial understanding and to have adopted it. The addition of the words "have been" in Sections 241(1) and 242(1) of the 2013 Act is, at its highest, clarificatory of that understanding; it cannot reasonably be read as a legislative decision to cut down, for the Central Government alone, a remedy which the same words had been understood to afford before 2013. It is not suggested that, in enacting Section 241(2), Parliament intended to narrow the scope of the remedy as compared with the 1956 Act; the legislative object of Chapter XVI, as of its predecessor, is to enable matters complained of to be brought to an end.

The conduct alleged is continuing in its effect and in its retention

346. We have also considered whether the conduct alleged here is truly of a continuing character, and are conscious of the distinction between a continuing wrong and the continuing effect of a wrong which was complete when committed (**Balakrishna Savalram Pujari Waghmare v. Shree Dhyaneshwar Maharaj Sansthan, AIR 1959 SC 798**). The Petition does not rest on a completed act whose consequences merely linger. As framed, it alleges the diversion of the funds and assets of BPSL through layered transactions and the retention of the resulting benefit by the persons and entities charged, and it therefore seeks disgorgement and the restoration of those monies and assets. On that case, the prejudice to the creditors and to public interest has not ended but subsists for as long as the diverted value remains with the recipients and unrestored. The affairs of a company include the custody, ownership and recovery of its assets; the non-restoration of assets diverted from the company therefore continues to affect the company, its creditors and the public interest, notwithstanding that the persons now managing it are different. The creditors have been compelled to accept substantial haircuts consequent to IBC proceedings. **Fraud,** as defined in the Explanation to Section 447, **includes any act,**

omission, concealment of any fact or abuse of position, committed 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 loss** (and, to the extent the Petition alleges concealment of the diverted funds, that concealment is itself an "act" within the definition and continues until the funds are disclosed and restored). The High Court of Punjab and Haryana in **Surender Singh v. SFIO (CRM-M No. 41761 of 2019, decided on 13.11.2019**), on which the SFIO relies, regarded the non-restoration of siphoned funds as bearing the character of a continuing offence. We are not called upon to decide that question in the criminal context. We note, by way of analogy only, that the Supreme Court has treated the offence of money laundering as a continuing one for as long as the person remains involved in any process or activity connected with the proceeds of crime (**Vijay Madanlal Choudhary v. Union of India, 2022 SCC OnLine SC 929**). We find the reasoning persuasive for the limited purpose of holding that the Petition, as pleaded, alleges a state of affairs which "is being" prejudicial to public interest within the meaning of Section 241(2).

347. The Respondents' reliance on **Power Finance Corporation (*supra*)** does not alter this. We accept, as the NCLAT observed in that case (at paragraph 41 of the judgment), that "have been" and "are being" are distinct and that the latter denotes continuing conduct. The question is what constitutes continuing conduct, and, for the reasons given above, a course of conduct which started in the past and whose prejudicial effect, together with the retention of its fruits, continues to fall within it. The same paragraph, however, records that "have been" describes action which began in the past and is still in progress, as distinct from "had been", which would denote acts that began and came to an end in the past. On that reasoning, conduct which commenced in the past and is still in progress is within the statutory language, and the retention and non-restoration of the fruits of the alleged diversion is, in our view, conduct which is "in progress" in that sense. Moreover, that case concerned a petition under Section 241(1) by a lender

which had become a member only in 2016 and which was itself found to have controlled the company's affairs since 2005; the appeal was dismissed on several independent grounds, including the petitioner's want of a sustainable title to the shares, delay and laches, and want of bona fides, and the NCLAT itself directed an investigation into the company's affairs under Section 210 in the public interest. It did not consider an application by the Central Government in the public interest under Section 241(2).

The CIRP and the resolution plan do not bring the matter to a close

348. The Respondents contended that, because the CIRP of BPSL was concluded and the resolution plan approved in 2019 by the NCLT on 05.09.2019 (affirmed by the NCLAT on 17.02.2020 and, finally, by the Supreme Court on 26.09.2025 in **Kalyani Transco v. Bhushan Power and Steel Ltd., 2025 INSC 1165**) and the erstwhile management was replaced, nothing remains of the "affairs" of BPSL that can be said to be being conducted in a prejudicial manner. We reject this contention as the Respondents have confused the cessation of control by the erstwhile management with the disappearance of the consequences of the acts complained of. The Petition does not challenge the manner in which the new management is conducting the affairs of BPSL. Rather, it concerns the alleged diversion of funds and value from the company during the period under the erstwhile management. The replacement of the erstwhile management may have brought its control over the company to an end, but it does not, by itself, undo the alleged diversion or remove the prejudice that may have been caused to the company and the public interest. The question under Section 241(2) is not whether the present management is conducting the affairs of BPSL prejudicially, but whether the course of conduct complained of, commenced under the erstwhile management, continues to prejudice the public interest through the retention of its fruits. Nor does the IBC stand in the way. The approval of a resolution plan extinguishes claims against the corporate debtor which are not provided for in the plan (**Ghanashyam Mishra and Sons (P) Ltd. v. Edelweiss Asset Reconstruction Co. Ltd., (2021) 9 SCC 657**), and Section 32A of the IBC protects the corporate

debtor and its property from prosecution and from action in respect of offences committed before the commencement of the CIRP where the plan results in a change of control in favour of a person who is not within the exceptions stated in that section. The present Petition, however, seeks no relief against BPSL or its property; it is brought for the benefit of the company and its stakeholders against those who allegedly diverted its assets, and Explanation (ii) to Section 32A (2) expressly preserves action against the property of any person other than the corporate debtor. The finality which the Supreme Court has accorded to the resolution plan therefore does not preclude these proceedings. The NCLT, Mumbai Bench took a similar view in **Union of India v. Videocon Industries Ltd.** in holding that proceedings under Sections 241 and 242 are not proceedings against the corporate debtor.

349. We would, however, add a caution. Our holding does not mean that every historical transaction in the affairs of a company can be brought before this Tribunal by the Central Government at any time. The Petitioner must plead and prove that a prejudice to the public interest subsists as a result of the alleged conduct, for instance that the diverted value remains with identifiable persons and has not been restored. If, at the hearing, it appears that the alleged conduct has fully run its course and that no prejudicial consequence subsists which this Tribunal can bring to an end, the Tribunal would be justified in declining relief on that ground. The lapse of time between the impugned transactions and the Petition, the intervening change of management and the effect of the CIRP are matters that the Respondents are entitled to place before the Tribunal for that purpose. The finding recorded on this Issue is confined to the maintainability of the Petition under Section 241(2) on the case as pleaded; nothing in it is an expression of opinion on the merits of the allegations, which remain to be proved.

Finding on Issue 3

350. In view of the foregoing, we hold that the expression "are being conducted" in Section 241(2) is not confined to conduct occurring on the date of the Petition. Read with Sections 241(3), 242(1), 242(2) and 246, and through Section 246 with Section 339, it includes a course of conduct which commenced in the past and whose prejudicial effect on public interest continues, including through the retention of the fruits of that conduct and the non-restoration of the company's assets. Neither the replacement of the erstwhile management nor the approval of the resolution plan under the IBC brings such a course of conduct to an end. The Petition, as pleaded, alleges conduct of this character and is therefore maintainable under Section 241(2). This finding is subject to the caution recorded in the preceding paragraph. The objection is accordingly rejected.

