

NATIONAL COMPANY LAW TRIBUNAL
COURT ROOM NO. 1,
MUMBAI BENCH

Item No. 42

MA 2070/2019 MA 2071/2019 CA 29/2023

CA 44/2023 CA 355/2023

IN

CP/3638(MB)2018

CORAM:

SH. PRABHAT KUMAR JUSTICE VIRENDRASINGH BISHT (Retd.)
HON'BLE MEMBER (TECHNICAL) HON'BLE MEMBER (JUDICIAL)

ORDER SHEET OF THE HEARING ON **22.07.2024**

NAME OF THE PARTIES: **UNION OF INDIA V/s INFRASTRUCTURE**
LEASING AND FINANCIAL SERVICES
LTD. & ORS.

Rule 11 of NCLT, under Section 241- 242 of the Companies Act, 2013

ORDER

MA 2070/2019 MA 2071/2019-

1. Adv. Kunal Mehta for the Respondent No. 334, Adv. Dinesh a/w Adv. Soumya Srinivasan for the Respondent No. 328 & 329, Adv. Robin Jaisughani for the Respondent No. 337, 341 & 339, Adv. Navroz for the Respondent No. 325, Adv. V.P. Singh for the Respondent No. 327.
2. Ld. Counsel for the Respondents submit that order in applications challenging the amendment of prayer clause has been passed this Tribunal today, and they would need some time to peruse the same for further arguments in the matter.
3. List this matter on **19.08.2024** at **12:30 hrs.** for further consideration.

CA 29/2023 CA 44/2023 CA 355/2023-

1. Adv. Aditya Bapat a/w Adv. Hammid Bhati for the Applicant is present
and
2. None present for the Union of India. Post this matter for tomorrow **i.e.**
23.07.2024 for further consideration.

Sd/-

**PRABHAT KUMAR
MEMBER (TECHNICAL)**

Sd/-

**JUSTICE VIRENDRASINGH BISHT
MEMBER (JUDICIAL)**

/Necraj/

**THE NATIONAL COMPANY LAW TRIBUNAL
MUMBAI BENCH-I**

C.A. 60 OF 2024

Under Rule 11 of NCLT Rules 2016

Deloitte Haskins & Sells LLP

...Applicant/

Original Respondent No.326

V/s

Union of India, through Ministry of
Corporate Affairs & others

... Respondents

I.A. 57 OF 2024

Under Rule 11 of NCLT Rules 2016

BSR & Associates LLP

...Applicant/

Original Respondent No.327

V/s

Union of India, through Ministry of
Corporate Affairs & others

... Respondents

I.A. 58 OF 2024

Under Rule 11 of NCLT Rules 2016

Mr. N Sampat Ganesh

...Applicant/

Original Respondent No.327

V/s

Union of India, through Ministry of
Corporate Affairs & others

... Respondents

C.A. 101 OF 2024

Under Rule 11 of NCLT Rules 2016

Mr. Milind Patil

...Applicant/

Original Respondent No.321

V/s

Union of India, through Ministry of
Corporate Affairs & others

... Respondents

C.A. 119 OF 2024

Under Rule 11 of NCLT Rules 2016

Mr. Udayen Sen

...Applicant/

Original Respondent No.323

V/s

Union of India, through Ministry of
Corporate Affairs & others

... Respondents

C.A 144 OF 2024

Under Rule 11 of NCLT Rules 2016

Mr. Rajesh Kotian

...Applicant/

Ors. Respondent No. 322

V/s

Union of India, through Ministry of
Corporate Affairs & others

...Respondents

C.A. 140 OF 2024

Under Rule 11 of NCLT Rules 2016

Mr. Shrenik Baid

... Applicant/

Respondent No. 335

V/s

Union of India, through Ministry of
Corporate Affairs & others

...Respondents

In the matter of

C.P. No. 3638/MB/2018

Union of India

...Petitioner

V/s.

Infrastructure Leasing & Financial Services
Limited & others

... Respondents

Order delivered on: 22.07.2024

Coram:

Shri Prabhat Kumar

Hon'ble Member (Technical)

Justice Shri V.G. Bisht

Hon'ble Member (Judicial)

Appearances:

For the Applicant : Mr. Janak Dwarkadas, Senior Counsel a/w
in CA 60/2024 Mr. Rahul Dwarkadas, Ms. Prachi
Dhanani, Ms. Rohini Jaiswal Ms. Saloni
Vyas, Advocate

For the Applicant : Mr. Rohan Cama, Advocate a/w Mr.
in CA 101/2024 Vijeet Trivedi, Advocate

For the Applicant : Mr. Robin Jaisinghani, Advocate
in CA 119/2024 &
140/2024

For the Applicant : Mr. Darius Khambata, Sr. Adv. a/w Mr.
in CA 57/2028 VP Singh, Aditya Jalan, Raghav Seth, Asif
and 58/2028 Ahmed, Ambareen Mujawar, Bhagya
Yadav, Anant Narayan Misra, Shreya
Choudhary and Prince Todi, Advocates

For the Applicant : Mr. Karn Shroff a/w Mr. Swapnil Shikhre
in CA 144/2024 i/b RMG Associates, Advocates

For the Respondent : Mr. Aditya Sikka a/w Mr. Meghav Gupta
Union of India and Ms. Onshi Jakhar, Ld. Counsel for
Union of India present. Mr. Yogini
Chauhan and Mr. Gaurav Jaiswal,
Representative for the Union of India
present.

ORDER

Per: Prabhat Kumar, Member (Technical)

1. The following Applications have been filed by some of the Respondents in the Company Petition 3638 of 2018 who were impleaded as a Respondent No.321 to 343 of the Company Petition No.3638 of 2018 vide order dated 18.07.2019 passed by this Tribunal.
2. CA 60 of 2024 is filed by Deloitte Haskins & Sells LLP, the Respondent in Company Petition 3638 of 2018 to seek following relief:
 - a. *That this Tribunal be pleased to declare that amendment to the Company Petition to the extent of inclusion of prayer clause '(e)' thereto has been carried out without the leave of this Hon'ble Tribunal and amounts to overreaching the Order dated 25th November 2019.*
 - b. *That Respondent No. 1/the Original Petitioner be directed to delete/strike off prayer clause '(e)' wrongfully incorporated in the amended Company Petition.*
 - c. *That pending the hearing and final disposal of the present Application the proceedings in M.A. 2070 of 2019 be stayed.*

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- d. For ad-interim and interim reliefs in terms of prayer clauses (a) to (c) above.*
3. IA 57 of 2024 is filed by B S R & ASSOCIATES LLP, the Respondent No.327 in Company Petition No.3638 of 2018 to seek following relief:
- a. Direct the Petitioner to delete Prayer (E) from the Amended Company Petition and refile the correct amended Company Petition in accordance with the Amendment Order dated November 25, 2019;*
 - b. Consider and decide the present Application as a preliminary challenge prior to considering the merits of the interim reliefs / sought by the Petitioner in MA No. 2070/2019; and '*
 - c. Pass any order and/or reliefs that this Hon'ble Tribunal may deem fit and proper in the facts and circumstances of the present case.*
4. IA 58 of 2024 is filed by N. Sampath Ganesh, the Respondent No.325 in Company Petition 3638 of 2018 to seek following reliefs:
- a. Direct the Petitioner to delete Prayer (E) from the Amended Company Petition and refile the correct amended Company Petition in accordance with the Amendment Order dated November 25, 2019;*
 - b. Consider and decide the present Application as a preliminary challenge prior to considering the merits of the interim reliefs sought by the Petitioner in MA No. 2070/2019; and Pass any order and/or reliefs that this Hon'ble Tribunal may deem fit and proper in the facts and circumstances of the present case.*
5. CA 101 of 2024 is filed by Milind Patel, the Respondent No.321 in Company Petition 3638 of 2018 to seek following reliefs:

