IN THE NATIONAL COMPANY LAW TRIBUNAL
PRINCIPAL BENCH, NEW DELHI

C.A. No. 222 of 2023
IN
C.P. No. 105 of 2023

(Order under Rule 11 of the National Company Law Tribunal Rules, 2016)

IN THE MATTER OF:

UNION OF INDIA THROUGH
SERIOUS FRAUD INVESTIGATION OFFICE

...PETITIONER

VERSUS

BHUSHAN AIRWAYS SERVICES
PRIVATE LIMITED

...RESPONDENT

AND IN THE MATTER OF C.A. NO. 222 of 2023

LATE MR. R.K. MEHRA
THR. LEGAL HEIR,
MS. GEETA MEHRA

...APPLICANT/RESPONDENT NO. 75

VERSUS

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

... NON-APPLICANT/PETITIONER

ORDER PRONOUNCED ON: 19.11.2026

Coram:
JUSTICE ANUPINDER SINGH GREWAL
HON'BLE PRESIDENT

SHRI RAVINDRA CHATURVEDI
HON'BLE MEMBER (TECHNICAL)

Present:

For the Union of India through SFIO/ Petitioner	:	Mr. Aditya Sikka, Adv. a/w Ms. Onshi Jakhar, Ms. Yuganshi Singh, Advs.
For the Applicants in C.A. 222 of 2023/ Respondent No. 75	:	Mr. Nesar Ahmad, PCS a/w Mr. Ahsan Ahmad, Mr. Rachit Ranjan, Mr. Manish Kumar, Mr. Aayush Kumar, Advs.

ORDER

1. The instant Application has been filed on behalf of Mrs. Geeta Mehra, wife and legal heir of Late Mr. R.K. Mehra, Respondent No. 75 in C.P. No. 105 of 2023 ("**captioned Petition**"), under Rule 11 of the National Company Law Tribunal Rules, 2016 ("NCLT Rules, 2016") through her constituted attorney Mr. K.P. Baluni, for deletion of the name of the Late Mr. R. K. Mehra from the array of parties of the captioned Petition, seeking the following reliefs:

Interim Prayer:

a. *Not to pass any adverse order against the Applicant (legal heir of Respondent No. 75) till the disposal of the present application in Company Petition No. 105/241-242 (PB)/2023 pending for adjudication before this Hon'ble Tribunal; and*
b. *To issue appropriate directions to the Non-Applicant/Petitioner not to take any coercive steps against legal heir of the Late Mr. R.K. Mehra (Respondent No. 75 in C.P. No. 105/241-242(PB)/2023) till disposal of the present application; and*
c. *To allow the Applicant to file additional affidavit on becoming aware of any additional information/facts in connection with present Company Petition; and /or*
d. *Any other order as this Hon'ble Tribunal deems appropriate in the interest of justice considering the facts and circumstances of the case.*

Final Prayer:

a. *Allow the present application and delete the name of the Respondent No. 75 (through legal heir) from the array of the parties in the Company Petition No. 105/241-242(PB)/2023 pending for adjudication before this Hon'ble Tribunal; and*
b. *Any other order as this Hon'ble Tribunal deems appropriate in the interest of justice considering the facts and circumstances of the case.*

Brief Facts:

2. It is the case of the Applicant that the Non-Applicant/Petitioner herein has filed a Company Petition under Sections 241-242 read with Sections 246 and 339 of the Companies Act, 2013 ("**the Act**") titled "*Union of India through Serious Fraud Investigation Office (SFIO), Ministry of Corporate Affairs vs. Bhushan Airways Services Pvt. Limited & Ors."* bearing C.P. No. 105 of 2023 wherein Late Mr. R.K. Mehra, through the Applicant as his legal heir, has been arrayed as Respondent No. 75. It was stated on behalf of the Applicant that the husband of the Applicant was the partner of Mehra Goel & Co. ("**Chartered Accountancy Firm**" / "**the said firm**") and that, in his capacity as statutory auditor of Bhushan Power and Steel Limited ("**BPSL**" / "**Corporate Debtor**" / "**Respondent No. 76 in the captioned Petition**"), he signed the financial statements, for and on behalf of the said firm, for the period between 2011-12 and 2016-17. It is stated that the audit of Respondent No. 76 was conducted by late Sh. R.K. Mehra who passed away on 23.03.2020, accordingly the legal heir of Late Sh. R.K. Mehra is arrayed as a Respondent to the captioned Petition to the extent of the estate of the Late Sh. R.K. Mehra.

Submissions on behalf of the Applicant:

3. Ld. CS, Mr. Nesar Ahmed, appearing on behalf of the Applicant, submitted that the Non-Applicant/Petitioner herein had earlier filed a Company Petition titled "*Union of India through Serious Fraud Investigation Office (SFIO), Ministry of Corporate Affairs vs. Bhushan Aviation Limited & Ors.*" bearing C.P. No. 170 of 2021 wherein Late Mr. R.K. Mehra was arrayed as Respondent No. 136. It was submitted that the Applicant herein (widow of Late Mr. R.K. Mehra), had filed an Interlocutory Application bearing I.A. (C.A.) No. 63 of 2021 under Rule 11 of NCLT Rules, 2016 seeking deletion of the name of Late Mr. R.K. Mehra from the array of parties and the same is pending before this Tribunal.

4. It was submitted that the Company Petition No. 170 of 2021 filed before this Tribunal is pending for adjudication and is next listed on 10.12.2026. It was submitted that on 29.11.2021 and 05.01.2022, during the course of hearing of the aforementioned I.A. (C.A.) No. 63 of 2021, connected with the Company Petition No. 170 of 2021, the learned Additional Solicitor General, Mr. Chetan Sharma (as he then was), appearing on behalf of the Petitioner had acknowledged the facts that Mr. R.K. Mehra has passed away and accordingly agreed that he would take necessary steps for amending the memo of parties as the Petitioner would not proceed against the deceased person. It was, however submitted that on both occasions the submissions were not recorded in the order sheet.

5. It was further submitted that Late Mr. R.K. Mehra be deleted from the array of the Parties as he was never involved or associated with the affairs of the Corporate Debtor and thus cannot be termed as a necessary or proper party without any specific allegations to attract Section 241 of the Act. It was submitted that the Petitioner has impleaded the legal heir of the Respondent, i.e., his wife, and such impleadment is illegal in law.

6. It was further submitted that after the death of Late Mr. R.K. Mehra on 23.03.2020, the said CA firm was reconstituted, and thus the Applicant has no role in the capacity of a legal heir of Respondent No. 75 in the affairs of the said CA firm nor does she have any pecuniary relations with any of its partners. It was further submitted that the Applicant is neither associated with the said CA firm nor has she signed any documents pertaining to BPSL and/or other CUIs and Respondents named in the captioned Petition.

7. It was submitted that Section 241(2) contemplates action against the persons involved in day-to-day functioning of the affairs of the company under investigation and that neither she nor her husband had any involvement in

the day-to-day affairs of the company and therefore she should be allowed to be deleted from the array of parties. It was also submitted that none of the ingredients of Section 241(3) of the Act are applicable in the context of Respondent No. 75 (through his legal heir) and therefore the provisions of Section 241(2) of the Act do not get attracted to Respondent No. 75.