ISSUE 4: WHETHER SECTIONS 246 AND 339 OF THE ACT HAVE BEEN VALIDLY INVOKED, AND WHAT IS THE SCOPE OF THE TRIBUNAL'S POWERS UNDER SECTION 242 OF THE ACT?

351. The Respondents contend that Section 339 operates only "in the course of the winding up of a company", that BPSL has not been wound up but has been resolved as a going concern, that only the official liquidator, the company liquidator, a creditor or a contributory may move under it, and that the expression "mutatis mutandis" in Section 246 cannot be used to delete the condition of winding up.

352. Section 246 provides that Sections 337 to 341 "shall apply mutatis mutandis, in relation to an application made to the Tribunal under section 241 or section 245". The legislative direction is to apply the provisions to applications under Section 241, which by their very nature are proceedings other than winding up. "Mutatis mutandis" means with the necessary changes in points of detail as held in **Ashok Service Centre v. State of Orissa, (1983) 2 SCC 82** and **Prahlad Sharma v. State of U.P., (2004) 4 SCC 113**. The necessary changes are obvious: the phrase "in the course of

the winding up" must be read as "in the course of the proceedings on an application under Section 241", and the persons entitled to apply must be read as the applicant under Section 241, including the Central Government under Section 241(2). The Supreme Court has itself proceeded on this footing. In **Usha Ananthasubramanian v. Union of India, (2020) 4 SCC 122**, it recognized that, on an application by the Central Government under Section 241(2), the powers of the Tribunal under Section 242 are supplemented by Sections 337 and 339, which apply mutatis mutandis. The only limit drawn by the Supreme Court was as to the persons against whom those powers may be exercised, namely persons connected with the conduct of the business of the company whose affairs are the subject-matter of the petition, and not the heads or officers of other organizations. That is a limit on the persons who may be proceeded against, not on the availability of Section 339 in a proceeding under Section 241, and the Tribunal will observe it in granting any relief. Any other reading would render Section 246 wholly otiose, because Sections 337 to 341 could never apply to an application under Section 241 if the precondition of a winding-up were to be insisted upon. The Respondents' reading is one which makes a legislative direction meaningless, and that is not an acceptable method of interpretation. A legal fiction created by statute, moreover, is to be given its full logical effect for the purposes for which it is created (**State of Bombay v. Pandurang Vinayak, AIR 1953 SC 244**). The underlying principle of Section 339, namely an inquiry into the fraudulent conduct of the business of the company, with the personal liability of those who were knowingly parties to it, remains intact; what changes is only the proceeding in which it is invoked.

353. The Delhi High Court in **Shriraj Investment & Finance Limited v. Union of India, 2021 SCC OnLine Del 4361**, has also observed that Sections 241, 242 and 246 read with Section 339 are available to the Central Government and are not dependent on the filing of an SFIO report. Those observations were made in writ proceedings challenging the Central Government's direction to initiate proceedings under these provisions, and



the High Court left objections to the jurisdiction of the Tribunal to be raised before the Tribunal itself. They are nevertheless a considered statement of the statutory scheme, and are consistent with the recognition by the Supreme Court in **Usha Ananthasubramanian** (*supra*) that Sections 337 and 339 apply mutatis mutandis to a petition under Section 241(2). The Appellate Tribunal has since relied on **Shriraj** in **BSR & Associates LLP v. SFIO, Company Appeal (AT) No. 182/2026** (decided on 25.08.2026), albeit on the question of the authority of the Central Government to institute such proceedings. Relevant paragraphs of **Shriraj Investment & Finance Limited v. Union of India (*supra*)** are as follows:

"19. Even otherwise, ***a bare perusal of Section 241,242,246 r/w 339 would reveal they are not dependent upon even filing of a SFIO report u/s 212 (12) of the Act. The Central Government, at any stage, on basis of any material before it, form an opinion to file petition under Section 241,242,246 r/w 339*** *of the Companies Act. In the present case,* ***though the Central Government has decided to file the same after receipt of SFIO report, however, the Act puts no fetters upon the Central Government to await a SFIO report****, to form its opinion that the affairs of the Company are being conducted in a manner prejudicial to the public interest and of the Company.*

20. ***The power vested in the Central Government under Section 241 of the Act is predicated on the protection of "public interest".*** *This is evident from the reading of the provision itself…*

21. It is verily important and critical to note that ***Section 242 is a natural corollary and sequitir to the substantive provisions of Section 241,*** *which mandates the* ***Central Government, in case affairs of a Company have been or are conducted in a manner prejudicial to public interest, the Central Government then may itself apply for an order under this Chapter XVI of the Companies Act****. The Act has to be read in consonance and uniformity to further the effect of the legislative intent.*

22. The reliefs for disgorgement can even be sought under section 241 and 242(1)(l)(m) de hors Section 212 (14A) amendment. The Central Government can authorize initiation of proceedings and the relief of freezing assets and disgorgement of property under Section 241, Section 242 r/w Sec.246, and Section 339/447 of the Companies Act inasmuch as ***disgorgement is a civil action in nature of an equitable relief and not a penal action****. In Karvy Stock Broking Ltd. v. Securities and Exchange Board of India, MANU/SB/0064/2008 it has been held that:*

> *"…Disgorgement is a monetary equitable remedy that is designed to prevent a wrongdoer from unjustly enriching himself as a result of his illegal conduct. It is not a punishment nor is it concerned with the damages sustained by the victims of the unlawful conduct. Disgorgement of illgotten gains may be ordered against one who has violated the securities laws/regulations but it is not every violator who could be asked to disgorge. Only such wrongdoers who have made gains as a result of their illegal act(s) could be asked to do so. Since the chief purpose of ordering disgorgement is to make sure that the wrongdoers do not profit from their wrongdoing, it would follow that the disgorgement amount should not exceed the total profits realized as the result of the unlawful activity…"*

(Emphasis supplied)

For the reasons recorded above, we reject the Respondents' contention that Section 339 cannot be invoked in this Petition and hold that the Petition is not rendered incompetent merely because BPSL has been resolved as a going concern and has not been wound up.

The Tribunal's powers under Section 242

354. Section 242(1) empowers the Tribunal, with a view to bringing to an end the matters complained of, to make "such order as it thinks fit". That power is exercisable only where the conditions in clauses (a) and (b) of Section 242(1) are satisfied, namely that the affairs of the company have been or

are being conducted in a manner prejudicial to public interest or to the interests of the company, and the further condition in clause (b) regarding winding up must also be satisfied, as held in **Tata Consultancy Services Ltd. v. Cyrus Investments (P) Ltd., (2021) 9 SCC 449**. How clause (b), which speaks of unfair prejudice to "such member or members" and of facts justifying a winding up on the just and equitable ground, is to be applied, mutatis mutandis, to an application by the Central Government in the public interest in respect of a company that has since been resolved as a going concern under the IBC, was not argued before us, and is left open for consideration at the final hearing. The present Issue concerns the width of the power once those conditions are satisfied. Section 242(2) enumerates specific kinds of orders but is expressed to be "without prejudice to the generality of the powers under sub-section (1)". The list is illustrative, not exhaustive. It has been consistently held that the expression "as it thinks fit", employed in relation to a quasi-judicial authority, connotes a jurisdiction of the widest amplitude, limited only by the statute and the purpose for which the power is conferred (**Narendra Singh v. Chhotey Singh, (1983) 4 SCC 131**; **Clariant International Ltd. v. SEBI, (2004) 8 SCC 524**; **V.C. Rangadurai v. D. Gopalan, (1979) 1 SCC 308)**, and, in relation to Chapter XVI and its predecessor, that the Tribunal's powers are wide, just and equitable, limited only by the object of bringing to an end the matters complained of (**Bennett Coleman & Co. Ltd. v. Union of India, 1973 SCC OnLine Bom 41**; **Rakhra Sports Pvt. Ltd. v. Khraitilal Rakhra, (1993) 76 Comp Cas 545**).