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- a. *That this Tribunal be pleased to order and direct that paragraph 22 (e) of Company Petition No. 3638 of 2018 on page 36 A, be deleted and expunged from the records;*
- b. *That pending the hearing and final disposal of the present Application, the proceedings in the above Company Petition including Miscellaneous Application No. 2070 of 2019 be stayed;*
- c. *That pending the hearing and final disposal of the present Company Application, this Hon'ble Tribunal, be pleased to disregard prayer (e) of paragraph 22 of Company Petition No. 3638 of 2018;*
6. CA 119 of 2024 is filed by Udayan Sen, the Respondent No.323 in Company Petition 3638 of 2018 to seek following reliefs;
- a. *That this Tribunal be pleased to declare that amendment to the Company Petition to the extent of inclusion of prayer clause '(e)' thereto has been carried out without the leave of this Hon'ble Tribunal and amounts to overreaching the Order dated 25thNovember 2019.*
- b. *That Respondent No. 1/the Original Petitioner be directed to delete/strike off prayer clause '(e)' wrongfully incorporated in the amended Company Petition.*
- c. *That pending the hearing and final disposal of the present Application the proceedings in M.A. 2070 of 2019 be stayed.*
- d. *That pending the hearing and final disposal of the present Company Application, this Hon'ble Tribunal, be pleased to direct that prayer (e) of paragraph 22 of Company Petition No. 3638 of 2018, is of no consequence and effect;*
7. CA 144 of 2024 is filed by Mr. Rajesh Kotian, the Respondent No.322 in Company Petition 3638 of 2018 to seek following reliefs:

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- a. *That this Hon'ble Tribunal be pleased to order and direct that paragraph 22 (e) of Company Petition No. 3638 of 2018 on page 36 A, be deleted and expunged from the records;*
 - b. *That pending the hearing and final disposal of the present Application, the proceedings in the above Company Petition including Miscellaneous Application No.2070 of 2019 be stayed;*
 - c. *That pending the hearing and final disposal of the present Company Application, this Hon'ble Tribunal, be pleased to disregard prayer (e) of paragraph 22 of Company Petition No. 3638 of 2018;*
 - d. *For ad interim and interim reliefs in terms of prayer clauses (b) and (c) above;*
 - e. *For such other orders and reliefs as this Hon'ble Tribunal may deem fit and proper in the nature and circumstances of the present case;*
 - f. *For costs of this Application,*
8. CA 140 of 2024 is filed by Mr. Shrenik Baid, the Respondent No.335 in Company Petition 3638 of 2018 to seek following reliefs:
- a. *That this Hon'ble Tribunal be pleased to declare that the amendment to the Company Petition to the extent of impleadment of the Applicant as a "Respondent" instead of "Proforma Respondent" thereto has been carried out without the leave of this Hon'ble "Tribunal and amounts to over-reaching the Order dated 18th July, 2019 passed by this Hon'ble Tribunal;*
 - b. *That this Hon'ble Tribunal be pleased to declare that amendment. to the Company Petition to the extent of inclusion of prayer clause `(e)' thereto has been, carried out without the leave of this Hon'ble Tribunal and amounts to overreaching the Order dated 25th November 2019 passed by this Hon'ble Tribunal;*

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- c. *That this Hon'ble Tribunal be pleased to order and direct Respondent No. 1 herein/ the Original Petitioner to forthwith rectify the cause title of the Company Petition to reflect the Applicant as a Proforma Respondent in the array of Parties at Page 6A39 of the Company Petition as amended;*
- d. *That Respondent No. 1/the Original Petitioner be directed to delete/strike off prayer clause '(e)' wrongfully incorporated in the amended Company Petition;*
- e. *Without prejudice to prayers (b) and (d) above, Respondent No. 1 herein/ the Original Petitioner be directed to delete the Applicant from the parties against whom prayer (e) of the amended Company Petition No. 3638 of 2018 is sought;*
- f. *pending the hearing and final disposal of the present Company Application, the proceedings in the above Company Petition No, 3638 of 2018 be stayed;*
- g. *pending the hearing and final disposal of the present Company Application, this Hon'ble Tribunal be pleased to disregard prayer (e) of paragraph 22 of Company Petition No. 3638 of 2018.*
- h. *Without prejudice to prayer (g) above, pending the hearing and final disposal of the present Company Application, this Hon'ble Tribunal be pleased to direct that prayer (e) of paragraph 22 of Company Petition No. 3638 of 2018 is of no consequence and effect qua the Applicant;*
- i. *for ad-interim and interim reliefs in tetras of prayers clauses (f) to (h) above;*
- j. *for costs of the Application; and*
- k. *for such other orders and reliefs as this Hon'ble Tribunal may deem fit and proper in the nature and circumstances of the present case.*

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9. The Applicants in the present Application are the erstwhile statutory auditors and ex-directors/ex-KMPs of several group companies within the Infrastructure Leasing & Financial Services Limited ("IL&FS") Group including IL&FS Financial Services Limited ("IFIN") and were arrayed as respondents in the Company Petition No. 3638 of 2018 vide order dated July 18, 2019, of this Tribunal. It is stated that the applicants are also arrayed as accused in the investigation report submitted by SFIO.
10. The Respondent No. 1 is the Union of India. The Respondent No. 1 is the Petitioner in Company Petition No. 3638 of 2018.
11. Since the issues raised in the captioned Applications are similar/identical, therefore, these applications are taken together for the purpose of its adjudication by this common order. The Application filed by Deloitte Haskins and Sells LLP ("Deloitte") is taken as the lead matter.
12. By the captioned Application, the Applicant prays inter alia for a declaration that the inclusion of prayer clause (e) in the amended Company Petition No. 3638 of 2018 amounts to over-reaching of the order dated 25th November 2019 passed by this Tribunal in Miscellaneous Application No. 2696 of 2019 (MA 2696). This Tribunal had passed the following Order allowing the amendment in the company petition :
- “MA 2696/2019 filed by the Union of India, represented by MCA through the Regional Director (Western Region), seeking to amend certain prayers in CO 3638/2018 and further to allow amendment of the cause title of the said CP and further permit the applicant/petitioner to further supplement / enlarge / amend / modify the scope of the reliefs sought and prayers made in the amended petition and lastly permit the applicant / petitioner to*

seek detailed main reliefs by filing further application, at the appropriate stage, on the basis of findings of the final investigation report or on the basis of any other material brought to the notice of the applicant / petitioner by the SFIO and for any other other reliefs, is allowed.”

13. The Respondents had made following prayers in MA 2696/2019 :

A. *“Allow the interim amendment of the petition in the original Company Petition No. 3638/2018, for reading the contents of the following applications and SFIO Interim Reports, as part and parcel of the main petition in Company Petition No. 3638/2018 :-*

1 Interim Report dated 30/11/2018 submitted by the SFIO.

2. Application filed by the Applicant-Petitioner vide Diary No. 3711/2018 on 03/12/2018 for impleadment of additional Respondents namely Mr. Hari Sankaran, Mr. Arun K. Saha, Mr. Ravi Ramaswami Parthasarthy, Mr. Vibhav Kapoor, Mr. K. Ramachandra, Mr. R. C. Bawa, Mr. Pradeep Puri, Mr. S. Rengarajan and Mr. Mukund Sapre, on the basis of the JSI Interim Report submitted by SFIO.

3. Application filed by the Applicant-Petitioner vide Diary No. 30457/2018, seeking reliefs under Sections 242(4), 246 r.w. 339 of the Companies Act, 2013 against the additional respondents namely Mr. Hari Sankaran, Mr. Arun K. Saha, Mr. Ravi Ramaswami Parthasarthy, Mr. Vibhav Kapoor, Mr. K. Ramachandra, Mr. R. C. Bawa, Mr. Pradeep Puri, Mr. S. Rengarajan and Mr. Mukund Sapre, on the basis of the JSI Interim Report submitted by SFIO.

4. MA No. 1576/2019 filed by the Applicant-Petitioner for impleadment of Mrs. Asha Kiran Bawa and Ms. Akanksha Bawa,

wife and daughter of Mr. Ramesh C. Bawa (Respondent No. 315), respectively, as Respondent Nos. 319 and 320, in the main Company Petition No. 3638/2018.

5. MA No. 1577/2019 filed by the Applicant-Petitioner seeking extension of orders dated 03/12/2018 (as modified by this Hon'ble Tribunal's order dated 16/01/2019) to Respondent Nos. 319 and 320 restraining them from alienating their moveable and immovable properties.

6. 2nd Interim Report of IL&FS & its subsidiaries dated 28/05/2019 titled "Investigation Report of IL&FS Financial Services Ltd. " submitted to the Applicant-Petitioner by SFIO.

7. MA No. 2071/2019 filed by Applicant-Petitioner for impleadment of Additional Respondents Nos. 321 to 343, on the basis of the 2nd Interim Report submitted by SFIO.