8. It was submitted that the Applicant's husband worked in a Chartered Accountancy firm as a partner whereby he was responsible for signing the balance sheets of the Respondent No. 76 in the capacity of an auditor. It was further submitted that he signed the financial statements of Respondent No. 76 for and on behalf of, and in the name of, the said firm on the basis of management representations that the audit fee was paid to the firm and not to him, and that no benefit accrued to him in his personal capacity from Respondent No. 1, Respondent No. 76 or any associated company. It was also submitted that no material has been placed on record to show that the Respondent No. 75 was guilty of fraud, misfeasance, persistent negligence or default in carrying out his obligations and functions under the law or of breach of trust.

9. It was further submitted that the Non-Applicant/Petitioner has also filed Case No. CC/770/2019 bearing cause title "*SFIO vs. Bhushan Steel Ltd. & Ors.",* before Dwarka District Court in the year 2019. In the said matter, it was stated that the proceedings against Late Mr. R.K. Mehra (Respondent No. 75 herein) have already been abated vide order dated 10.02.2021. Relevant extract of the said order dated 10.02.2021 passed by the Special Court, Dwarka, New Delhi reads as follows:

Today the matter is listed in respect of A-186 to A-188, 207, 209, A-254 to A-256, A-274 to A-284.

At this stage, ld. Sr.Special Counsel assisted by ld. Prosecutor and Sr. Assistant Director on behalf of SFIO/complainant have submitted at Bar that they have verified the factum of death of A-186 (R.K.Mehra).

In view of aforesaid submissions, proceedings against A-186 i.e. Late R.K.Mehra stands abated.

10. It was submitted that the allegations against Late Mr. R.K. Mehra have not been proved in any court nor has there been any adverse finding against him till his demise or thereafter. It was further submitted that the non-applicant having knowledge of abatement of proceedings against him, in the matter filed before ASJ-3 & Special Judge (Companies Act) in the Dwarka District Courts, has made him a party (through legal heir) in the captioned Company Petition based on ill-conceived legal advice. It was submitted that Mrs. Geeta Mehra is a senior citizen (aged more than 74 years, as stated in the Application) and has never been associated with the conduct and management of the affairs of the Corporate Debtor or otherwise, therefore, the present Company Petition against her is harsh and burdensome, resulting in mental harassment of the widow of Late Mr. R.K. Mehra.

11. It was submitted that Order I Rule 3 of the Code of Civil Procedure, 1908 ("**the Code, 1908**") stipulates who may be joined as defendants and that the legal heir of the Respondent No. 75 has been wrongly joined as a party in the present proceedings, contrary to the provisions of the Code, 1908. Reliance was placed on the Supreme Court judgment in **Iswar Bhai C. Patel vs. Harihar Behera and Ors., (1999) 3 SCC 457,** wherein it was observed as follows:

"10. This Rule requires all persons to be joined as defendants in a suit against whom any right to relief exists provided that such right is based on the same

act or transaction or series of acts or transactions against those persons whether jointly, severally or in the alternative. The additional factor is that if separate suits were brought against such persons, common questions of law or fact would arise. The purpose of the Rule is to avoid multiplicity of suits."

12. It was submitted that the present proceedings are bad for misjoinder of parties as the legal heir of the Respondent No. 75 is neither a necessary party nor a proper party for adjudication of the issues involved in the present legal proceedings and that she does not have any direct or legal interest in the present litigation. Reliance in this regard was placed on the Supreme Court judgment in **Ramesh Hirachand Kundanmal vs. Municipal Corporation of Greater Bombay and Ors., (1992) 2 SCC 524.**

13. It was also submitted that Rule 51 of the NCLT Rules, 2016 provides that this Tribunal has the power to regulate its own procedure, which reads as under:

"51. Power to regulate the procedure: -

The Tribunal may regulate its own procedure in accordance with the rules of natural justice and equity, for the purpose of discharging its functions under the Act."

14. It was further submitted that, as per the judgment of the Supreme Court in **Usha Ananthasubramanian v. Union of India (2020) 4 SCC 122**, a proceeding against a third party or outsider to the company, such as an auditor who is not part of the management, is not maintainable, and that since the original Respondent No. 75 has died the proceeding must abate and cannot be maintained against the legal heir.

15. The instant Application came to be listed before this Adjudicating Authority for the first time on 20.07.2023, wherein the following order was passed by this Adjudicating Authority:

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.*

ORDER
19.07.2023

CRL.M.A. 17499/2023 (Stay)

1. With the consent of the parties, it is noted that a joint request for adjournment with respect to proceedings qua petitioner no.2 will be made before the learned National Company Law Tribunal, Principal Bench at Delhi.

2. List for further arguments on 03.08.2023, at 02:15 PM.

3. Order be uploaded on the website of this Court, forthwith.

It is submitted that they have also filed or are in the process of filing similar applications on the maintainability.

Taking note of the above and also the plea of the SFIO, we are inclined to adjourn the matter to 31.08.2023.

In the meanwhile, SFIO is directed to file the reply to the maintainability applications.

Accordingly, at request, list the matter on 31.08.2023.

16. Thereafter, an affidavit in reply dated 24.08.2023, to the instant Application on behalf of the Union of India through SFIO was filed and uploaded on the DMS-e portal on 25.08.2023.

Submissions on behalf of the Non-Applicant/Petitioner:

17. Ld. Counsel Mr. Aditya Sikka appearing for the SFIO/Non-Applicant submitted that the contention that the proceedings under Section 241-242 read with Sections 246 and 339 cannot be continued against the legal heirs of a deceased person is incorrect. It was submitted that Sections 337 to 340 of the Act contemplate proceedings for misfeasance, malfeasance and fraudulent

conduct and apply *mutatis mutandis* to proceedings under Section 241-242 of the Act by virtue of Section 246 of the Act.

18. It was submitted that proceedings under Section 339 of the Act are specifically for the fraudulent conduct of business of a company and/or conduct of business to defraud creditors. It was submitted that Section 339 of the Act contemplates an inquiry into the manner in which the business of a company was conducted followed by a declaration and liability for fraudulent conduct of business and/or conduct of business to defraud the creditors. It was submitted that this Section contemplates recompense to the creditors of the Company who were defrauded by the acts of the management and other persons who participated in the fraudulent conduct of business.

19. It was submitted that it is settled law that proceedings for misfeasance, malfeasance and/or fraudulent trading under the Act are founded on the principle that a person who has caused loss to the company by an act amounting to fraud and/or breach of trust, such as abdication of a statutory duty or obligation, should make good the loss. It was submitted that the proceedings contemplated under Section 339 of the Act are not for punishing the wrongdoer found guilty of malfeasance/fraud but for compensating the company and/or its creditors in respect of the loss occasioned. It was submitted that in such proceedings, the power of this Tribunal to proceed to affix liability against an individual does not abate on the death of the wrongdoer but exists only to the extent of the individual's estate in the hands of the legal heirs.

20. It was submitted that in the instant case, Respondent No. 75 passed away in or about 2020, the investigation report was submitted on 06.05.2022, which sets forth clear instances of abdication of duty by Respondent No. 75, who was at the relevant time an auditor of Respondent No. 76. It was submitted that; the investigation report clearly encloses documents and levels allegations

which clearly demonstrate Respondent No. 75's participation in the fraudulent conduct of business. It was further submitted that on the basis of the investigation report and the underlying documents, the captioned Petition has been filed *inter alia* seeking to impose liability for the participation in the fraudulent conduct of business only to the extent of the deceased Respondent No. 75's estate.