355. The Respondents' submission that the reliefs sought by the Petitioner, namely disgorgement, restoration, the freezing of assets and the personal liability of persons for the debts of BPSL, are beyond Section 242(2) is therefore misconceived. A relief does not have to fall within an enumerated clause of Section 242(2) in order to be within the Tribunal's power, provided that it serves the object of bringing to an end the matters complained of. Moreover, clause (m) of Section 242(2), which permits provision to be made for any other matter in respect of which it is just and equitable that

provision be made, together with, clause (i) of Section 242(2), which contemplates the recovery of undue gains and their application, including repayment to identifiable victims, squarely supports relief of this character. Insofar as persons other than a managing director, manager or director are concerned, the relief rests upon clause (m) and upon Section 339, rather than upon clause (i), which speaks of gains made by a managing director, manager or director during the period of appointment. It has been held that disgorgement is a civil, equitable remedy intended to prevent unjust enrichment, and is not penal in nature (**Shriraj**, relying upon the decisions of the Securities Appellate Tribunal in **Karvy Stock Broking Ltd. v. SEBI and Shadilal Chopra v. SEBI**, as discussed above. That it may be sought alongside the criminal prosecution does not change its nature. Disgorgement will in any event be confined to the gains actually made by the person concerned, in line with the principle stated in **Karvy Stock Broking Ltd. (*supra*)**; and a declaration of personal liability under Section 339(1) is a civil consequence, distinct from any penal consequence under Section 339 read with Section 447, which is for the competent Special Court and is not the subject-matter of this order. Nor is the Petition rendered infructuous by the change in the management of BPSL, for the jurisdiction under Section 242(1)(a) extends to affairs that "have been or are being" conducted in a prejudicial manner, and the consequences of past conduct, if established, subsist until they are undone. Therefore, a civil remedy in respect of the manner in which the affairs of the company have been conducted lies before this Tribunal under Sections 241 and 242 read with Sections 246 and 339 of the Companies Act, 2013.

Finding on Issue 4

356. We hold that Section 339 is available in this Petition by virtue of Section 246, and that the reliefs sought are within the Tribunal's power under Section 242, subject to proof to the satisfaction of the conditions of Section 242(1), and to the limitations noted above, namely that any declaration of personal liability under Section 339 can be made only against persons who

were knowingly parties to the carrying on of the business of BPSL in a fraudulent manner, and that the quantum of any disgorgement is confined to the gains actually made. Nothing in this finding affects the finality of the resolution plan approved in respect of BPSL; the extent and form of any relief against any person, having regard to Sections 31 and 32A of the Insolvency and Bankruptcy Code, 2016, will be considered at the stage of final relief. The Respondents' objection is accordingly rejected.

ISSUE 5: WHETHER SECTION 212(14A) IS A SPECIAL REMEDY THAT BARS THE PRESENT PETITION?

357. Mr. Rishav Banerjee, Ld. Counsel for Respondent Nos. 38 and 39 submitted that the specific remedy for disgorgement on the basis of an SFIO report is under Section 212(14A); that, having failed to invoke it, the Central Government cannot resort to the general power under Section 241(2); and, relying on the maxim *generalia specialibus non derogant*, that the special provision prevails. Ld. Senior Counsel Mr. Sudhir Makkar submitted, in a different vein, that Section 212(14A), introduced with effect from 15.08.2019, cannot in any event be invoked for acts prior to that date, and that the decision in **Shriraj (*supra*)** is under challenge before the Supreme Court.

358. We have considered the submissions and examined the relevant provisions of the Companies Act, 2013. The question for determination is whether the introduction of Section 212(14A) renders the remedies available under Sections 241(2), 242, 246 and 339 unavailable to the Central Government where the allegations of fraud are founded upon an SFIO investigation report.

Section 212(14A) is an additional remedy and not an exclusive one

359. The text of Section 212(14A), provides that, where the report under sub-section (11) or sub-section (12) states that fraud has taken place in a company and that any person or entity has taken undue advantage or

benefit, whether in the form of any asset, property or cash or in any other manner, the Central Government "may file an application before the Tribunal" for disgorgement and for holding the person liable personally without limitation of liability. The provision thus creates an express statutory route for seeking the specified reliefs in the circumstances contemplated therein. However, the use of word "may", does not, by itself, establish that Parliament intended this route to be exclusive. The word is "may", and it does not purport to displace the existing remedy under Chapter XVI. Parliament, in inserting Section 212(14A) by the Companies (Amendment) Act, 2019, left the substantive remedy under Sections 241(2), 242, 246 and 339 intact. The same amending Act inserted the proviso to Section 241(2), which provides for applications of the Central Government in respect of prescribed companies to be heard by the Principal Bench. That proviso would have had no purpose if Section 241(2) had, at the same moment, been rendered unavailable to the Government in the very cases of investigated fraud for which Section 212(14A) was introduced. These provisions had already been invoked by the Central Government before the amendment, as in the **IL&FS proceedings** of 2018. Had Parliament intended Section 212(14A) to be the exclusive remedy in such cases, it would have expressly so provided or made corresponding amendments to the existing provisions.

360. The maxim *generalia specialibus non derogant* does not lead to a different conclusion. The principle applies where a general and a special provision are in conflict and cannot be reconciled. It does not justify reading an exclusion into a statute where the provisions can operate harmoniously. The Supreme Court in **Power Machines India Ltd. v. State of M.P., (2017) 7 SCC 323**; and **Bihar State Co-operative Marketing Union Ltd. v. Uma Shankar Sharan, (1992) 4 SCC 196**, as relied upon by the SFIO recognize that the availability of a specific remedy does not invariably exclude another remedy available under the same statutory framework. In the present case, the two provisions here do not conflict. Section 212(14A) is available only when there is an SFIO investigation report recording fraud. The power of

the Central Government to apply under Section 241(2) is not so confined: as held in **Shriraj (*supra*)**, it may be exercised on any material on the basis of which the Government forms the requisite opinion, at any stage, and the Act places no fetter on the Government awaiting the SFIO report. A remedy open in a wider set of circumstances is not displaced by one that is available in a narrower subset. Nor does Section 212(14A) offer the Tribunal's full range of powers as it is provided under Section 242.