8. MA No. 2071/2019 filed by Applicant-Petitioner for extension of orders dated 03/12/2018 (as modified by orders dated 16/01/2019) passed by this Hon'ble Tribunal, to the additional respondents Nos. 321 to 343 (except proforma respondents 338 to 341)

B. Allow the amendment of the cause title of the Company Petition No. 3638/2018, to include Section 246 r/w Section 339, besides the already invoked Section 241 and 242, of the Companies Act, 2013.

C. Permit the Applicant-Petitioner to further supplement / enlarge / amend / modify the scope of the reliefs sought and prayers made in the amended petition in Company Petition No. 3638/2018, by filing any other documents or applications in view of the extraordinary nature of circumstances.

D. Permit the Applicant-Petitioner to seek detailed main reliefs by filing further application, at the appropriate stage, on the basis

of findings of the final investigation report or any other material brought to the notice of the Applicant-Petitioner by the SFIO.

E. *Pass any other order / directions that this Hon'ble Tribunal deems fit and proper, in the circumstances as detailed in the instant Application."*

14. Consequent to this, the amended Company Petition 3638/2018 was filed on 21.2.2024 after inserting the following relief amongst others.

A.

B.

C.

D.

E. *Declare that the Respondents named in the Investigation Report dated May 28, 2019 namely Respondent Nos. 2, 3, 9, 313, 314, 315, 321 to 335, 340 and 341 were knowingly parties to the fraudulent conduct of business of IL&FS Financial Services Limited and/or parties to the conduct of business of IL&FS Financial Services Limited with a view to defraud the creditors of IL&FS Financial Services Limited or any other person and in terms of Section 339 of the Companies Act, 2013 direct the said Respondents to pay such amounts as may be determined by this Hon 'ble Tribunal to the creditors and others of IL&FS Financial Services Limited plus interest thereon at such rate as this Tribunal may direct.*

"

15. Essentially, pursuant to the leave granted by this Tribunal on February 20, 2024, Respondent No. 1 herein carried out the amendments that had been previously permitted by this Tribunal including but not limited to by way of MA 2696.

Applicant's Submissions

16. The Applicants challenge the amendment carried out by Respondent No. 1 to CP 3638 to the limited extent that prayer (e) which was amended into CP No. 3638 was allegedly not contemplated. The Applicants' case essentially is that this Respondent had sought leave to amend CP No. 3638 and bring in detailed main reliefs by filing a further application in terms of prayer (d) to MA No. 2696, since no further application was filed, the Respondent could not have amended in prayer (e).
17. It is the case of the Applicants that both prayer (C) and (D) in the Amendment Application contemplate filing of a further application in respect of any further amendments to be made. It is further stated that neither the Company Petition nor the Amendment Application by which the Company Petition was sought to be amended contained any final reliefs against the Applicant herein. In view of the aforesaid, the Applicant in its Additional Affidavit in Reply dated 10th June, 2023 filed in the Attachment Application inter alia expressly stated that by the Order dated 25th November 2019 the Amendment Application came to be allowed, however, Respondent No. 1/the Original Petitioner has not amended the final reliefs sought in the Company Petition and no final reliefs have been sought against the Applicant even in the amended Company Petition. The Applicant therefore submitted that since no final reliefs were claimed against it in the Company Petition and/or the Attachment Application the question of granting any interim reliefs did not arise as it is a settled position of law that interim reliefs can only be granted in aid of final reliefs.
18. Vide Affidavit in Rejoinder on 8th January 2024 in response to Applicant's Additional Affidavit dated 10.06.2023, Respondent No. 1/the Original Petitioner admitted that no final reliefs have been sought against

the Applicant and further stated as to why final relief were not sought against the Applicant stating that –

“c. Thirdly, while it is an admitted position that the present proceedings are pursuant to/under Section 339 of the Act, the Petitioner has in the captioned Application disclosed that it is presently seeking interim reliefs on the basis of the !FIN Investigation Report since the investigation by the SFIO into the affairs of/L&FS and its subsidiaries are pending. This is crucial since Respondent No. 326 was an auditor not just for !FIN but other subsidiaries of IL&FS as well. In this regard, it is submitted that while the investigation by the SFIO into !FIN is complete, the investigation into the affairs of IL&FS and its other subsidiaries are continuing. Seeking final reliefs qua IFIN at this stage may prejudice the right to recompense of the victims of the fraud in other subsidiaries in the IL&FS Group having the same directors and KMP's as /FIN and/or where Respondent No. 326 was an auditor. It is thus that the Petitioner had only sought interim reliefs the basis of the SFIO IFIN Report. Given that the investigation into the affairs of IL&FS and its subsidiaries are at an advanced stage, the Petitioner will be seeking reliefs in terms of Section 339 of the Act against such individuals and entities that are found to have participated in the fraudulent conduct of business of the each subsidiary in the IL&FS Group including IL&FS.

d. Being aware of with certainty that final reliefs in terms of Section 339 of the Act will be sought against Respondent No. 326, it is inapposite to contend that the reliefs in the captioned Application cannot be granted. " (Emphasis supplied)

19. The Applicant submits that insertion of prayer clause '(e)' is in defiance of the Order dated 25th November 2019 and amounts to overreaching the order of this Tribunal. This is evident from the following:

- (a) The reliefs sought in the Amendment Application do not contain prayer clause '(e)' and/ or any relief similar to prayer clause '(e)'. The following comparison chart of the reliefs claimed in the Amendment Application and the reliefs incorporated in the amended Company Petition demonstrates the same:

Reliefs sought in Amendment Application No. 2696 of 2019 [Diary No. 5844 of 2019]	Corresponding Amendment made in the Amended Company Petition No. 3638 of 2018
<p>A. Allow the interim amendment off the Petition in the original Company Petition No. 3638/2018, for reading the contents of the following applications and SFIO Interim Reports, as part and parcel of the main petition in Company Petition No. 3638/2018:</p> <ol style="list-style-type: none"> 1. 1st Interim Report dated 30/11/2018 submitted by the SFIO. 2. Application filed by the Applicant-Petitioner vide Diary No. 3711/2018 on 03/12/2018 for Impleadment of additional Respondents namely Mr. Hari Sankaran, Mr. Arun K. Saha, Mr. Ravi Parthasarathy, Mr. Vibhav Kapoor, Mr. K. Ramachandra, Mr. R.C. Bawa, Mr. Pradeep Puri, Mr. S. Rengarajan and Mr. Mukund Sapre, on the basis of the 1st Interim Report submitted by SFIO. 3. Application filed by the Applicant-Petitioner vide Diary No. 30457 /2018, seeking reliefs under Sections 242(4), 246 r.w. 339 of the Companies Act, 2013 against the additional Respondents namely Mr. Hari Sankaran, Mr. Arun K. Saha, Mr. Ravi Parthasarathy, Mr. Vibhav Kapoor, Mr. K. Ramachandra, Mr. R.C. Bawa, Mr. Pradeep Puri, Mr. S. Rengarajan and 	<p>21A. The Petitioner submits that the contents of the following applications and SFIO Reports/ Interim Reports be considered as part and parcel of the present Petition as if it were set out herein in extenso:</p> <ol style="list-style-type: none"> 1. Interim Report dated November 30,2018 (Interim Report) submitted by the Serious Fraud Investigation Office (SFIO) 2. Application files by the Applicant-Petitioner vide Diary No. 3711/2018 on December 3, 2018 for impleadment of additional Respondents namely Mr. Hari Sankaran, Mr. Arun K. Saha, Mr. Ravi Ramaswami Parthasarthy, Mr. Vibhav Kapoor, Mr. K. Ramachandra, Mr. R.C. Bawa, Mr. Pradeep Puri, Mr. S. Rengarajan and Mr. Mukund Sapre, on the basis of the 1st Interim Report submitted by SFIO. 3. Application filed by the Applicant-Petitioner vide Diary No. 30457/2018 seeking reliefs under Sections 242(4), 246 r/w 339 of the Companies Act, 2013 against the additional respondents namely Mr. Hari Sankaran, Mr. Arun K. Saha, Mr. Ravi Ramaswami Parthasarthy, Mr. Vibhav Kapoor, Mr. K. Ramachandra, Mr. R.C. Bawa, Mr. Pradeep Puri, Mr. S. Rengarajan and Mr.