21. It was submitted that the basis of the captioned Petition i.e., the Investigation Report, the underlying documents and the allegations against Respondent No. 75 are on record. It was submitted that the Applicant's contention that proceedings under Sections 241–242 of the Act are not maintainable against an auditor is untenable, and that the captioned Application must therefore be dismissed, as the contention is incorrect both in law and on merits.

22. It was submitted that Section 246 of the Act makes the provisions of Section 339 of the Act *mutatis mutandis* applicable to proceedings under Section 241-242 of the Act. It was submitted that Section 339 of the Act provides for proceedings for the fraudulent conduct of business of a company and empowers this Tribunal to pass an order declaring that the business of a company has been conducted in a fraudulent manner and/or to defraud the creditors. It was submitted that the declaration and consequent liability can be made by this Tribunal against *inter alia* any person who was knowingly a party to the carrying on of business in a fraudulent manner or to defraud the creditors of the company.

23. It was further submitted that the words "*any person"* would include an auditor of a company who knowing fully well of the fraud in the affairs/business of a Company abdicates his statutory duties and obligations, independence and participates in the fraud. It was submitted that so long as the acts perpetrated directly affect or relate to the business of a company, it is settled that even an outsider to the company can be brought within the sweep of Section 339 of

the Act. It was submitted that the object of Section 339 of the Act is to discharge debts and other liabilities of the company consequent on the fraudulent conduct of the business by those who knowingly participated in such conduct.

24. It was submitted that a statutory auditor plays an important role in auditing the balance sheets of a company. It was submitted that the Act along with the applicable rules and regulations enjoins various duties and/or responsibilities on an auditor which is aimed at ensuring that a true and fair view of the company is presented to the shareholders of a company and/or public at large. It was submitted that the investigation report demonstrates that the statutory auditor of the Respondent No. 76 did the exact opposite, he failed to perform his duties independently and connived with other Respondents and facilitated them in fraudulently conducting the business of the company.

25. It was submitted that under such circumstances, the Applicant's contention that an outsider cannot be made a party to the proceedings under Section 339 of the Act is contrary to law and plain words of the Act. It is submitted that the investigation report identifies the fraudulent conduct of business of BPSL and Respondent No. 75's role personally prior to his demise, the evidence and the allegations against him.

26. It was further submitted that the submissions advanced on behalf of the Applicant are completely untenable in law due to the following reasons:
    a. The judgment in **Usha Ananthasubramanian** (***supra***) does not hold that a proceeding against a third party/outsider is not maintainable. Ld. Counsel refers to paragraph 3 of the judgment, which records the allegation that the petitioner therein had failed to take preventive steps in the management of Punjab National Bank and had thereby aided the perpetration of the fraud. It is further submitted that, in paragraphs 4 to 6, the Supreme Court considered Section 241(2) read with Section 246 and 339 of the Act and held

that the role of the person concerned in the alleged fraud must be examined with reference to the Company that is the subject matter of the petition, and not another company. Relying upon paragraph 8 of the said judgment, Ld. Counsel submits that the judgment does not exclude third parties or persons outside the management of a company from the scope of Section 339 of the Act, as such an interpretation would be contrary to Section 341 of the Act.

b. It was further submitted that the contention that proceedings cannot continue against the legal heirs of a deceased person alleged to have been involved in the fraudulent conduct of the company's business is contrary to the judgments of the Supreme Court in **Official Liquidator v. Parthasarathi Sinha & Ors., (1983) 1 SCC 538**, and **Official Liquidator v. P.A. Tendolkar, (1973) 1 SCC 602**. Learned Counsel submits that the said judgments, while dealing with Sections 542 and 543 of the Companies Act, 1956, which are akin to Sections 339 and 340 of the Companies Act, 2013, recognise that proceedings may continue against the legal heirs of a deceased person to the extent of the estate of the deceased. It is submitted that the relief sought in the present Petition is confined accordingly. Relevant paragraphs of the aforementioned judgment in **Official Liquidator v. Parthasarathi Sinha & Ors. (*supra*)** as relied upon by the Non-Applicant/Petitioner are as follows:

*"**17.** Having given our anxious consideration to the question before us, we are of the view that the Kerala and Punjab & Haryana High Courts have applied the decision in Tendolkar case [(1973) 1 SCC 602 : AIR 1973 SC 1104 : (1973) 3 SCR 364 : (1973) 43 Comp Cas 382] correctly and that the two learned Judges of the Calcutta High Court who delivered the judgment under appeal erred in its application. If this Court had really come to the conclusion that on the death of a person against whom proceedings under Section 543 had been initiated such proceedings could not be proceeded against his legal representatives, the final order would not have been what was actually made*

therein. "The true doctrine is that whenever you find that the deceased person has by his wrong diverted either property or the proceeds of the property belonging to someone else into his own estate, you can then have recourse to that estate through his legal representative when he is dead, to recover it." The legal representative, of course, would not be liable for any sum beyond the value of the estate of the deceased in his hands.

18. *The liability arising under the misfeasance proceedings is founded on the principle that a person who has caused loss to the company by an act amounting to breach of trust should make good of the loss. Section 543 of the Act does not really create any new liability. It only provides for a summary remedy for determining the amount payable by such person on proof of the necessary ingredients. The section authorises the court to direct such persons chargeable under it to pay a sum of money to the company by way of compensation. This is not a provision intended to punish a man who has been found guilty of misfeasance but for compensating the company in respect of the loss occasioned by his misfeasance. Whenever there is a relationship based on contract, quasi-contract, some fiduciary relation or a failure to perform a duty, there is no abatement of the liability on the death of the wrong-doer. When once the liability is declared it is open to the Official Liquidator to realise the amount due by resorting to Section 634 of the Act and Section 50 of the Code of Civil Procedure. In Tendolkar case [(1973) 1 SCC 602 : AIR 1973 SC 1104 : (1973) 3 SCR 364 : (1973) 43 Comp Cas 382] this Court did not consider the effect of Section 634 of the Act which made the relevant provisions of the Code of Civil Procedure relating to execution of decrees applicable to orders passed by the court under the Act."*

Relevant paragraph of the said judgment in **Official Liquidator v. P.A. Tendolkar (*supra*)** as relied upon by the Non-Applicant/Petitioner is as follows:

"33. *We see no reason to extend the maxim, as a general principle, even to cases involving breaches of fiduciary duties or where the personal conduct of the deceased Director has been fully enquired into, and the only question for determination, on an appeal, is the extent of the liability incurred by the deceased Director. Such liability must necessarily be confined to the assets or estate left by the deceased in the hands of the successors. Insofar as an heir or legal representative has an interest in the assets of the deceased and represents the estate, and the liquidator represents the interests of the Company, the heirs as well as the liquidator should, in equity, be able to question a decision which affects the interests represented."*

27. It was further contended that the Application, which purports to challenge the maintainability of the captioned Petition, raises mixed questions of fact and law and ought not to be considered at the threshold, and the interim reliefs for freezing the assets of the Respondents, including the Applicant, ought to be considered before or simultaneously with it. It was further submitted that the Application has been filed without authority, since the Power of Attorney dated 13.11.2021 relied upon by Mr. K.P. Baluni is a special power of attorney confined to C.P. No. 170 of 2021 and is also insufficiently stamped and thus it is improper for the Applicant to attribute statements to learned Senior Counsel in another proceeding, which in any event are irrelevant. It was also contended that the criminal proceedings in Case No. CC/770/2019 pertain to a different investigation report.