361. The Respondents' submissions, when considered together, give rise to an inconsistency. Respondent Nos. 1, 3, 6, 8, 11, 12, 26 and 34 contend that Section 212(14A) cannot be applied to conduct preceding 15.08.2019. At the same time, the Respondents contend that the said provision constitutes the exclusive remedy for seeking disgorgement on the basis of an SFIO investigation report. If Section 212(14A) were to be construed as prospective and inapplicable to such prior conduct, while simultaneously being treated as the exclusive remedy, the consequence would be to exclude the availability of that remedy altogether in respect of such conduct. Parliament cannot be taken to have intended to leave an entire class of earlier frauds beyond civil remedy by providing a prospective remedy. We need not decide whether Section 212(14A) is retrospective, as the Petition is not brought under it. It suffices that Chapter XVI is a remedy that has always been available and was not displaced when Section 212(14A) was added.

362. Even otherwise, an applicant who has more than one remedy is free to elect the one that serves the purpose. The Central Government has elected to proceed under Sections 241, 242, 246 and 339.

The binding decisions

363. The Delhi High in **Shriraj Investment & Finance Limited (*supra*)** has held that reliefs of disgorgement could be sought under Sections 241 and 242 independent of Section 212(14A) and that the Central Government's remedy is not dependent on an SFIO report, binds this Tribunal, which functions within the territorial jurisdiction of that High Court. A decision of

the High Court is binding on the tribunals subject to its jurisdiction (**East India Commercial Co. Ltd. v. Collector of Customs, AIR 1962 SC 1893**) and remains so unless and until it is stayed, set aside or overruled. No order staying the operation of **Shriraj Investment** (**supra**) has been brought to our notice. The mere pendency of a challenge before the Supreme Court does not, by itself, suspend the binding force of the judgement. We are conscious that the observations in Shriraj (supra) were made in writ proceedings in which objections to the jurisdiction of the Tribunal were left to be raised before the Tribunal. Even if they were regarded as not strictly binding on the precise question before us, they have since been relied upon by the NCLAT in BSR & Associates LLP (supra), which binds this Tribunal, and we respectfully agree with them for the reasons independently recorded above.

364. We draw support from the judgement of the NCLAT, in **BSR & Associates LLP (*supra*)**, wherein the contention that Section 212(14A) constitutes the sole statutory source of power to seek disgorgement or impose liability for fraudulent conduct of business was rejected. The relevant extract of the judgement in **BSR & Associates LLP (*supra*)** is as follows:

"17. ***Further, the appellant has also sought to mis-label Section 212(14A) of the Act to be the only power to seek disgorgement/imposition of liability for fraudulent conduct of business. This argument is incorrect and contrary to the position of law set out in 'Shriraj Investment & Finance Ltd. & Ors.' Vs. 'Union of India, Through Secretary & Anr.', [WP (CRL) No. 1823 of 2020], which clearly holds the same power can be exercised under Section 241(2) read with Section 246 and 339 of the Companies Act whether with an Investigation Report or without. The Court held as under:"***

"22. ***The reliefs for disgorgement can even be sought under section 241 and 242(1)(l)(m) de hors Section 212 (14A) amendment. The***

Central Government can authorize initiation of proceedings and the relief of freezing assets and disgorgement of property under Section 241, Section 242 r/w Sec.246, and Section 339/447 of the Companies Act inasmuch as disgorgement is a civil action in nature of an equitable relief and not a penal W.P.(Crl) No.1823/2020 & W.P.(CRL) 1414/2021 Page 13 of 14 action. In Karvy Stock Broking Ltd. v. Securities and Exchange Board of India, MANU/SB/0064/2008 it has been held that:

> ***"...Disgorgement is a monetary equitable remedy that is designed to prevent a wrongdoer from unjustly enriching himself as a result of his illegal conduct. It is not a punishment nor is it concerned with the damages sustained by the victims of the unlawful conduct. Disgorgement of ill-gotten gains may be ordered against one who has violated the securities laws/regulations but it is not every violator who could be asked to disgorge. Only such wrongdoers who have made gains as a result of their illegal act(s) could be asked to do so. Since the chief purpose of ordering disgorgement is to make sure that the wrongdoers do not profit from their wrongdoing, it would follow that the disgorgement amount should not exceed the total profits realized as the result of the unlawful activity..."***

24. ***Disgorgement occurring in Section 212 (14A) cannot be read in blissful isolation whereas, the length and breadth of the Act, chapter and verse bespeaks of such properties/ shares/ debentures, to be frozen/ liquidated/disposal/ sold for utilization in furtherance of public interest by way of sale, recovery of undue gains to alleviate the wrong done to persons/ financial institutions.***

25. ***Further, the impugned letter dated 29.06.2019 and corrigendum dated 18.11.2019 is not to be read as judicial order/ or a statute. It is an executive*** **W.P. (Crl) No.1823/2020 & W.P.(CRL)*

365. The Respondents have sought to distinguish the aforesaid position by pointing out that **Shriraj Investment** (**supra**) is under challenge before the Supreme Court. We are unable to accept that circumstance, by itself, as a ground for declining to follow the said decision. In the absence of any order staying its operation, the judgment continues to bind this Tribunal. Further, our conclusion does not rest solely upon **Shriraj Investment** (**supra**). As discussed above, the language and structure of the Companies Act do not disclose an express or necessary exclusion of the remedies under Chapter XVI upon the introduction of Section 212(14A). The judgment of the NCLAT in **BSR & Associates LLP (*supra*)** provides further support for this interpretation. Should the Supreme Court, in the pending proceedings, lay down a contrary position of law, the Respondents shall be at liberty to bring the same to the notice of this Tribunal, whereupon the matter may be considered in accordance with the law so declared.

366. We, however, clarify that the availability of remedies under Sections 241(2), 242, 246 and 339 alongside Section 212(14A) does not dispense with compliance with the statutory requirements governing the remedy invoked, nor does it dilute the burden resting upon the Petitioner to establish its entitlement to the reliefs claimed. The fact that the present Petition is founded upon an SFIO investigation report does not render the contents of that report conclusive proof of the allegations contained therein. The report may constitute material forming the basis of the proceedings and the opinion of the Central Government; the allegations against each Respondent must nevertheless be established in accordance with law. Each Respondent shall be entitled to raise all defenses available under the Act and the applicable procedural law, and to challenge the admissibility, reliability and probative value of the material relied upon by the Petitioner. In particular, any relief under Section 339 must satisfy the statutory

conditions governing its invocation, including the requirement of fraudulent conduct of business and the knowing participation of the person sought to be held liable. The present findings are confined to the availability of the statutory remedy and shall not be construed as a determination of the merits of the allegations or the liability of any individual Respondent.

Finding on Issue 5

367. In view of the foregoing discussion, we hold that Section 212(14A) is an additional remedy and not an exclusive remedy, and its invocation does not bar the Central Government from invoking Sections 241(2), 242, 246 and 339 of the Companies Act, 2013, even where the allegations of fraud are founded upon an SFIO investigation report. The objection to the maintainability of the present petition on this ground is, accordingly, rejected. This finding is confined to the availability of the statutory remedy and shall not be construed as a determination on the merits of the allegations, the liability of any individual Respondent or the entitlement to any particular relief.