<p>Mr. Mukund Sapre, on the basis of the 1st Interim Report submitted by SFIO.</p> <p>4. MA No. 1576/2019 filed by the Applicant-Petitioner for Impleadment of Mrs. Asha Kiran Bawa and Ms. Akanksha Bawa, wife and daughter of Mr. Ramesh C. Bawa (Respondent No. 315), respectively, as Respondent Nos. 319 and 320, in the main Company Petition No.3638/2018.</p> <p>5. MA No. 1577 /2019 filed by the Applicant-Petitioner seeking extension of orders dated 03/12/2018 (as modified by this Hon'ble Tribunal's order dated 16/01/2019) to Respondent Nos. 319 and 320 restraining them from alienating their movable and immovable properties.</p> <p>6. 2nd Interim Report of IL&FS & its subsidiaries dated 28/05/2019 titled "Investigation Report of IL&FS Financial Services Ltd." submitted to the Applicant- Petitioner by SFIO.</p> <p>7. M.A. No. 2071 / 2019 filed by Applicant-Petitioner for Impleadment of Additional Respondents Nos. 321 to 343, on the basis of the 2nd Interim Report submitted by SFIO.</p> <p>8. MA No. 2071/2019 filed by Applicant-Petitioner for extension of orders dated 03/12/2018 (as modified by orders dated 16/01/2019) passed by this Hon'ble Tribunal, to the additional respondents Nos. 321 to 343 (except proforma respondents 338 to 341.)</p>	<p>Mukund Sapre, on the basis of the 1st Interim Report submitted by SFIO.</p> <p>4. MA No. 1576/2019 filed by the Applicant-Petitioner for impleadment of Mrs. Asha Kiran Bawa and Ms. Akanksha Bawa, wife and daughter of Mr. Ramesh C Bawa (Respondent No. 315), respectively, as Respondent Nos. 319 and 320, in the main Company Petition No. 3638/2018</p> <p>5. MA No. 1577/2019 filed by the Applicant-Petitioner seeking extension of orders dated December 3, 2018 (as modified by this Hon'ble Tribunal's order dated January 16, 2019) to Respondent Nos. 319 and 320 restraining them from alienating their movable and immovable properties.</p> <p>6. Investigation Report of the SFIO dated May 28, 2019 (IFIN Report) submitted by the SFIO</p> <p>7. MA No. 2071/2019 filed by Applicant-Petitioner for impleadment of Additional Respondents Nos. 321 to 343, on the basis of the IFIN Report submitted by SFIO.</p> <p>8. MA No. 2070/2019 filed by Applicant-Petitioner for extension of orders dated December 3, 2018 (as modified by orders dated January 16, 2019) passed by this Hon'ble Tribunal, to the additional respondents Nos. 321 to 343 (except proforma respondents 338 to 341)</p> <p>A copy of the aforesaid documents are hereto annexed and marked as Annexure P8 Colly.</p>
<p>B. Allow the amendment of the cause title of the Company Petition No. 3638/2018, to include Sections 246 r.w. Section 339, besides the already invoked Section 241 and 242, of the Companies Act, 2013.</p>	<p>Cause title duly amended at Pgs. 6A1 to 6A40 to incorporate Respondent Nos. 12 to 341.</p>
<p>C. Permit the Applicant-Petitioner to further supplement / enlarge/ amend / modify the scope of the reliefs sought and prayers</p>	<p>(f) Permit the Petitioner to further supplement / enlarge/ amend / modify the scope of the reliefs sought and prayers made in the</p>

made in the amended petition in Company Petition No. 3638/2018, by filing any other documents or applications in view of the extraordinary nature of the circumstances.	amended Company Petition No. 3638/2018, by filing any other documents or applications in view of the extraordinary nature of the circumstances and/or on the basis of findings of the final investigation report in respect of Respondent No. 1 and its subsidiary companies or any other material brought to the notice of the Petitioner, by the SFIO.
D. Permit the Applicant-Petitioner to seek detailed main reliefs by filing further application, at the appropriate stage, on the basis of findings of the final investigation report or any other material brought to the notice of the Applicant – Petitioner by the SFIO.	(e) Declare that the Respondents named in the Investigation Report dated May 28, 2019 namely Respondent Nos. 2, 3, 9, 313, 314, 315, 321 to 335, 340 and 341 were knowingly parties to the fraudulent conduct of business of IL&FS Financial Services Limited and/or parties to the conduct of business of IL&FS Financial Services Limited with a view to defraud the creditors of IL&FS Financial Services Limited or any other person and in terms of Section 339 of the Companies Act, 2013 direct the said Respondents to pay such amounts as may be determined by this Hon'ble Tribunal to the creditors and others of IL&S Financial Services Limited plus interest thereon at such rate as this Tribunal may direct.
E. Pass any other order/ directions that this Hon'ble Tribunal deems fit and proper, in the circumstances as detailed in the instant Application.	-

(b) The Order dated 25th November 2019 allowing the Amendment Application permitted Respondent No. I/the Original Petitioner to seek detailed main reliefs by filing further application, at the appropriate stage, on the basis of the findings of the final investigation report or on the basis of any other material brought to the notice of Respondent No. I/the Original Petitioner by the SFIO. Admittedly, no such application has been filed by Respondent No. I/the Original Petitioner.

(c) As per Respondent No. 1, the Original Petitioner's own case in the Affidavit in Rejoinder dated 8th January 2024 no final reliefs have been claimed against the Applicant. Had the relief

now sought to be included by way of prayer clause (e), which is in the nature of final relief, been sought in the Amendment Application and allowed by the Order dated 25th November 2019 and consequently been incorporated in the amended Company Petition, there was no reason for Respondent No. 1 the Original Petitioner to state that no final reliefs have been claimed against the Applicant.

20. It is further submitted by the Applicant that, in terms of Rule 55 of the National Company Law Tribunal, Rules, 2016 ("NCLT Rules"), no pleadings, subsequent to the reply, shall be presented except by the leave of the Tribunal upon such terms as the Tribunal thinks fit. Respondent No. 1 the Original Petitioner did not, at any stage including in the Amendment Application or at any time thereafter including at the hearing before this Tribunal on 20th February 2024 or 21st February 2024, file any application to seek the leave of this Tribunal to seek any relief in terms of prayer clause '(e)', which is surreptitiously included in the amended Company Petition. As such no leave has been sought nor granted by this Tribunal to amend the Company Petition to include prayer clause '(e)' therein. Thus, the amendment to the extent of inclusion of prayer clause '(e)' has been carried out without the leave of this Tribunal, which is contrary to Rule 55 of the NCL T Rules. As such the amendment to the extent of inclusion of prayer clause '(e)' ought not to be permitted and the Respondent No. 1 the Original Petitioner be cautioned against making such overreaching amendments without the permission/order of the Tribunal.

21. It is this Respondent's submission that prayer (e) that was amended into CP 3638 was contemplated under prayer (c) to MA 2696, whereas, prayer (d) contemplated amendment to CP 3638 based upon investigation reports of the SFIO for other companies in the scope of the investigation and to finally set out the total fraud across the IL&FS Group (once all

investigation reports are submitted and approved) and the consequent apportionment of liability to the participants involved. The short issue for consideration, therefore, is the scope and purport of MA 2696 which was allowed by way of the order dated November 25, 2019.

22. Ld. Sr. Advocate appearing in CA 57/2024 submitted that Section 424(1) of the Act provides that this Hon'ble Tribunal shall not, while disposing off any proceeding before it, be bound by the procedure laid down in the Code of Civil Procedure, 1908 ("CPC") but shall be guided by the principles of natural justice, and be subject to the National Company Law Tribunal Rules, 2016 ("NCLT Rules").

23. The relevant rules in the NCLT Rules in relation to amendment have been extracted hereinbelow [Pr. 16, Pg. 8-9, Objection Application]:

"17. Functions of the Registrar.—(1) The Registrar shall have the following functions, namely—

(b) receive applications for amendment of appeal or the petition or application or subsequent proceedings.

155. General power to amend.—The Tribunal may, within a period of thirty days from the date of completion of pleadings, and on such terms as to costs or otherwise, as it may think fit, amend any defect or error in any proceeding before it; and all necessary amendments shall be made for the purpose of determining the real question or issue raised by or depending on such proceeding."