28. The instant Application was next listed on 31.08.2023, wherein the following order was passed by this Adjudicating Authority:

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.

29. Thereafter, Rejoinder to the instant Application was filed and uploaded on the DMS-e portal on 12.09.2023. In the rejoinder, the Applicant clarified that she has not challenged the maintainability of the captioned Petition as a whole and seeks only the deletion of Respondent No. 75. As to the objection on authority, it was stated that Mr. K.P. Baluni filed the Application on her instructions as she was not in India when service was effected, and that she has since executed a fresh Power of Attorney dated 12.09.2023 in his favour, specifically authorising him and ratifying his earlier acts in filing the present Application, which has been annexed to the rejoinder.

30. In the rejoinder, it was further submitted that Section 339 of the Act can be invoked only in the course of winding up, on the application of the Official Liquidator, the Company Liquidator or a creditor or contributory, and that neither Respondent No. 1 nor Respondent No. 76 is in winding up. It was submitted that Respondent No. 76 underwent the corporate insolvency resolution process on the application of Punjab National Bank under Section 7 of the Insolvency and Bankruptcy Code, 2016, and that the resolution plan of JSW Steel Limited was approved by this Tribunal on 05.09.2019 after the Committee of Creditors had considered the erosion of net worth. The claim for recovery of about Rs. 5,431 crores for distribution to creditors had therefore become infructuous, the creditors having accepted reduced claims under the

approved plan, which has attained finality. It was also submitted that proceedings can be continued against the estate of a deceased person only upon a finding by a court of competent jurisdiction that he was guilty, that the Petitioner has not crystallised the amount sought to be recovered from the estate, and that allegations in an investigation report are not proof.

31. Thereafter written submissions dated 22.07.2026 on behalf of Respondent No. 75 were filed and uploaded on the DMS-e portal on 27.07.2026. Consolidated written submissions on behalf of SFIO were also filed and uploaded on the DMS-e portal on 12.10.2026.

32. In the short note dated 22.07.2026 filed on behalf of the Applicant, it was additionally submitted that Late Mr. R.K. Mehra and his firm were never the statutory auditors of, or associated with, Respondent No. 1, whose auditors were M/s Amit K. Arora & Co., M/s Rajesh Agarwal & Associates and M/s Rattan Kaur & Associates and the Petitioner has impleaded his legal heir instead of the CA firm on whose behalf he signed the financial statements of Respondent No. 76. It was further submitted that the Petition, filed in 2023 in respect of FY 2011-12 to 2016-17, is barred by limitation and the name of Late Mr. R.K. Mehra was not recommended in the Executive Summary and the Summary of Charges and hence the Central Government formed no opinion under Section 241(2) qua him. It was also contended that the Petitioner has not shown how he or his legal heir benefited from the alleged fraud and the Petitioner seeks relief for wrongs allegedly done to Respondent No. 76 by a petition against Respondent No. 1.

FINDINGS AND ANALYSIS

33. We have heard the learned counsel for the parties and have perused the material available on record, including the Application, the reply filed on

behalf of the Union of India through SFIO, the rejoinder thereto and the written submissions filed on behalf of the parties.

34. The Applicant seeks deletion of the name of Late Mr. R.K. Mehra, the original Respondent No. 75, from the array of parties on the above-mentioned grounds. The Non-Applicant/Petitioner, on the other hand, contends that its claim arises under Section 339 read with Section 246 of the Act, is compensatory and not penal in nature, and survives against the estate of the deceased in the hands of his legal representative.

35. On the above pleadings, the following questions arise for determination at this stage:

(a) Whether the Application has been competently instituted with respect to the Power of Attorney objection?

(b) Whether the Central Government's opinion and sanction under Section 241(2) extend to Respondent No. 75 also?

(c) Whether the Petition is liable to be held not maintainable against the original Respondent No. 75 merely because he was the statutory auditor of BPSL and not a member of its management?

(d) Whether a claim under Section 339 read with Section 246 of the Act survives on the death of the person against whom it is made, or can be pursued against his legal representative to the extent of the estate of the deceased? And

(e) Whether, in the circumstances, the name of the legal heir deserves to be removed from the array of parties under Rule 11 of the NCLT Rules, 2016?

Issue (a): Whether the Application has been competently instituted with respect to the Power of Attorney objection?

36. As regards the objection of the non-applicant that the Application was instituted by Mr. K.P. Baluni under a Power of Attorney dated 13.11.2021 which was confined to C.P. No. 170 of 2021, we find that Mrs. Geeta Mehra has since executed a fresh Power of Attorney dated 12.09.2023, annexed to the rejoinder, which specifically authorises Mr. Baluni to act in the present proceedings and ratifies his earlier acts in instituting this Application. A defect of this nature is curable by ratification, and no prejudice is shown to have been caused to the non-applicant. The objection, therefore, does not survive. The further objection that the earlier Power of Attorney was insufficiently stamped is left to be dealt with in accordance with law.

37. We therefore hold that the Power of Attorney objection does not survive as the defect was cured by the fresh Power of Attorney dated 12.09.2023 ratifying the earlier acts, and no prejudice is shown.

Issue (b): Whether the Central Government's opinion under Section 241(2) extends to Respondent No. 75 also?

38. The contention that Section 241(2) contemplates action only against persons involved in the day-to-day functioning of the company is, in our view, misplaced. Section 241(2) is the gateway through which the Central Government may approach the Tribunal, it does not prescribe against whom relief may be claimed. The persons against whom a declaration may be sought under Section 339 are those identified in Section 339(1) itself, which, by virtue of Section 246, applies to the proceedings under Section 241.

39. It was further contended in the short note that the name of the original Respondent No. 75 was not recommended in the Executive Summary and the Summary of Charges, and that the Central Government therefore formed no

opinion under Section 241(2) qua him. We are unable to accept this contention at this stage. The opinion which Section 241(2) requires the Central Government to form is that the affairs of the company are being conducted in a manner prejudicial to public interest. It is an opinion on the affairs of the company, on the basis of which the Central Government may approach the Tribunal. It is not an opinion on the role of each person against whom a declaration under Section 339 may thereafter be sought, and the persons against whom such a declaration may be sought are those identified in Section 339(1) itself. The Non-Applicant/Petitioner has, moreover, pointed out in its reply that the Central Government's letter dated 19.05.2022 authorised the filing of a petition arraying all persons and entities charged under Section 447 of the Act in the Investigation Report. The documents on which the Petition is founded are to be read as part of it for the present purpose, as noted below while considering **Dahiben (*supra*)**. Whether the case pleaded against the original Respondent No. 75 on the basis of those documents is made out is a matter which the Petitioner is to specify, in terms of the direction below to state its case against the deceased with particularity, and which the Tribunal will decide at the final hearing.

40. It is therefore held that Section 241(2) requires the Central Government's opinion only on the affairs of the company, not on each person later proceeded against, so the omission of the deceased from the Executive Summary does not mean no opinion was formed. Whether a case lies against him is left for the final hearing.