ISSUE 6: PENDENCY OF PROCEEDINGS BEFORE THE HIGH COURT OF DELHI

368. It has been brought to our notice that three writ petitions are pending before the Delhi High Court: **W.P.(C) No. 8239 of 2024 (Rail Track India Pvt. Ltd. v. Union of India)**, **W.P.(Crl.) No. 3497 of 2023 (Shree Ankleshwar Commercial Co. Pvt. Ltd. v. Union of India)** and **W.P.(Crl.) No. 3697 of 2023 (BSN Enterprises v. Union of India)**. Respectively, they challenge the proposition that disgorgement can be ordered only after a finding of guilt by the Special Court and only under Section 212(14A); the investigation for offences and the sanction letter dated 19.05.2022; and the assignment of the investigation to the SFIO by the order dated 03.05.2016 on the ground that it was made without the formation of opinion. Pleadings are stated to be complete; according to the written submissions of the Applicants, W.P.(C) No. 8239 of 2024 is next listed on 03.02.2027, and the

other two writ petitions are listed on 15.03.2027. The Respondents submit that their outcome bears directly on the maintainability of the Petition, and that the Petition should not proceed.

369. We find no merit in the contention that the Petition should be dismissed on this ground. The proceedings before this Tribunal under Chapter XVI of the Companies Act, 2013, are distinct from the proceedings before the Delhi High Court, which concern the validity of the executive actions and orders impugned therein. A challenge to the legality of the Central Government's executive decision is analytically distinct from the exercise of the statutory jurisdiction conferred upon this Tribunal under the Companies Act, 2013. The mere pendency of a challenge to such actions does not render the present Petition non-maintainable or, by itself, curtail the jurisdiction conferred upon this Tribunal by the Act. In this regard, it is pertinent to note that, by order dated 15.07.2024 passed by the Division Bench of the Delhi High Court in LPA Nos. 492/2024 and 493/2024, arising out of the proceedings in W.P.(C) No. 8239/2024, the order of the learned Single Judge dated 31.05.2024 was set aside by consent, and it was clarified that the NCLT was at liberty to proceed with the pending Petition, subject to further orders or directions to be passed by the learned Single Judge while finally disposing of the writ petition. The said order thus permits the present proceedings to continue, while expressly preserving the effect of any further directions passed in the writ proceedings.

370. The grounds of challenge in the writ petitions are, in any event, to a large extent the same as those dealt with in this order. The submission that disgorgement can be sought only under Section 212(14A) and only after guilt has been determined has been answered under Issue 5 in the light of binding authority, since disgorgement under Chapter XVI is a civil remedy independent of the criminal process. The contention that the investigation was assigned without formation of opinion concerns the legality of the investigation; the Tribunal's present proceeding rests on the Central

Government's opinion formed after receiving the BPSL Report, which is an independent act dealt with under Issue 2.

371. While holding that the pendency of those petitions does not, by itself, bar the maintainability of this Petition, we grant the Respondents liberty to bring to the notice of this Tribunal any order of the High Court in those proceedings, and clarify that any interim order which this Tribunal may pass in the Petition shall be subject to the outcome of the aforesaid writ proceedings pending before the High Court of Delhi. The objection is rejected on that basis.

372. We are conscious of the comity between this Tribunal and the High Court. Our decision not to dismiss or stay the Petition is not a view on the merits of the writ petitions, and nothing in this order is intended to pre-empt the High Court's adjudication or to be cited as expressing any opinion on the validity of the order dated 03.05.2016, the sanction letter or the investigation. The parties shall promptly bring to the notice of this Tribunal any subsequent order or material development in the aforesaid writ proceedings. In considering further steps in the present Petition, this Tribunal shall have due regard to the status and effect of such orders, in particular any direction governing the continuation of the proceedings before this Tribunal. We shall keep these considerations in mind in dealing with any interim relief or final directions in the Petition.

Finding on Issue 6

We find no merit in the objection. Proceedings under Chapter XVI of the Companies Act, 2013 are distinct from the writ proceedings, which concern the validity of executive actions. Their mere pendency neither renders the Petition non-maintainable nor curtails this Tribunal's jurisdiction. Further, by order dated 15.07.2024 in LPA Nos. 492/2024 and 493/2024, the Hon'ble Division Bench of the Delhi High Court recorded the consent from the parties therein, that this Tribunal was at liberty to proceed with the Petition, subject to further directions in W.P.(C) No. 8239/2024. In any event, the grounds

raised in the writ petitions substantially overlap with those already dealt with in this order. The objection is accordingly rejected.

ISSUE 7: LIMITATION

The nature of the objection and the manner of its examination

373. The Respondents contend that the Petition is barred by limitation because the Central Government had knowledge of the alleged fraud as early as 03.05.2016, when the investigation was ordered; that the three-year period under Article 137 of the Schedule to the Limitation Act, 1963 expired in 2019; and that the Petition, filed on 11.04.2023, is hopelessly time-barred. The SFIO's first answer is that limitation was not pleaded in any application. Section 3 of the Limitation Act, however, requires that a proceeding instituted after the prescribed period be dismissed although limitation has not been set up as a defense.

Applicability of the Limitation Act

374. Section 433 of the Act provides that the provisions of the Limitation Act, 1963 "shall, as far as may be, apply to proceedings or appeals before the Tribunal or the Appellate Tribunal". The residuary Article 137 applies, which prescribes 3 years as period of Limitation, where there is no specific provision for limitation, as held in relation to applications before the Adjudicating Authority under the IBC in **B.K. Educational Services Pvt. Ltd. v. Parag Gupta and Associates, (2019) 11 SCC 633**. The period is three years from the date when the right to apply accrues.

Accrual of the right to apply

375. The right of the Central Government to apply under Section 241(2) accrues only when the conditions for its exercise exist, that is, when the Government is in a position to form an opinion that the affairs of the company are being conducted in a manner prejudicial to public interest. The respondents rely upon the order dated 03.05.2016 directing an

investigation to contend that the Government had knowledge of the alleged fraud from that date. However, the mere initiation of an investigation on account of apprehended diversion of funds and irregularities does not, without more, establish that the Government then possessed knowledge of the specific fraudulent transactions, their modus operandi, the persons involved and the amounts diverted, which form the basis of the present Petition. The record further indicates that, in 2018, the SFIO sought and obtained approval to investigate additional entities in order to trace the movement of funds from BPSL and accommodation entries. This circumstance is relevant to the question whether the material facts underlying the present Petition had been established by that stage. The BPSL Report was submitted on 06.05.2022, following which the Central Government authorized institution of the proceedings on 19.05.2022. These circumstances must be assessed to determine when the right to apply accrued; the mere date on which the investigation commenced cannot, by itself, be treated as conclusive of that question.