(emphasis supplied)

24. It is evident that the NCLT Rules require that the Registrar receive an amendment application and this Hon'ble Tribunal has the power to decide on such an application. However, the NCLT Rules do not expressly provide the manner in which an amendment ought to be carried out.

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25. Given that there is no specific provision on the manner of amendment in the NCLT Rules, this Hon'ble Tribunal will be guided by the principles of natural justice and the procedure envisaged by CPC. Reference to the principles analogous to CPC, in the absence of specific provisions under the NCLT Rules, would ensure proper and effective adjudication and prevent the abuse of process by parties.
26. The words in Section 424(1) of the Act creating a bar on the application of the procedure laid down in the CPC are to be interpreted as words of amplitude, and not of restriction. These words cannot be said to prohibit this Hon'ble Tribunal from drawing sustenance from the fundamental principles underlying the CPC, more so in the absence of specific provisions under the NCLT Rules [Maharashtra State Electricity Board v. Datar Switchgear Ltd., 2002 SCC OnLine Bom 983, Pr. 41].
27. In light of the above, it is pertinent to note the provisions on amendment under the CPC

“Order VI

17. Amendment of pleadings.—*The Court may at any stage of the proceedings allow either party to alter or amend his pleading in such manner and on such terms as may be just, and all such amendments shall be made as may be necessary for the purpose of determining the real questions in controversy between the parties:*

Provided that no application for amendment shall be allowed after the trial has commenced, unless the Court comes to the conclusion that in spite of due diligence, the party could not have raised the matter before the commencement of trial.

18. Failure to amend after order.—*If a party who has obtained an order for leave to amend does not amend accordingly within the time limited for that purpose by the order, or if no time is thereby limited then within fourteen days from the date of the*

order, he shall not be permitted to amend after the expiration of such limited time as aforesaid or of such fourteen days, as the case may be, unless the time is extended by the Court.”

(emphasis supplied)

28. From the above, it is clear that a party, upon getting an order permitting amendment, ought to file the amended petition “accordingly” and within a limited time period. The word “accordingly” implies that the amendment ought to be made in line with the amendment application and the order allowing such amendment. The fact that a time period for amendment is stipulated in the CPC indicates that the amendment ought to be carried out in a timely manner, once the amendment order is passed. The Petitioner followed the process under the NCLT Rules by filing the amendment application. As is evident from a comparison set out in the table above, the Petitioner did not seek permission to add any prayer similar to prayer (E) added in the amended Main Petition.
29. Ld. Sr. Advocate(s) has also took us through decision in case of **National Insurance Co. Ltd. vs. Life Insurance Corporation of India (1964) 2 SCR 182** on principles of interpretation as well as decision in case of **Cotton Corporation of India Limited vs. United Industrial Bank Limited and others (1983) 4 SCC 625** on grant of temporary relief in case final relief can not be granted.
30. Ld. Counsel in CA 119/2024 has relied upon the decision in **Major General B M Bhattacharjee (retd.) & Anr. Vs. Russell Estate Corporate and Another (1993) 2 SCC 533, S K Samsudin vs. Ravikant & Anr. (1997) Cri. LJ 1603, Gopal Raheja & Anr, vs. Vijay Raheja and Ors. (Order dt. 15th November, 2006 passed by the Hon’ble Bombay High Court in NM No. 1327 of 2006 in Appeal No. 334 of 2005)** contending that orders can not be assigned convenient

interpretation; and decision in case of **Jayanta Halder vs. K. Durga Prasad & Ors. (Order passed by the Hon'ble Calcutta High Court in W.P. C.R.C. 269 (W) of 2016 on 26th August, 2016) and Re: Sanjiv Dutta, Deputy Secretary, Ministry of Information & Broadcasting, New Delhi & Ors. (1995 Cr. L.J. 2190)** on defiance of the orders in force and consequence which may follow therefrom. The Ld. Counsel has also argued that decision in case of **Bhagwati Prasad vs. Chandramaul AIR 1966 SC 735**, sought to be relied by the Union to buttress its case, was considered in case of **Bachhaj Nahar vs. Nilima Mandal & Anr. 2008 17 SCC 491** wherein it was held that *“The principles laid down in Bhagwati Prasad, and Ram Sarup Gupta referred to above and several other decisions of this Court following the same cannot be construed to make out a new case which is not pleaded. Another aspect to be noticed is that the court can consider such a case not specifically pleaded, only when one of the parties raises the same at the stage of arguments by contending that the pleadings and issues are sufficient to make out a particular case and that the parties proceeded on that basis and had led evidence on that case. Where neither party puts forth such a contention, the court cannot obviously make out such a case not pleaded, suo moto”*. It is further stated in the said decision at Para 13 that *“Where there is no prayer for a particular relief and no pleadings to support such a relief, and when the defendant has no opportunity to resist or oppose such a relief, if the court considers and grants such a relief, it will lead to miscarriage of justice. Thus it is said that no amount of evidence, on a plea that is not put forward in the pleadings, can be looked into to grant any relief”*.

31. The counsel(s) in other applications adopted the arguments advanced by the Ld. Counsel in CA 60/2024 and CA 57/2024.

Respondent No. 1/Union of India's submissions

32. It is the Respondent's submission that prayer clause (e) included in the amended C.P. 3638 of 2018 was contemplated and is within the terms of prayer clause (C) of M.A. 2696 of 2019 granted by this Tribunal vide order dated 25th November 2019. It is submitted that to appreciate the purport and scope of MA 2696 and the amendment carried out by this Respondent, the necessary facts and circumstances are as follows:

- a. On 30th September, 2018, The Department of Economic Affairs, Ministry of Finance issued an Office Memorandum (OM) in respect of Infrastructure Leasing & Financial Services Limited (IL&FS) to the Ministry of Corporate Affairs, Union of India (MCA) requesting the MCA to take action under the Companies Act, 2013 (Act) after taking note of series of defaults by the IL&FS Group and the way the IL&FS Group were headed threatening collapse of the money markets in India.
- b. On 30th September, 2018, in parallel, the MCA directed the Serious Fraud Investigation Office to investigate into the affairs of 'IL&FS and its subsidiaries'. At this time, it is submitted that IL&FS has 69 domestic subsidiaries, associates, joint ventures etc and 133 offshore subsidiaries. The scope of investigation that was ordered therefore has to be construed accordingly. The scope of investigation therefore includes an investigation into various entities in the IL&FS Group.
- c. On 1st October, 2018, the MCA filed a Company Petition under Section 241(2) of the Act being Company Petition No. 3638 of 2018 (CP 3638) against IL&FS and its then existing Board of Directors before the NCLT seeking, inter alia, as a first step the removal of the then existing Board of Directors of IL&FS and the appointment of a new board of Directors in place and stead

thereof. The Petition sought liberty to expand the scope of reliefs. The Hon'ble Tribunal, passed an interim order superseding the then existing board of directors of IL&FS with a new Board of Directors (New Board). The New Board of Directors were directed by the Tribunal's order to take charge of the affairs of IL&FS and report a roadmap for recovery of the IL&FS Group to the Hon'ble Tribunal no later than October 31, 2018. Pursuant to this order, the orders of the Hon'ble NCLAT, the New Board of IL&FS are conducting a resolution process for resolving the entities in the IL&FS Group which have an aggregate fund based debt burden in excess of INR 94,000 Crores (approx).

- d. On 15th October, 2018, this Tribunal NCLAT by an order granted an interim stay on coercive and other actions by creditors against IL&FS and its subsidiaries. On 30th October, 2018, this Tribunal by an order directed the Petitioner/MCA to implead the group companies of the IL&FS Group to the captioned Company Petition. These aggregated to more than 300 companies. The impleadment of the group companies of the IL&FS Group effectively constituted the 1st set of amendments to the CP 3638. Further to the Officer Order dated September 30, 2018 directing investigation to be initiated by the SFIO and upon an e-mail dated November 1, 2018, the SFIO submitted an interim report in respect of IL&FS and one Employees Welfare Trust pertaining to the IL&FS Group (Interim Report). The Interim Report broadly highlights the modus of fraud that was perpetrated across the IL&FS Group. It specifically also highlighted broadly the modus of fraud in IFIN, amongst other entities in the IL&FS Group. The Interim Report named the individuals who were in charge of the IL&FS Group entity/vertical and group wise.