Issue (c): Whether the Petition is liable to be held not maintainable against the original Respondent No. 75 merely because he was the statutory auditor of BPSL and not a member of its management?

41. The principal contention of the Applicant is that an auditor, being an outsider to the management of the company, cannot be proceeded against under

Sections 241–242 of the Act. We are unable to accept that contention at this stage, for the following reasons.

42. **First**, the text of the provision does not support it. Section 339(1) contemplates two distinct classes of persons: (i) a person who is or has been a director, manager or officer of the company; and (ii) "any persons who were knowingly parties to the carrying on of the business in the manner aforesaid". The second class is not defined by status or office. It is defined by conduct and knowledge, namely knowing participation in the carrying on of the company's business with intent to defraud creditors or other persons or for any fraudulent purpose. Had the legislature intended to confine the provision to persons in management, the first class alone would have sufficed and the second would have been redundant. Explanation (b) to the Section enlarges the expression "officer" to include persons in accordance with whose directions or instructions the directors are accustomed to act. Even so enlarged, the first class remains defined by position or control, which confirms that the second class is a distinct and wider one. Section 339(3) likewise attaches liability under Section 447 to "every person who was knowingly a party", and the expression "fraud" in the Explanation to Section 447 is itself wide enough to cover acts, omissions and concealment committed by any person:

"(i) "fraud" in relation to affairs of a company or any body corporate, includes any act, omission, concealment of any fact or abuse of position committed by any person or any other person with the connivance in any manner, with intent to deceive, to gain undue advantage from, or to injure the interest of the company or its shareholders or its creditors or any other person, whether or not there is any wrongful gain or wrongful loss;"

43. A statutory auditor is, by the very nature of his office, a person whose function is to examine and report on the accounts and financial position of the company, and who is therefore placed in a position to know of its affairs. An

auditor who, with knowledge, certifies accounts which he knows to be false, or who consciously suppresses or fails to report what he knows so as to enable the business of the company to be carried on fraudulently, is capable of being a person who was "knowingly" a party to the carrying on of such business within the meaning of Section 339(1). Whether the original Respondent No. 75 was in fact such a person is a question of fact which can only be adjudicated during the hearing of the captioned petition.

44. **Second**, the judgment of the Supreme Court in **Usha Ananthasubramanian (supra)** does not further the Applicant's case as far as it is sought to be taken. The appellant in that case was the former Managing Director and CEO of Punjab National Bank, and her assets had been frozen in proceedings under Section 241 concerning another company. The Supreme Court, after setting out Sections 241(2), 337 and 339, noted that Sections 337 and 339 are given in aid of the Tribunal's powers and apply *mutatis mutandis*. It was further held that the persons referred to in Section 339(1) are those connected with the carrying on of the business of the company which is the subject-matter of the proceedings, and not the business of another company or other persons and, on that reasoning, held that the head of some other organisation could not be roped in. The *ratio* of the decision is, therefore, that the person proceeded against must have a nexus with the business of the company in respect of which the Petition is filed. It does not hold that a person who is not a part of the management cannot be a person knowingly party to the fraudulent carrying on of that very company's business. The Supreme Court also took care to clarify that nothing in the judgment affects the investigation by the CBI or the SFIO. In the present case, the original Respondent No. 75 is alleged to have been a signatory of the statutory audit of BPSL itself, i.e., the very company whose business is alleged to have been carried on fraudulently. The nexus insisted upon in **Usha Ananthasubramanian (*supra*)** is therefore alleged to exist here. The contention in the short note that the original

Respondent No. 75 was never the auditor of Respondent No. 1 in the captioned Petition does not alter this position, since the Petitioner's stated case is that the Petition concerns the fraudulent conduct of the business of BPSL alone, and the declaration under Section 339 is sought in respect of BPSL. Relevant paragraphs of the aforenoted judgment in **Usha Ananthasubramanian (*supra*)** are as follows:

"6. *Under Section 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, may apply itself to the Tribunal for orders under this Chapter, which is headed "prevention of oppression and mismanagement".* ***Apart from the vast powers that are given to the Tribunal under Section 242, powers under Sections 337 and 339 are also given in aid of this power, which will apply mutatis mutandis.***

7. Section 337 refers to penalty for frauds by an officer of the company in which mismanagement has taken place. Likewise, Section 339 refers to any business of the company which has been carried on with intent to defraud creditors of that company. Obviously, the persons referred to in Section 339(1) as persons who are other than the parties "to the carrying on of the business in the manner aforesaid" which again refers to the business of the company which is being mismanaged and not to the business of another company or other persons.

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."

45. **Third**, we are not persuaded by the submission that an auditor stands wholly outside the sweep of the Petition because he holds no office in the conduct and management of the company. The second limb of Section 339(1) is not tied to the holding of any office, as noted above. Nor does the Applicant's reliance on Section 241(3) assist her, since, as recorded above, the relief claimed against the original Respondent No. 75 is confined to liability for participation in the fraudulent conduct of business to the extent of his estate and is not a declaration under Section 241(3).

46. We are further cognizant of the position that the reliefs under Section 242 of the Act, which are directed at bringing to an end matter of oppression and mismanagement as between the shareholders and the management, being the internal affairs of the company, are not ordinarily moulded against an auditor who is not a part of the management. The relief sought against the original Respondent No. 75, however, is not claimed under Section 242 as such, but by way of Section 339, which applies to the proceedings under Section 241 by virtue of Section 246 and whose operation does not depend upon the person concerned being a part of the management.

Separate statutory remedies against an auditor

47. It is pertinent to mention here that we are not unmindful that the Act and allied statutes contain separate provisions under which an auditor may be proceeded against for lapses in the discharge of his duties; however, such provisions are limited in their scope and purpose. Each of them is directed to a particular consequence, and thus none of them confers upon this Tribunal, in a proceeding under Section 241 instituted by the Central Government on the basis of an investigation report, the power to declare persons who were knowingly parties to the fraudulent carrying on of a company's business personally responsible for its debts or other liabilities, which is the distinctive remedy under Section 339(1).

48. Moreover, the legislature has itself made it clear that these remedies do not displace one another. Section 339(4) provides that the Section applies notwithstanding that the person concerned may be punishable under any other law in respect of the very matters on the ground of which the declaration is to be made. The existence of separate provisions for proceeding against an auditor cannot, therefore, by itself take an auditor outside the reach of Section 339 read with Section 246, if the case pleaded is one of knowing participation in the fraudulent carrying on of the company's business.

49. The Petition, on prima facie understanding, does not seek merely to hold the original Respondent No. 75 accountable for lapses in the discharge of his duty as an auditor, for which the specific provisions are available. The case set up is that he abdicated his statutory duties and independence, connived with the other Respondents and thereby knowingly facilitated the fraudulent conduct of the business of BPSL, and that he should consequently be answerable (since deceased to the extent of his estate) for the resulting liabilities. The consequence sought thus goes well beyond what the specific provisions governing the conduct of an auditor can deliver. Whether the allegations made in the Petition and the Investigation Report are true; whether the audit lapses, if any, were the result of mere negligence, error of judgment or want of professional skepticism, which would attract only the specific remedies against an auditor; or whether they amount to knowing participation in the fraud, which alone would attract Section 339, are questions which can be decided only upon hearing the captioned Petition on its merits, on the basis of the pleadings and the evidence. They cannot be pre-judged in an interlocutory application for deletion of a party.