Section 17 of the Limitation Act

376. There is, in addition, Section 17(1)(a) of the Limitation Act, 1963, which provides that, where a suit or application is based upon the fraud of the defendant or respondent, the period of limitation begins to run only when the applicant has discovered the fraud or could, with reasonable diligence, have discovered it. Section 17 is attracted through Section 433, as the Petition is founded on fraud. Its application must, however, be assessed with reference to the nature of the allegations and the material on record. The distinction is between knowledge of circumstances that may give rise to suspicion and discovery, or the possibility of discovery through reasonable diligence, of the facts constituting the alleged fraud. The knowledge that sets time running is clear and definite knowledge of the facts constituting the fraud, and not a mere suspicion or the existence of antecedent circumstances (**Biman Chandra Datta v. Promotha Nath Ghose, (1922) ILR 49 Cal 886**, **UBS Switzerland AG v. DPP Securities Pvt. Ltd., 2025 SCC Online Cal 3993**. Where Section 17 is invoked, it is

for the applicant to show in the first instance the circumstances that attract it; once that is shown, it is for the other side to establish that the applicant had clear and definite knowledge of the facts constituting the fraud at an earlier date (**Biman Chandra Datta, *supra***). Section 17 of the 1963 Act goes further than the provision considered in that case, since time runs from when the fraud could, with reasonable diligence, have been discovered. Here the Petition and the documents on which it rests prima facie show that the facts constituting the alleged fraud were discovered through the investigation that culminated in the BPSL Report. These are the order dated 03.05.2016, which speaks only of a "possibility of diversion of funds"; the extension of the investigation on 08.01.2018 to trace the movement of funds through accommodation entities; and the BPSL Report itself. The Applicants have not shown that the facts known in 2016, or at any time more than three years before 11.04.2023, amounted to clear and definite knowledge of the fraud, or would have done so with reasonable diligence.

Delay and the exercise of discretion

377. The Respondents have another recourse. Chapter XVI relief is discretionary ("such order as it thinks fit"), and the Respondents are entitled, at the hearing, to urge that any delay, to the extent that it is shown on evidence to have caused prejudice, is a factor to be weighed in determining the relief, if any, to be granted. The Respondents are also at liberty to place before this Tribunal any material to show that the Central Government had clear and definite knowledge of the fraud at an earlier date, and any such material will be considered at the hearing. For present purposes, it is enough that, on the Petition and the documents on which it is founded, the Petition is not barred by limitation.

378. We have not lost sight of the fact that the transactions in question are alleged to date from the financial year 2009-10 to 2017-18 and that the Petition was filed in April 2023. The law of limitation rests on the policy that disputes should not be kept alive indefinitely and that respondents should not be called upon to meet stale claims. That policy carries

particular weight where the claim is for personal liability without limit. Our conclusion that the Petition is within time rests on the accrual of the right to apply and on Section 17 of the Limitation Act, and not on any suggestion that the Government is free of the discipline of limitation. We note that Article 137 has been consistently applied to applications to the Adjudicating Authority under the IBC (**B.K. Educational Services, (*supra*); Sesh Nath Singh v. Baidyabati Sheoraphuly Co-operative Bank Ltd., (2021) 7 SCC 313**), and that the right to apply under that Article accrues when the applicant first becomes entitled to apply (**Gaurav Hargovindbhai Dave v. Asset Reconstruction Co. (India) Ltd., (2019) 10 SCC 572**). The Respondents remain at liberty to show on evidence, as stated above, that the Government's right to apply accrued earlier.

Finding on Issue 7

In view of the foregoing, we hold that the Petition is not barred by limitation. Although Article 137 of the Limitation Act, 1963 applies to these proceedings through Section 433 of the Act, the Central Government's right to apply under Section 241(2) did not accrue merely because the investigation was ordered on 03.05.2016. That order spoke only of a possible diversion of funds, and the investigation was extended in 2018 to trace the movement of funds through accommodation entities. The facts constituting the alleged fraud were established only through the BPSL Report dated 06.05.2022, after which the institution of proceedings was authorised on 19.05.2022. Further, since the Petition is founded on fraud, Section 17(1)(a) of the Limitation Act postpones the start of limitation until the fraud was discovered or could, with reasonable diligence, have been discovered. The Respondents have not shown that the Central Government had clear and definite knowledge of the fraud more than three years before 11.04.2023. We therefore hold that the petition on its face, is within the period of limitation and that the objection that it is time-barred is rejected, with liberty as stated above.

ISSUE 8: PARALLEL PROCEEDINGS UNDER THE IBC (DOUBLE JEOPARDY, RES SUB JUDICE AND LIS PENDENS)

The submission

379. The Respondents submit that BPSL was admitted to CIRP on 26.07.2017, that the Resolution Professional, after a transaction review by BDO India LLP (report dated 14.03.2018), filed applications before this Tribunal under Sections 25(2)(j), 43 to 51 and 66 of the IBC, namely C.A. No. 538/2018, C.A. No. 254(PB)/2019 and I.A.(IBC) No. 330/2018, in respect of suspect transactions; that the Petition seeks the same relief on similar allegations five years later; that the IBC, which by Section 238 overrides inconsistent laws, is a complete code (**Innoventive Industries Ltd. v. ICICI Bank, (2018) 1 SCC 407**); and that the Petition is therefore hit by double jeopardy, *res sub judice* and *lis pendens*. The SFIO and Respondent No. 76 dispute this.

No inconsistency between the IBC and Chapter XVI

380. Section 238 of the IBC gives it overriding effect over other laws to the extent of inconsistency. An overriding clause needs a real and clear inconsistency before it displaces another law (**R.S. Raghunath v. State of Karnataka**, as cited by the SFIO). The Respondents have not demonstrated such inconsistency. They did not place before this Tribunal the Resolution Professional's applications, let alone show that the transactions, parties and reliefs in those applications are identical to those in the Petition. Section 66 of the IBC contemplates a contribution to the assets of the corporate debtor in the circumstances specified therein, including fraudulent trading under sub-section (1) and wrongful trading under sub-section (2). The present petition, on the other hand, invokes the jurisdiction of this Tribunal under Sections 241(2), 242, 246 and 339 of the Companies Act, 2013, at the instance of the Central Government and in the public interest. The statutory basis, purpose and scope of the reliefs sought under these provisions are not necessarily identical to those under Section 66 of

the IBC. The distinction is further apparent from the statutory ingredients of the provisions invoked under the IBC. Section 43 concerns preferential transactions and requires examination of the statutory conditions relating to the nature, timing and effect of the transaction; proof of an intention to defraud creditors is not an essential ingredient. Section 49 addresses undervalued transactions entered into with the intent to defraud creditors, while Section 66(1) concerns the carrying on of the corporate debtor's business with intent to defraud creditors or for a fraudulent purpose. Section 66(2), in turn, addresses wrongful trading and the failure to exercise the requisite due diligence to minimize potential loss to creditors. The Supreme Court in Anuj Jain, Interim Resolution Professional for **Jaypee Infratech Ltd. v. Axis Bank Ltd., (2020) 8 SCC 401**, explained that the statutory enquiries under Sections 43, 45, 49 and 66 are distinct. Consequently, the fact that certain transactions may be examined under the IBC does not, by itself, establish that the statutory tests applicable to the present Petition are identical.

381. The present proceedings require examination of the Central Government's case that the affairs of BPSL were being conducted in a manner prejudicial to public interest, together with the requirements of the other provisions invoked. The public-interest inquiry under Section 241(2) is distinct from the inquiry into whether a transaction is preferential or undervalued under the IBC, or whether the requirements of fraudulent or wrongful trading under Section 66 are satisfied. This distinction does not dispense with the statutory ingredients of Sections 246 and 339, which must independently be established before any consequential relief can be granted.