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- e. On 3rd December, 2018, on the basis of the Interim Report, the MCA filed Miscellaneous Applications in CP 3638 of 2018 before this Tribunal against the individuals named in the Interim Report seeking to implead them in CP 3638 and an order to attach their movable/immovable properties. By an Order (as extended and modified from time to time), the Tribunal passed an order impleading the individuals named and essentially froze their assets and properties. By the same Order, the Tribunal was also pleased to make absolute the impleadment of the group companies of IL&FS. One of the ex-directors challenged this order in Appeal before the Hon'ble NCLAT, however, the Hon'ble NCLAT was pleased to only permit a monthly sustenance allowance.
- f. On 20th December, 2018, on the basis of the Interim Report and a Prima Facie Opinion of the Institute of Chartered Accountants dated December 4, 2018, the MCA filed a Petition under Section 130 of the Companies Act, 2018 before this Tribunal praying inter alia that the books of accounts of IL&FS, IFIN and IL&FS Transportation Networks Limited (ITNL) be re-opened and recast (S130 Petition). On 1st January 2019, by an order in the S130 Petition, the NCLT was pleased to direct that the accounts of IL&FS, IFIN and ITNL for the past 5 financial years be re-opened and recast on the ground that the affairs of IL&FS, IFIN and ITNL had been mismanaged casting a doubt on the reliability of the financial statements/accounts. This order dated January 1, 2019 was challenged by one of the ex-directors of IFIN before the NCLAT which dismissed the Appeal by an order dated January 31, 2019; the order dated January 31, 2019 passed by the NCLAT was appealed before the Hon'ble Supreme Court by the same ex- director. The Hon'ble Supreme Court by an order dated

June 4, 2019 dismissed the Civil Appeal filed by the said ex-director.

- g. On 22nd March, 2019, pursuant to an inspection conducted by the Reserve Bank of India of IL&FS and IFIN, an inspection report was submitted which highlighted various corporate governance and audit issues. On 28th May, 2019, pursuant to the Office Order dated September 30, 2018, the SFIO submitted the Investigation Report of IL&FS Financial Services Limited (IFIN Investigation Report). The SFIO Report, an Investigation Report under Section 212(12) of the Companies Act, 2013, sets forth that the SFIO Report is in respect of one of the companies under investigation namely IFIN and that cross linkages of issues with other group companies which are unearthed during the investigation of other group companies / entities would be dealt with in subsequent reports. The IFIN Investigation Report is thus essentially in respect of IFIN and sets out findings of the SFIO with respect to the fraudulent practices of the erstwhile management of IFIN and its ex-auditors/chartered accountants. It essentially records that there was abusive lending practises to defaulting (i) borrowers outside the IL&FS Group (in return for perquisites); and (ii) group companies in order to boost the financial position of IFIN and thereby maximise their profits. The erstwhile management are charged inter alia under Section 447 and 448 of the Act.
- h. On 30th May, 2019, on the basis of the IFIN Investigation Report and the direction of the MCA dated May 29, 2019 issued under Section 212(14) of the Companies Act, 2013, the SFIO filed a Criminal Complaint before the Sessions Court (Special Judge Companies Act), Mumbai against, amongst others, the auditors/ex-auditors of IFIN being Complaint CC No. 20/2019.

In November, 2023, the Hon'ble Special Court has taken cognizance.

- i. On 8th June, 2019, on the basis of the IFIN Investigation Report, MCA filed two applications seeking: (i) impleadment of the individuals/entities charged under Sections 447 of the Companies Act, 2013 and Section 417, 420 and 120-B of the IPC namely MA No. 2071 of 2019; and (ii) extension of the order dated December 3, 2018 to the said individuals/entities. MA 2071 of 2019 for impleadment was contested by the ex-directors, auditors and KMPs but was eventually allowed by the Hon'ble NCLT order dated July 18, 2019; aggrieved by the Impleadment, the auditors, ex- directors and KMPs appealed to the Hon'ble NCLAT which by an order dated March 4, 2020 upheld the order for impleadment passed by the NCLT vide order dated July 18, 2019; and the Hon'ble Supreme Court in Civil Appeals dismissed the challenge to the order dated March 4, 2020 filed by various parties, except the challenge by Ms. Neera Saggi and Ms. Renu Challu, (independent directors of IFIN) which has been remanded by to the Hon'ble NCLT.
- j. On 10th June, 2019, MCA filed a Petition under Section 140 (5) of the Companies Act, 2013 inter alia against the auditors of IFIN namely BSR & Associates LLP (BSR) and the engagement partner(s) as well as their team (S140(5) Petition) and Deloitte Haskins and Sells (Deloitte) and the engagement partners(s) as well as their team. The maintainability of this petition was challenged by Deloitte and BSR by filing applications before the NCLT which was dismissed by an order dated August 9, 2019; Deloitte and its engagement partners filed appeals before the Hon'ble NCLAT whereas BSR and its engagement partner filed a Writ Petition before the Hon'ble Bombay High Court which

included a challenge to vires of Section 140(5) of the Act and the direction to prosecute issued under Section 212(14) of the Act alongwith the consequential proceeding i.e. the SFIO Complaint. The proceedings in the Petition under Section 140(5) of the Act were initially stayed in September 2019. Thereafter, Deloitte joined in on the challenge (save and except for the challenge to the order dated August 9, 2019. While the Hon'ble Bombay High Court was pleased to inter alia set aside inter alia the Petition under Section 140(5) of the Act, the Hon'ble Supreme Court has set aside the said order of the Hon'ble High Court vide order dated May 3, 2023. The order dated May 3, 2023 is presently the subject matter of a review petition.

- k. On 18th July, 2019, this Tribunal, by an order was pleased to allow MA 2071 and impleaded the ex- directors/KMPs, ex-auditors and chartered accountants of IFIN. This order was challenged by the ex-directors/KMPs, ex- auditors and chartered accountants of IFIN before the Hon'ble NCLAT.
 - l. On 23rd July, 2019, the Hon'ble Appellate Tribunal, on an application by Deloitte and others stayed the operation of the order dated July 18, 2019 passed by the Hon'ble NCLT for a period of 10 days which was further extended vide an order dated July 29, 2019 by an order passed by the Hon'ble NCLAT.
33. It is further submitted that prayer clause ©, which was allowed to be inserted, reads as follows :

”Permit the Applicant-Petitioner to further supplement / enlarge / amend / modify the scope of the reliefs sought and prayers made in the amended petition in Company Petition No. 3638/2018, by filing any other documents or applications in view of the extraordinary nature of circumstances.”

34. The Union of India essentially sought to expand the scope of the Company Petition by inserting Section 339 in the cause title of the petition. Section 339 of the Companies Act, 2013 provides for a declaration of fraudulent conduct of business against individuals / entities and also affixation of liability. By prayer (b), the documents and applications such as IFIN Investigation Report, and its applications for interim reliefs pursuant to under section 246 and 339 of the Act were allowed to be read in context of section 339 of the Act. Thus, prayer (C), consequent to enlarging the scope and reading in the documents and averments therein pertaining to section 246 and 339 of the Act, sought leave to amend the scope of reliefs accordingly.

35. The scope of investigation ordered was into the affairs of IL&FS and its subsidiaries. IL&FS has a vast number of subsidiaries whose investigation was underway but the investigation in respect of one subsidiary was complete which had set forth serious findings of fraud. Since the investigation into the other subsidiaries was underway, there was an urgent need to safeguard larger public interest and the creditors rights to recompense. Till date while this Respondent had sought and had been granted interim reliefs in terms of Section 246 and 339 of the Act to prevent the frittering away of assets, however, the main CP i.e. CP 3638 had not been amended and remained as a Petition only under Section 241(2) of the Act. IL&FS and its subsidiaries was an intricate web with common directors, personnel, auditors etc across various subsidiaries. Thus, while the fraud in relation to IFIN had been established, the quantum of the liability in light of the resolution process, the role and liability of the common directors, personnel, etc across other subsidiaries, and the consequent liability there was yet to be established. There were diverse proceedings across multiple forums in relation to or

in certain cases arising from the investigation into IFIN and IL&FS which required to be consolidated.