50. We are equally conscious of the consequences that would follow from an adverse finding. The word "knowingly" in Section 339(1) imports knowledge and participation; a mere failure to detect, or negligence in detecting, an irregularity would not suffice. The burden of establishing the requisite

knowledge and participation lies on the Petitioner, who will be required to discharge it by cogent material. It is for this reason that we are directing the Petitioner to state its case against the deceased with particularity.

51. We hold that an auditor is not outside Section 339 of the Act merely because he is not in management, as its second limb covers any person knowingly party to the fraudulent conduct of the company's business, and **Usha Anantha Subramanian (*supra*)** requires only a nexus with that company. Whether the audit lapses, if any, were the result of mere negligence, error of judgment or want of professional skepticisms or whether he acted knowingly are matters to be decided at the final hearing.

Issue (d): Whether a claim under Section 339 read with Section 246 of the Act survives on the death of the person against whom it is made, or can be pursued against his legal representative to the extent of the estate of the deceased?

Statutory Framework under Sections 241, 246 and 339 of the Act

52. The Petition has been filed by the Union of India through SFIO under Sections 241 and 242 read with Sections 246 and 339 of the Act. Section 241(2) enables the Central Government, where it is of the opinion that the affairs of a company are being conducted in a manner prejudicial to public interest, to apply to the Tribunal for an order. It reads:

> ***"241. Application to Tribunal for relief in cases of oppression, etc.—*** *… (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."*

53. Section 246 of the Act then provides:

> ***"246. Application of certain provisions to proceedings under section 241 or section 245.—*** *The provisions of sections 337 to 341 (both inclusive) shall apply* mutatis mutandis*, in relation to an application made to the Tribunal under section 241 or section 245."*

54. Section 339 of the Act, which is the provision principally invoked in the Petition, provides, so far as is relevant:

> ***"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: …*
>
> *(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,— … (b) the expression "officer" includes any person in accordance with whose directions or instructions the directors of the company have been accustomed to act."*

55. Section 339 applies to the present proceedings by virtue of Section 246. The expression *mutatis mutandis* signifies that the provision is to be applied with such modifications as are necessary to fit the proceedings to which it is extended. The reference in Section 339(1) to "the course of the winding up of a company" must therefore necessarily be read as a reference to the proceedings before the Tribunal under Section 241, failing which Section 246 would be rendered nugatory. For the same reason, the reference to an application by the Official Liquidator, the Company Liquidator or a creditor or contributory must be read as a reference to the application of the Central Government under Section 241(2). This answers the contention in the rejoinder that Section 339 can be invoked only in the course of winding up. The Supreme Court in **Usha Ananthasubramanian (*supra*)** also recognised that Sections 337 and 339 are "*given in aid of*" the Tribunal's powers under Section 241(2).

56. The second limb of the Applicant's case is that, upon the death of the original Respondent No. 75, the claim has abated. We find no merit in this contention at this stage. The original Respondent No. 75 having died before the proceedings were instituted, the question is more accurately one of survival of the claim against his estate than of abatement. The liability under Section 339(1) is to make good the debts or other liabilities of the company. It is compensatory in nature; it is not intended to punish the wrongdoer. That characteristic has been held by the Supreme Court to be decisive of the question of survival of the claim. In **Official Liquidator v. Parthasarathi Sinha & Ors., (1983) 1 SCC 538**, dealing with Section 543 of the Companies Act, 1956, which corresponds to Section 340 of the present Act (Section 542 of that Act corresponding to Section 339), the principle of which applies

equally to Sections 339 and 340 of the present Act, the Supreme Court held that the liability in misfeasance proceedings is founded on the principle that a person who has caused loss to the company by an act amounting to breach of trust should make good the loss; that the provision is not meant to punish but to compensate the company; and that where the liability is founded on a relationship based on contract, quasi-contract, a fiduciary relation or a failure to perform a duty, there is no abatement of the liability on the death of the wrongdoer. In **Official Liquidator v. P.A. Tendolkar, (1973) 1 SCC 602**, the Supreme Court confined the liability of the successors to the assets or estate left by the deceased. The Applicant's contention that no benefit accrued to the deceased personally does not, at this stage, alter the position. Though the passage quoted in paragraph 17 of Parthasarathi Sinha (*supra*) speaks of property diverted into the estate of the deceased, paragraph 18 makes it clear that liability founded on a failure to perform a duty also does not abate on the death of the wrongdoer. Whether any such liability is established, and in what amount, are matters for the final hearing.

57. The decisions in **Parthasarathi Sinha (*supra*)** and **Tendolkar (*supra*)** concerned misfeasance proceedings that were already pending when the director died. In the present case the original Respondent No. 75 died on 23.03.2020, before the Investigation Report dated 06.05.2022 and the filing of the Petition on 11.04.2023, so that the claim has been brought against his estate after his death. The question is therefore not one of abatement of pending proceedings but of survival of the cause of action against the estate. The principle on which those decisions rest, that a compensatory liability founded on a failure of duty does not die with the wrongdoer, applies equally to such a case. The same principle is embodied in Section 306 of the Indian Succession Act, 1925, under which all demands whatsoever existing against a person at the time of his decease survive against his executors or administrators, except causes of action for defamation, assault or other

personal injuries not causing death and cases where the relief sought could not be enjoyed or granting it would be nugatory.

58. Section 306 speaks in terms of executors and administrators, and we refer to it only as an illustration of the principle, which in our view extends to the person who represents the estate of the deceased. The claim under Section 339 does not fall within any of those exceptions, since it is compensatory and is confined to the estate. The contention in the rejoinder that proceedings can be continued against the estate only upon a prior finding of guilt by a court of competent jurisdiction is also without substance. The claim being civil and compensatory in nature, no such prior finding is a precondition. Whether the deceased was knowingly a party to the fraudulent carrying on of business is to be determined in the Petition on the material and the evidence, with the burden on the Petitioner as noted above, and the contention that the amount sought to be recovered has not been crystallised is met by the direction below that the Petitioner state the amount sought to be recovered from the estate.

59. ***Further,*** the Code, 1908, although it does not apply directly, illustrates the same principle. Section 2(11) defines a "legal representative" as a person who in law represents the estate of a deceased person. Order XXII Rule 4, which applies where a defendant dies during the pendency of a suit, provides for bringing on record the legal representative of a deceased defendant, who may make any defense appropriate to her character as such. That Order governs death during the pendency of a suit and applies to the present proceedings, if at all, only by analogy, the original Respondent No. 75 having died before they were instituted. Section 50(2) of the Code, 1908, which applies where a judgment-debtor dies before the decree is fully satisfied, limits the liability of the legal representative to the property of the deceased that has come into her hands:

"50. Legal representative.— … (2) Where the decree is executed against such legal representative, he shall be liable only to the extent of the property of the deceased which has come to his hands and has not been duly disposed of; and, for the purpose of ascertaining such liability, the Court executing the decree may, of its own motion or on the application of the decree-holder, compel such legal representative to produce such accounts as it thinks fit."