382. The Supreme Court in **Glukrich Capital (*supra*)**, upheld the view that Section 66 of the IBC does not empower the Adjudicating Authority to pass orders against other organizations or entities with whom the corporate debtor had carried on business, and observed that the remedy against third parties lies in the civil remedies available in law independent of Section 66. The remedy under Chapter XVI is one of those independent remedies. That

the legislature, in making consequential amendments to the Companies Act, 2013 through the IBC, left Section 339 untouched, as the SFIO points out, also indicates that it perceived no conflict. The principle in **Innoventive Industries (*supra*)**, that the IBC is a self-contained code on the insolvency process, does not render other independent remedies inoperative.

Double jeopardy

383. Article 20(2) of the Constitution prohibits prosecution and punishment more than once for the same offence. It applies to proceedings of a criminal nature before a court or judicial tribunal that result in punishment for an offence (**Maqbool Hussain v. State of Bombay, AIR 1953 SC 325**). The proceedings under Section 66 of the IBC and under Chapter XVI of the Act are not prosecutions for any offence and neither results in punishment. The relief of disgorgement is, as noted, civil and equitable. The criminal prosecution under Section 447 proceeds separately before the Special Court, and civil and criminal proceedings arising from the same facts may proceed concurrently (**Syed Askari Hadi Ali Augustine Imam v. State (Delhi Admn.), (2009) 5 SCC 528**). The plea of double jeopardy therefore does not arise.

Res sub judice and lis pendens

384. Section 10 of the Code of Civil Procedure, 1908 bars the trial of a suit in which the matter in issue is directly and substantially in issue in a previously instituted suit between the same parties or between parties under whom they claim. The conditions precedent of this principle are not met in the instant case. The applicant is different (the Resolution Professional on one hand, the Union of India on the other), Respondents against whom reliefs are sought are different since, as noticed in Glukrich Capital (supra), Section 66 of the IBC does not reach other organisations or entities with whom the corporate debtor dealt, whereas relief against such persons, if they were knowingly parties to the fraudulent conduct of

the business, is available in proceedings under Sections 241 and 242 read with Sections 246 and 339. Further, the statutory basis of nature of the relief in proceedings under Section 241-242 and Section 66 of the IBC are different. The principle of *lis pendens*, embodied in Section 52 of the Transfer of Property Act, 1882, applies to the transfer of immovable property during the pendency of a suit in which a right to it is directly and specifically in question. It has no application to the maintainability of a petition of this nature.

Safeguards against inconsistency and double recovery

385. While the objection is not made out as a bar, we recognize that the transactions covered by the Resolution Professional's applications and by the BPSL Report may overlap in part, since the BDO review covered the period from 27.07.2015 to 26.07.2017. There is a legitimate concern that the same transaction, or the same sum, should not be the subject of conflicting findings or of a double recovery. That concern is met by case management and not by dismissal of the Petition. We direct that (i) the parties shall disclose to this Tribunal the status and the transactions covered by those applications; (ii) any amount recovered or recoverable in respect of the same transaction in any proceeding under the IBC shall be given credit for, so that no person is made to pay twice; and (iii) any matter that has attained finality in the IBC proceedings between the same parties shall be treated in accordance with the settled principles of res judicata.

386. The Respondents' real grievance, as we understand it, is that persons accused of fraud in respect of the same transactions should not be made to defend overlapping proceedings in more than one forum, at the instance of different applicants, with a risk of inconsistent outcomes and double liability. That is a serious concern and the law recognizes it. The IBC is a self-contained code on the insolvency process, but the Supreme Court has also cautioned that the jurisdiction of the NCLT under the IBC is confined to matters arising out of or in relation to insolvency resolution and does not

displace independent statutory remedies (**Embassy Property Developments Pvt. Ltd. v. State of Karnataka, (2020) 13 SCC 308**). The safeguards we have directed are intended to meet the Respondents' concern while preserving both remedies. If, at the hearing, it appears that a particular transaction has already been adjudicated, or will inevitably be adjudicated, in the proceedings of the Resolution Professional, this Tribunal will take that into account in deciding whether, and to what extent, relief on that transaction should be granted in this Petition.

Finding on Issue 8

387. We hold that neither the pendency of proceedings under the IBC nor the principles of double jeopardy, *res sub judice* nor *lis pendens* bar the Petition. The instant Petition will be adjudicated on merits, subject to the safeguards stated above.

OTHER OBJECTIONS RAISED IN C.A. NO. 315 OF 2023 AND C.A. NO. 08 OF 2024

388. Two of the applications raise objections that are not covered by the issues framed above. Respondent No. 54 (C.A. No. 315 of 2023) and Respondent No. 44 (C.A. No. 08 of 2024) contend that no investigation could be carried out against them without the prior approval of the Central Government under Section 219(d) of the Act, and that no specific role is attributed to them in the Petition. Respondent No. 44 also prays that her name be deleted from the array of parties and that the Petitioner be restrained from acting on the Investigation Report against her. Neither of them addressed oral arguments but, as recorded above, we have considered their pleadings.

389. The objection under Section 219 does not go to the maintainability of the Petition. Section 219 regulates the power of an inspector, in the course of investigating the affairs of a company, to investigate and report on the affairs of certain other bodies corporate and of persons who are or have

been its managing director, manager or employee. The approval of the Central Government under that section was in fact sought and granted, by the order dated 08.01.2018, in respect of twenty further companies. Whether any further approval was required before the SFIO could examine the dealings of Respondent Nos. 44 and 54 with BPSL, and the consequence of its absence, are questions going to the validity of the investigation. The challenge to the Investigation Report and the sanction in W.P.(Crl.) No. 1891 of 2023 has been dismissed, the SLP therefrom has also been dismissed, and other challenges to the investigation are pending before the Delhi High Court. This Tribunal, in a proceeding under Chapter XVI, does not sit in appeal over the investigation. Moreover, as held in Shriraj (supra), the power of the Central Government under Section 241(2) is not dependent on an SFIO report; the report is the material on which the Government formed its opinion, and the Petitioner will have to prove its case against each Respondent at the hearing. The objection is therefore not a ground for dismissing the Petition. Any contention as to the admissibility or weight of the material collected in the investigation is left open.

390. The contention that no specific role is attributed to Respondent Nos. 44 and 54 raises a question of fact. In its replies to these applications, the SFIO has pleaded that Respondent No. 44 was a designated partner of Assurity Real Estate LLP (Respondent No. 31), through which diverted funds are alleged to have been used to acquire real estate, and that Respondent No. 54 received and routed monies of BPSL by way of accommodation entries. Whether those allegations are true, and whether either of them was a knowing party to the fraudulent conduct of the business of BPSL, can be decided only at the hearing. Their concern that the case against them be identified with precision is met by the direction, made below, that the Petitioner file a statement identifying the role alleged against each Respondent. The prayers of Respondent No. 44 for deletion of her name and for restraint on the Petitioner are accordingly declined at this stage, without prejudice to her right to seek deletion if the statement so filed discloses no case against her.



CONCLUSION

391. For the ease of reference, the conclusions reached in this order are summarised below.

(i) Territorial jurisdiction in a petition under Section 241(2) is determined by the registered office of the company whose affairs are complained of (the "concerned company"), and not by the registered offices of other persons and entities arrayed on the basis that they were knowingly parties to the conduct complained of and as such they are necessary and proper parties.