36. Prayer (e) notably does not seek to apportion liability nor does it seek to affix the total quantum of fraud less recovery, it simply seeks a declaration of fraud in line with the first part/step of Section 339 of the Act. Prayer (e) thus is a first step / part of Section 339 of the Act with detailed main reliefs which will follow on filing of a subsequent application. It is thus evident that prayer clause (e) follows the terms of MA 2696 of 2019, in other words, there is no overreach of the order dated 25th November 2019 and the amendment carried out to CP 3638 of 2018 is in line with the Respondent No. 1's Application and this Tribunal's permission.
37. The Applicant has submitted that in seeking final reliefs against them, after the SFIO IFIN Report, Respondent No. 1 was to file a further application, at the appropriate stage, on the basis of the findings of the final investigation report or on the basis of any other material brought to the notice of the Respondent No. 1 herein. The Applicant has argued that no such application has been filed by Respondent No.1 herein for seeking detailed main reliefs and placed reliance on prayer clause (D) of MA 2696 of 2019. The same is reproduced hereunder:
38. Permit the Applicant-Petitioner to seek detailed main reliefs by filing application, at the appropriate stage, on the basis of the findings of the final investigation report or any other material brought to the notice of the Applicant-Petitioner, by the SFIO.”
39. It is submitted that on a bare perusal of the aforementioned prayer clause (D) of MA 2696, it is evident that the said relief essentially seeks leave to add detailed main reliefs (in terms of Section 339 of the Act) in respect of IL&FS and its subsidiaries as a whole by filing applications, at the appropriate stage, on the basis of the findings of the Final Investigation

Report or any other material brought to the notice of Respondent No. 1 herein by the SFIO.

40. In this regard, it is submitted that the investigation of IL&FS Ltd. would entail an investigation into all subsidiaries (vertically grouped internally depending upon the nature of business) which are under the umbrella of the parent company IL&FS Ltd. IFIN is one subsidiary – its investigation stands complete with the filing of the IFIN Investigation Report, however, the remaining IL&FS Group remains under investigation by the SFIO who shall over the course of the investigation, submit individual investigation reports pertaining to various entities of the IL&FS group. These individual investigation reports would pertain to, as is the case with IFIN, that specific entity.
41. Thus, relief at prayer (D) sought leave to amend and include detailed final reliefs in respect of IL&FS by filing further applications and quantifying the total loss/ overall fraud and the final liability of those involved. This is so since, as set out above, the entities involved in the IL&FS Group had many common directors, auditors, and KMPs and had a complicated structure of group lending and interlinkages, that would have a bearing on the quantification of the final amount to be recovered. In fact, it is for this very reason that the prayer amended in the captioned Petition in terms of prayer (e) does not quantify the total fraud across the IL&FS Group and therefore liability of those complicit in terms of Section 339 of the Act. It merely seeks to include the first step/part of reliefs under Section 339 i.e. a mere declaration.
42. In addition to the above, it is submitted that the Applicant has also sought to contend that this Respondent had admitted that it had not sought final reliefs in its affidavit in rejoinder dated January 8, 2024, therefore amendment by the inclusion of prayer (e) is incorrect. It is submitted that this contention is incorrect since:

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- i. as of the date of the filing of the affidavit-in-rejoinder on January 8, 2024, by the Respondent herein, no final reliefs had been claimed in the captioned Petition, although permission had been sought and granted by this Hon'ble Tribunal vide its order dated November 25, 2019, to amend the reliefs sought in the captioned company petition; and
- ii. Section 339 of the Act contemplates a declaration of fraudulent conduct and thereafter the liability to contribute to the debts of the company. By including the relief at (e), this Respondent, in line with MA 2696 only sought a declaratory relief in terms of Section 339 of the Act arising out of the finding of fraud and the accused arrayed in the IFIN Investigation Report and/or the SFIO Complaint specifically pertaining to one major entity of the IL&FS group, i.e., IFIN – whose investigation report had been submitted.
43. It is Applicant's contention that Respondent No. 1 has never claimed any final reliefs against the Applicant qua the SFIO IFIN Report, therefore, final reliefs cannot be granted, and by including prayer clause (e), Respondent No. 1 has tried to overcome this defence. It is humbly submitted that the prayer clause (e) was not included to defeat the Applicant's argument that since no final relief has been claimed, no interim reliefs can be granted. It is in fact surprising that the Applicant contends so since the Applicant has always been aware of the case against them and cannot seek to make a contradictory argument.
44. In fact, the Applicant in its challenge to the impleadment order dated July 18, 2019, before the Hon'ble NCLAT and Hon'ble Supreme Court has argued and contended that Section 339 cannot be made applicable to

statutory auditors. This makes it amply clear that the Applicants are aware of the final reliefs contemplated against them viz. reliefs pursuant to Section 339 of the Act viz. liability for fraud. The Applicants have acted on this knowledge and made submissions that it is not a necessary and/or proper party as final reliefs under Section 339 cannot be passed against them. So also, the Applicants have been provided with complete copies of the Investigation Report and are also aware of the facts, circumstances, and grounds. It is a settled position of law that even if a plea is not specifically made but is covered by an issue or otherwise and the parties knew about the same at trial then the fact that the plea was not merely taken would not disentitle a party from relying upon it. ***Bhagwati Prasad vs. Chandramaul AIR 1966 SC 735 10.***

45. The decision in Cotton Corporation (supra) simply seeks to set forth that the purpose of granting interim relief in aid of final reliefs is to ensure that the interim relief is in line with the final relief to be granted. In other words, the purpose is to ensure that the interim and final reliefs are not at odds or are of the same nature. A party who is fully aware of the case against it and the scope of reliefs being sought and having acted on such knowledge cannot place reliance on this principle and contend otherwise.

Finding and Decision

46. We have heard the Learned Counsel and perused the material on record.

47. It is the case of the Union that insertion of final relief under prayer clause '(e)' in the Amended Company Petition in terms of Section 339 of the Companies Act, 2013 was in terms of prayer clause '(C)' of the Amendment Application granted by this Tribunal and was therefore allegedly within the scope of Order dated 25th November 2019 ("Amendment Order"). That the declaratory relief sought under Section 339 of the Act qua the Applicant in respect of IFIN, and the direction to make payment of amounts thereunder was contemplated in prayer clause

'(C)' of the Amendment Application. Further, the prayer clause (D) enables the Union to seek detailed main reliefs by filing further application, at the appropriate stage, on the basis of findings of the final investigation report or any other material brought to the notice of the Applicant-Petitioner by the SFIO. Since, the prayer clause € has been inserted pursuant to prayer clause © already allowed by this Tribunal, there was no need to file another application before this Tribunal for seeking relief for declaration in terms of section 339 of the Act. It is further advocated that there exists a prima-facie case against the applicants on the basis of findings in SFIO report, basis which a criminal complaint has also been filed against these parties before the Criminal court, which is sub-judice. The Union emphasised that the insertion of clause € didn't require any further application in the context of the case.

48. Per contra, the Applicant has contested this proposition stating that as per Respondent No. 1's own case, the investigation qua IFIN stands concluded and therefore the 2nd SFIO Report in respect of IFIN is purportedly a 'final investigation report'. Therefore, the impugned prayer clause '(e)' which is a final relief against the Applicant based on the findings of the 2nd SFIO Report (which is a final investigation report qua IFIN) squarely falls under the leave granted by this Tribunal to Respondent No. 1 under prayer clause '(D)' of the Amendment Application and could only be inserted after a fresh application filed in this regard was allowed by this Tribunal after following due process including providing all respondents including the Applicant herein an opportunity to be heard. Therefore, Respondent No. 1's reliance on leave granted under prayer clause '(C)' of the Amendment Application for the said purpose is entirely misplaced. Further, without prejudice to the aforesaid, upon a perusal of prayer clause '(C)' of the Amendment Application, it is evident that the same also pertains to seeking liberty from this Tribunal for supplementing / enlarging / amending / modifying

the scope of the reliefs sought in the amended Company Petition No. 3638/2018 upon filing any other documents/ applications. A perusal of the Amendment Order also makes it evident that Respondent No. 1 / Original Petitioner has only been granted liberty to file further documents/ applications for seeking further reliefs in the Company Petition, and not to undertake an amendment to the Company Petition to incorporate the reliefs of the nature contained in impugned prayer clause (e).