Abatement of criminal proceedings before the Special Court, Dwarka

60. As regards the abatement of the proceedings against the original Respondent No. 75 in Case No. CC/770/2019 before the Special Court, Dwarka, by order dated 10.02.2021, such abatement is an incident of a criminal prosecution, which is personal to the accused, and a prosecution under Section 447 of the Act, to which Section 339(3) refers, cannot be carried forward against a person who is no more. The Petition before us, however, does not seek to punish the deceased; it seeks compensatory relief confined to his estate. Section 339(4) itself contemplates that a declaration under Section 339(1) may be made notwithstanding that the person concerned may be punishable under another law. The abatement of the criminal case, therefore, does not conclude the matter here. Moreover, as stated in the reply and borne out in the Executive Summary of the Investigation Report, Case No. CC/770/2019 arose out of a separate investigation into the affairs of Bhushan Steel Limited, a company distinct from BPSL.

61. We hold that the Section 339 claim is compensatory, not penal, and so survives against the estate of the deceased and can be pursued against his legal representatives to the extent of that estate. The criminal abatement at Dwarka does not affect this, being personal to the accused and relating to a separate investigation.

Issue (e): Whether, in the circumstances, the name of the legal heir deserves to be removed from the array of parties under Rule 11 of the NCLT Rules, 2016?

62. The instant Application has been filed under Rule 11 of the NCLT Rules, 2016, which provides:

> *"**11. Inherent powers—** Nothing in these rules shall be deemed to limit or otherwise affect the inherent powers of the Tribunal to make such orders as may be necessary for meeting the ends of justice or to prevent abuse of the process of the Tribunal."*

63. It is to be noted that this Tribunal is not bound by the procedure laid down in the Code of Civil Procedure, 1908, but is guided by the principles of natural justice and has the power to regulate its own procedure (Section 424(1) of the Act and Rule 51 of the NCLT Rules, 2016). The principles underlying Order I Rule 10(2) of the Code, 1908, which empowers a court to strike out, at any stage, the name of a party improperly joined, furnish a useful guide, though not a binding rule. The said provision reads:

> *"**10. Suit in name of wrong plaintiff.—** … (2) The Court may at any stage of the proceedings, either upon or without the application of either party, and on such terms as may appear to the Court to be just, order that the name of any party improperly joined, whether as plaintiff or defendant, be struck out, and that the name of any person who ought to have been joined, whether as plaintiff or defendant, or whose presence before the Court may be necessary in order to enable the Court effectually and completely to adjudicate upon and settle all the questions involved in the suit, be added."*

64. It is a settled proposition of law that an application for deletion of a party at the threshold cannot be converted into a trial of the Petition itself. The Tribunal has to see whether, on the averments in the Petition read with the

Investigation Report and the documents on which the Petition is founded, and taking those averments to be correct, a case is disclosed against the party sought to be deleted. Disputed questions of fact, such as whether the deceased knew of, participated in or facilitated the alleged fraud, or merely discharged his functions as an auditor, cannot be adjudicated based on affidavits and written notes filed in an interlocutory application. We place reliance on the judgment of the Supreme Court in **Dahiben v. Arvindbhai Kalyanji Bhanusali, (2020) 7 SCC 366** wherein it was emphasized, in the analogous context of Order VII Rule 11 of the Code, 1908, that the court must scrutinize the averments in the pleadings read with the documents relied upon, treating them as correct, and cannot enter upon the defense or the merits at the threshold. Relevant paragraphs of the aforenoted judgment in **Dahiben v. Arvindbhai Kalyanji Bhanusali (*supra*)** are as follows:

"23.6. Under Order 7 Rule 11, a duty is cast on the court to determine whether the plaint discloses a cause of action by scrutinising the averments in the plaint *[Liverpool & London S.P. & I Assn. Ltd. v. M.V. Sea Success I, (2004) 9 SCC 512],* ***read in conjunction with the documents relied upon, or whether the suit is barred by any law****.*

23.8. Having regard to Order 7 Rule 14 CPC, the documents filed along with the plaint, are required to be taken into consideration for deciding the application under Order 7 Rule 11(a). When a document referred to in the plaint, forms the basis of the plaint, it should be treated as a part of the plaint.

23.9. In exercise of power under this provision, the court would determine if the assertions made in the plaint are contrary to statutory law, or judicial dicta, for deciding whether a case for rejecting the plaint at the threshold is made out.

23.10. At this stage, the pleas taken by the defendant in the written statement and application for rejection of the plaint on the merits,

would be irrelevant, and cannot be adverted to, or taken into consideration.

23.11. *The test for exercising the power under Order 7 Rule 11 is that if the averments made in the plaint are taken in entirety, in conjunction with the documents relied upon, would the same result in a decree being passed..."*

23.12. *In Hardesh Ores (P) Ltd. v. Hede & Co. [Hardesh Ores (P) Ltd. v. Hede & Co., (2007) 5 SCC 614] the Court further held that it is not permissible to cull out a sentence or a passage, and to read it in isolation. It is the substance, and not merely the form, which has to be looked into. The plaint has to be construed as it stands, without addition or subtraction of words. If the allegations in the plaint prima facie show a cause of action, the court cannot embark upon an enquiry whether the allegations are true in fact."*

65. We have considered the submission that the Applicant is a senior citizen aged over 74 years, that she has never been associated with the affairs of BPSL or of the CA firm, and that the firm was reconstituted after his death on 23.03.2020. These submissions may be relevant to the manner and extent of any eventual recovery, but they do not go to maintainability. The Applicant is not sought to be made liable for any act of her own. Her liability, if any, is wholly derivative and confined by law to the estate of the deceased that has come into her hands. She is at liberty to show that no such estate has devolved upon her or that it has been duly disposed of in accordance with law, in which event no liability can be fastened upon her. The reconstitution of the CA firm is likewise of no consequence for the purposes of this Application, as the claim is directed not against the firm but against the estate of the deceased partner in respect of his own alleged conduct. Nor does the non-impleadment of the firm assist the Applicant. The second limb of Section 339(1) reads "any persons" who were knowingly parties to the fraudulent carrying on of business and is not confined to the firm on whose behalf such person acted. Section 341, which applies by virtue of Section 246, enables a declaration made in

respect of a firm to be extended to its partners. It does not suggest that a partner can be reached only through the firm.

66. We also record that the Applicant has been brought on record as the person who represents the estate of the deceased. Without her presence on record, no effective order can be made which binds that estate, and she is, therefore, a necessary party in that representative capacity.

67. We hold that deletion is not warranted, as the legal heir is impleaded only as the representative of the estate and not for any wrong of her own, so the misjoinder objection fails; her age and non-involvement go only to the extent of recovery.

Other Contentions Raised

68. The rejoinder further contends that, Respondent No. 76 having undergone the corporate insolvency resolution process and the resolution plan of JSW Steel Limited having been approved by this Tribunal on 05.09.2019, the claim for recovery has become infructuous. We are unable to accept that contention as a ground for deletion of the original Respondent No. 75 at this stage. The Petition was filed on 11.04.2023, and the resolution plan attained finality only upon the judgment of the Supreme Court dated 26.09.2025 in **Kalyani Transco v. Bhushan Power & Steel Ltd.**, after the Petition had been filed. The clean slate which follows the approval of a resolution plan protects the corporate debtor from claims not provided for in the plan. It does not, by itself, extinguish a claim directed against persons who are alleged to have knowingly participated in the fraudulent conduct of the business of the corporate debtor. The effect, if any, of the approved plan on the nature and extent of the relief that may eventually be granted under Section 339 of the Act, including the contention that the claim has become infructuous, goes to the merits of the Petition and will be examined at the final hearing.