(ii) Section 241(2) does not confine the Central Government to a petition concerning a single legal entity. A petition complaining of the affairs of one company may array persons and entities alleged to have knowingly participated in them, against whom orders under Section 339, applied by Section 246, are sought. Section 13(2) of the General Clauses Act, 1897 supports the joinder of several respondents in such a petition, but does not displace the rule that territorial jurisdiction is determined by the registered office of the company whose affairs are complained of.

(iii) The Central Government's opinion under Section 241(2) is a subjective satisfaction, reviewable for the existence of relevant material and for arbitrariness. It may be evidenced by a communication issued with the approval of the competent authority after consideration of the investigation report; no particular form is required as none is prescribed under the law. The sufficiency of the material is tested at the hearing before this Tribunal on merits, which forms its own opinion and accordingly passes necessary orders under Section 242.

(iv) A petition under Section 241(2) filed in the name of the Union of India, on a decision of the Central Government taken on the SFIO's report, and presented by an officer of the SFIO authorized for the purpose, is a petition filed by the Central Government itself. The authorization of an officer to carry out the Government's decision is distinct from the delegation of power, and Section 458 is not attracted. Any defect in the

internal designation of the officer who signs and verifies the petition is a curable irregularity, which may be ratified by the Central Government.

(v) The words "are being conducted" in Section 241(2), read with Sections 242(1), 242(2), 246 and 339, include a course of conduct commenced in the past whose prejudicial effect on public interest continues, including the continued retention of diverted funds and assets. A construction confining those words to conduct occurring on the date of the petition would produce an absurd result, by depriving this Tribunal, on an application by the Central Government, of the power which Section 242(1) confers in respect of affairs that "have been" so conducted; no words are thereby read into Section 241(2). The completion or approval of a resolution plan does not bring the matter to a close, and Section 32A of the IBC does not shield suspended board of directors/third parties from remedies in respect of property wrongfully diverted.

(vi) By virtue of Section 246, Section 339 applies, with necessary changes, to a petition under Section 241, and the condition of winding-up is read as the pendency of the proceedings under Section 241.

(vii) Disgorgement is a civil and equitable relief and therefore can be pleaded under Sections 241-242 before this Tribunal.

(viii) Section 212(14A) is an additional remedy and not an exclusive one. The remedy under Sections 241, 242, 246 and 339 is independent of it and of the existence of an SFIO report.

(ix) The mere pendency of writ proceedings challenging the investigation or sanction, in which no stay has been granted, does not bar the maintainability of the Petition.

(x) A petition by the Central Government based on an SFIO report is not, on its face, barred by limitation where it is filed within three years of the report and the respondents do not show earlier clear and definite knowledge of the fraud, since the right to apply accrues when the Government is in a position to form the opinion required, and Section 17(1)(a) of the Limitation Act applies to proceedings founded on fraud.

(xi) Proceedings under Section 66 of the IBC by a Resolution Professional do not bar a petition by the Central Government under Chapter XVI. The



remedies differ in applicant, purpose, reach and relief, neither is a prosecution, and the principles of *res sub judice* and *lis pendens* are not attracted. Conflicting findings and double recovery are avoided by case management.

(xii) An objection that the investigation was conducted without the approval required by Section 219 goes to the validity of the investigation and not to the maintainability of a petition under Section 241(2).

392. The findings above relate to maintainability. The burden of proving the allegations of fraud, and the knowing participation of each Respondent, remains on the Petitioner. Fraud must be pleaded with particulars and proved. The Respondents retain every defense on the merits, together with the liberty reserved under the several issues. In view of the foregoing, we hold that this Tribunal has territorial jurisdiction to entertain the Petition; that the Petition has been validly instituted by the Central Government, which has formed the opinion required by Section 241(2) of the Act. **The Petition bearing C.P. No. 105 of 2023 is accordingly maintainable.** We reiterate that no finding has been recorded on the merits of the allegations, which remain to be adjudicated.

ORDER

393. In the result, we pass the following order:

394. **Intervention Petition Nos. 60 to 67 of 2026 are allowed** and stand disposed of in terms of this order.

395. The **applications** filed by the Respondents **challenging the maintainability** of Company Petition No. 105 of 2023, **being C.A. No. 223 of 2023, C.A. No. 228 of 2023, C.A. No. 231 of 2023, C.A. No. 261 of 2023, C.A. No. 315 of 2023, C.A. No. 390 of 2023, C.A. No. 08 of 2024 and C.A. No. 62 of 2024 are dismissed**. The Petition is held to be maintainable before this Bench.

396. It is pertinent to clarify that the Applicants in the captioned Company Applications have confined their submissions to the issue of maintainability of Company Petition No. 105 of 2023 and have not pressed the other reliefs, if any, sought in those Applications. Accordingly, this Tribunal has adjudicated only upon the question of maintainability of Company Petition No. 105 of 2023. The parties are at liberty to raise the remaining reliefs, which have not been adjudicated by this order, during the hearing of Company Petition No. 105 of 2023, and the same shall be decided, accordingly, on merits.

397. The Respondents shall file their replies on the merits, if not already filed, within four (4) weeks from the date of this order, with an advance copy to the Petitioner, and the Petitioner may file its rejoinder within three (3) weeks thereafter. The Respondents shall be at liberty to raise all defenses available on the merits, including on evidence, the question of knowledge and delay referred to under the above Issues.

398. In order that each Respondent may know the case to be met, the Petitioner shall, within four (4) weeks from the date of this order, file a consolidated statement identifying, in respect of each Respondent, the role alleged against it, the transactions in which that role is alleged to have been played and the corresponding portions of the BPSL Report.

399. The Petitioner and the Respondents shall, within two (2) weeks from the date of this order, file an affidavit disclosing the present status and the transactions covered by C.A. No. 538/2018, C.A. No. 254(PB)/2019 and I.A.(IBC) No. 330/2018, and any other proceeding under the Insolvency and Bankruptcy Code, 2016 concerning the transactions of BPSL. Credit shall be given, in any order passed in the Petition, for any amount recovered or recoverable in respect of the same transaction in any such proceeding, so that no person is made to pay twice.

400. The Respondents shall be at liberty to bring to the notice of this Tribunal any order passed by the High Court of Delhi in W.P.(C) No. 8239 of 2024, W.P.(Crl.) No. 3497 of 2023 and W.P.(Crl.) No. 3697 of 2023.

401. The Petitioner shall, within four (4) weeks from the date of this order, file an affidavit of a competent officer of the Ministry of Corporate Affairs, as directed under Issue 2(A) above, confirming the authority of the officer who has signed and verified the Petition and ratifying its institution and prosecution.

402. The interim directions issued by this Tribunal in the Petition, including by the orders dated 08.06.2023, 16.05.2024 and 07.09.2026, shall continue to operate until further orders.

403. The findings in this order are confined to the question of maintainability. Nothing herein shall be construed as an expression of opinion on the merits of the allegations in the Petition, which shall be decided independently on the evidence. There shall be no order as to costs.

List the captioned Petition bearing C.P. No. 105 of 2023 along with other pending applications on **26.11.2026** for further proceedings.

Sd/-
(ANUPINDER SINGH GREWAL)
(PRESIDENT)

Sd/-
(RAVINDRA CHATURVEDI)
MEMBER (TECHNICAL)