69. The remaining grounds in the short note do not call for deletion of the legal heir at this stage. The grounds that the original Respondent No. 75 was never the auditor of Respondent No. 1, that the firm has not been impleaded and that no benefit accrued to him have been dealt with above. The plea that the Petition, filed in 2023 in respect of the financial years 2011-12 to 2016-17, is barred by limitation is already dealt with by this Tribunal vide its order dated 30.10.2026 in the captioned petition, holding the captioned petition to be maintainable.

70. So far as the submissions said to have been made by the learned Additional Solicitor General on 29.11.2021 and 05.01.2022 in I.A. No. 63 of 2021 in C.P. No. 170/241-242(PB)/2021 are concerned, they were admittedly not recorded in any order. That Application, which relates to a different company, remains pending before this Tribunal and will be decided on its own merits. The Applicant cannot, in our view, derive an estoppel in the present Petition from an unrecorded submission made in a different proceeding. We do not find it necessary to examine the further objection of the non-applicant to the attribution of statements to learned Senior Counsel in that proceeding, in view of the above. We clarify that nothing in this order shall be construed as an expression of opinion on I.A. (C.A.) No. 63 of 2021.

Conclusion

71. In view of the foregoing, we are of the considered view that:

(i) the Petition cannot be held, at this stage, to be not maintainable against the original Respondent No. 75 because he was merely the statutory auditor of BPSL and not a part of its management.

(ii) section 241(2) of the Act requires the Central Government's opinion only on the affairs of the company, not on each person later proceeded against, so the omission of the deceased from the Executive Summary does not mean no opinion was formed.

(iii) a claim under Section 339 read with Section 246 of the Act is compensatory in nature and survives, where the person against whom it is made died before the proceedings were instituted, against his estate, and may be pursued against his legal representative to the extent of the estate of the deceased that has come into her hands.

(iv) the legal heir is not a mis-joined party but is on record only in her representative capacity.

(v) the principle of clean slate does not, by itself, extinguish a claim directed against persons who are alleged to have knowingly participated in the fraudulent conduct of the business of the corporate debtor.

(vi) the existence of separate provisions under which an auditor may be proceeded against for lapses in his professional duties does not take him out of Section 339, because Section 339(4) expressly provides that the Section applies even where the person is punishable under any other law. The relief claimed against the deceased herein is under Section 339 of the Act and not under Section 242 of the Act.

(vii) the word "knowingly" in Section 339(1) of the Act requires knowledge and participation, and the burden of proving knowing participation lies on the SFIO. Whether the deceased was merely careless or was knowingly a party to the fraud is a disputed question of fact which can be decided only at the final hearing and not in an application for deletion of a party.

(viii) the contention that Section 339 of the Act can be invoked only in the course of the winding up is also rejected by virtue of the words *mutatis mutandis* in Section 246 of the Act; the reference to winding up is read as a reference to the proceedings under Section 241 of the Act, and the application of the Central Government under Section 241(2) takes the place of the application of a liquidator, creditor or contributory. And

(ix) no estoppel can arise from the submissions said to have been made on 29.11.2021 and 05.01.2022 in I.A. (C.A.) No. 63 of 2021 in C.P. No. 170 of 2021, that SFIO would not proceed against the deceased, as they were never

recorded in any order and were made in a different proceeding relating to a different company.

72. **We, therefore, decline the prayer for deletion of Respondent No. 75 at this stage.** The legal heir shall continue as a Respondent in her capacity as the legal representative of the late Respondent No. 75, and her liability, if any, shall be limited to the estate of the deceased that has come into her hands. She is at liberty to contend on the merits that the deceased had no role in the matters alleged.

73. We are mindful that the legal heir of the deceased Respondent No. 75 is not herself alleged to have participated in anything. The Petitioner must first establish that the deceased was knowingly a party to the fraud, and only then does the question of recovery from the estate arise.

74. Needless to say, the observations made above are prima facie in nature and have been recorded only for the purpose of deciding the present Application. They shall not influence the final adjudication of the captioned Petition. All rights and contentions of the parties on the merits, including the contentions that the audit was conducted in accordance with law, that the deceased did not knowingly participate in any fraud, and whether any estate has devolved upon the legal heir, are kept open.

ORDER

75. The Non-Applicant/Petitioner (SFIO) is directed to file a consolidated statement within four (4) weeks from the date of this order, to specify the case against the deceased with particularity, including the specific acts and omissions attributed to him, the financial years concerned, the documents relied upon and the amount sought to be recovered from his estate, with an advance copy to the Applicant, who may file her response within four (4) weeks thereafter. The legal heir will have every opportunity to show that she has

inherited no estate or that the deceased had no role. Nothing in this order is to be understood as casting any imputation on her.

76. **Final Prayer (a) of Respondent No. 75 for deletion from the array of parties is declined at this stage.** The legal heir of the late Respondent No. 75 shall continue as a Respondent in her capacity as the legal representative. Her liability, if any, shall be limited to the estate of the deceased that has come into her hands, and she is at liberty to raise all defenses on the merits.

77. **Interim Prayer (a) of the aforesaid Application is decided accordingly in terms of this order.**

78. **Interim prayer (b) of the captioned Application is allowed** to the extent that the Petitioner/SFIO is directed not to take any coercive steps against the legal heir of Late Mr. R.K. Mehra till the final disposal of the captioned Petition. In furtherance of such direction, the Applicant herein is directed not to sell, encumber, alienate or part with, in any manner whatsoever, the properties whether movable or immovable or otherwise, which have devolved upon her from Late Mr. R.K. Mehra in her capacity of legal heir, till the final disposal of the captioned Petition. In this regard, the Applicant is hereby directed to file within four (4) weeks from the date of this order, an affidavit listing (along with description wherever necessary) all the properties devolved upon her in the capacity of her being the legal heir of Late Mr. R.K. Mehra, and disclosing the names of the other legal heirs, if any, of Late Mr. R.K. Mehra. The parties having been heard on the Application, and the Non-Applicant/Petitioner having itself prayed in its reply that its prayer for freezing the assets of the Respondents be considered along with the Application, the restraint on the Applicant recorded above is in modification of the order dated 08.06.2023 directing status quo over the assets of all the Respondents, to the extent that the order applies to the original Respondent No. 75 and the Applicant. As regards them, the restraint shall hereafter be confined to the properties

devolved upon the Applicant from Late Mr. R.K. Mehra, and nothing in this direction extends to the Applicant's own assets.

79. **Interim Prayer (c) of the aforesaid Application is allowed** to the extent that the Applicant herein is at liberty to file an appropriate application before this Tribunal to file an additional affidavit on becoming aware of any additional information/facts in connection with the present Company Petition and any such application will be decided on its own merits.

80. **C.A. No. 222 of 2023 is heard and disposed of accordingly, in terms of the aforesaid findings and directions.** List the main matter on the date already fixed, i.e., **26.11.2026**.

Sd/-
(ANUPINDER SINGH GREWAL)
(PRESIDENT)

Sd/-
RAVINDRA CHATURVEDI
(MEMBER (TECHNICAL)