49. The question involved in the present case thus is whether prayer (e) introduced into Company Petition No. 3638 of 2018 falls within the scope of prayer (C) or (D) of the amendment application which was allowed by this Tribunal by order dated November 25, 2019. Admittedly, Respondent No. 1 filed an amendment application in July 2019. In this amendment application filed in July 2019, the Respondent No. 1 sought four reliefs. By prayer (A) and (B) to the amendment application, Respondent No. 1 sought to (A) bring onto the record of the main company petition filed in October, 2018 under Section 241(2) of the Companies Act, 2013 documents and applications including the Investigation Report for IFIN dated May 28, 2019 and the Interim Report dated November 30, 2019; and (B) amend the cause title of Company Petition No. 3638 of 2018 to include Sections 246 and 339 of the Companies Act, 2013. This was done since Company Petition No. 3638 of 2018 as originally filed on October 1, 2018 was a Petition under only Section 241(2) of the Companies Act, 2013. Thus effectively, by prayer (A) and (B), Respondent No. 1 sought to expand the scope and frame of the Petition to being a Petition under Sections 246 and 339 as well.
50. Prayer (C) which was the third prayer to the amendment application sought permission to supplement/enlarge/amend/modify the scope of reliefs in the Company Petition No. 3638 of 2018 as filed on October 1, 2018 and also sought permission to adduce any other documents or

applications in its support. Prayer (C) to the amendment application filed in July 2019 therein must be considered in the context above. Keeping the scope of prayer (A) and (B) in mind as well as the chronological submissions by Respondent No. 1 above, we are of the view that by prayer (C) to the amendment application, Respondent No. 1 sought leave to amend/enlarge the reliefs in the Company Petition No. 3638 of 2018 as filed on October 1, 2018 to include reliefs in terms of Section 339 of the Act.

51. The amendment application of Respondent No. 1 was allowed vide order dated July 25, 2019 giving Respondent No. 1 leave to amend, but the amendment, it appears, was not carried out. On February 20, 2024, we permitted Respondent No. 1 to amend the Petition as allowed by this Tribunal vide July 25, 2019 within one day. It is thus that all the amendments to the Petition, as allowed by this Tribunal was affected inter alia by incorporating prayer (e). We are thus of the view that there is no infirmity in the action of Respondent No. 1 by introduction of prayer (e) to Company Petition No. 3638 of 2018. Prayer (e) amended into Company Petition No. 3638 of 2018 is within the purview of prayer (C) of the amendment application, as allowed.
52. The Applicant's counsel argued that a statement in Respondent No. 1's rejoinder indicated final reliefs would be sought later, implying the amendment did not seek final reliefs. However, Respondent No. 1 clarified that prayer (e) is a declaratory relief, and detailed main reliefs, like liability apportionment under Section 339, will be determined after completion of investigation. This aligns with prayer (D) of the amendment application, and we accept Respondent No. 1's explanation.

53. In view of above, the CA 60/2024, IA 57/2024, IA 58/2024, CA 101/2024, CA 119/2024, CA 140/2024, and CA 144/2024 are **dismissed**.

Sd/-

Prabhat Kumar
Member (Technical)

Sd/-

Justice V.G. Bisht
Member (Judicial)

**THE NATIONAL COMPANY LAW TRIBUNAL
MUMBAI BENCH-I**

CA No. 65 of 2024

Rule 11 of NCLT Rules, 2016

Deloitte Haskins & Sells LLP

**...Applicant/ Org.
Respondent No. 326**

Vs.

Union of India & Ors.

...Respondents

CA No. 117 of 2024

Kalpesh Mehta

**.... Applicant/
Org. Respondent No. 324**

Vs.

Union of India & Ors.

... Respondents

CA No. 118 of 2024

Udayan Sen

**... Applicant/
Org. Respondent No. 323**

Vs.

Union of India & Ors.

... Respondents

IA No. 19 of 2024

B S R & Associates LLP

... Applicant

Vs.

Union of India, Ministry of
Corporate Affairs

... Respondent

CA No. 93 of 2024

Manu Kochhar

... Applicant

Vs.

Union of India, Ministry of
Corporate Affairs

... Respondent

In the matter of

CA No. 3638 of 2018, Under Section 241-
242 of Companies Act, 2013

Union of India

... Org. Petitioner

Vs.

Infrastructure Leasing & Financial Services
Limited & Ors.

... Respondents

Order delivered on: 22.07.2024

Coram:

Shri Prabhat Kumar
Hon'ble Member (Technical)

Justice V.G. Bisht (Retd.)
Hon'ble Member (Judicial)

Appearances:

- For the Applicant in IA 19/2024 : Mr. V.P. Singh a/w Mr. Aditya Jalan and Mr. Raghav Seth and Mr. Ambareen Mujawar,, Advocates
- For the Applicant in CA 117/2024 & 118/2024 : Mr. Robin Jaisinghani a/w Ms. Aditi Bhatt I/b Dastur Kalambi and Associates, Advocates
- For the Applicant in CA 65/2024 : Sr. Counsel Mr. Janak Dwarkadas a/w Mr. Rahul Dwarkadas, Ms. Prachi Dhanani, Ms. Rohini Jaiswal and Ms. Saloni Vyas i/b Veritas Legal for Deloitte Haskins & Sells LLP, Advocates
- For the Respondent/ Union of India : Mr. Aditya Sikka a/w Mr. Meghav Gupta and Ms. Onshi Jakhar, Ld. Counsel for Union of India present. Mr. Yogini Chauhan and Mr. Gaurav Jaiswal, Representative for the Union of India present.

ORDER

Per: Prabhat Kumar, Member (Technical)

1. These Applications have been filed by the persons allowed to be impleaded by this Tribunal pursuant to order dated 18.07.2019 seeking declaration, amongst others, that the compilation of the documents dated 07.02.2024 tended by the Union of India is not admissible in the present proceedings.
2. The Applicants have made following prayers :-

CA No. 65 of 2024

3. This Application is filed by the Deloitte Haskins & Sells LLP seeking following reliefs :

- a. *That this Hon'ble Tribunal be pleased to declare that the Compilation of Documents dated 7th February 2024 (being annexures to the 2nd Interim SFIO Report) tendered by Respondent No. 1/the Original Petitioner is not admissible in the present proceedings.*
- b. *That pending the hearing and final disposal of the present Application the proceedings in M.A. 2070 of 2019 be stayed.*
- c. *For ad-interim and interim reliefs in terms of prayer clauses (a) and (b) above.*
- d. *For such other orders and reliefs as this Hon'ble Tribunal may deem fit and proper in the nature and circumstances of the present case.*
- e. *For costs of this Application.*

CA 117/2024

4. The Interlocutory Application is filed by the Kalpesh Mehta seeking following reliefs.

- a. *That this Hon'ble Tribunal be pleased to declare that the Compilation of Documents dated 7th February 2024 (being annexures to the 2nd Interim SFIO Report) tendered by Respondent No. 1/the Original Petitioner is not admissible in the present proceedings.*
- b. *That pending the hearing and final disposal of the present Application the proceedings in M.A. 2070 of 2019 be stayed.*

- c. For ad-interim and interim reliefs in terms of prayer clauses (a) and (b) above.*
- d. For such other orders and reliefs as this Hon'ble Tribunal may deem fit and proper in the nature and circumstances of the present case.*
- e. For costs of this Application.*

CA 118/2024

- 5. The Interlocutory Application is filed by the Udayan Sen seeking following reliefs.
 - a. That this Hon'ble Tribunal be pleased to declare that the Compilation of Documents dated 7th February 2024 (being annexures to the 2nd Interim SFIO Report) tendered by Respondent No. 1/the Original Petitioner is not admissible in the present proceedings.*
 - b. That pending the hearing and final disposal of the present Application the proceedings in M.A. 2070 of 2019 be stayed.*
 - c. For ad-interim and interim reliefs in terms of prayer clauses (a) and (b) above.*
 - d. For such other orders and reliefs as this Hon'ble Tribunal may deem fit and proper in the nature and circumstances of the present case.*
 - e. For costs of this Application.*

IA 19/2024

- 6. The Interlocutory Application is filed by the B S R & Associates LLP seeking following reliefs.

- a. *Direct that the SFIO Report is inadmissible in evidence in terms of Section 223 of the Act;*
- b. *Prohibit the Petitioner from in any manner placing reliance on the SFIO Report in its entirety or in part; and/or;*
- c. *Pass any order and/or reliefs that this Hon'ble Tribunal may deem fit and proper in the facts and circumstances of the present case.*

CA 93/2024

7. The Interlocutory Application is filed by the Manu Kochhar seeking following reliefs.
 - a. *That this Hon'ble Tribunal be pleased to order and direct that the documents submitted by the Respondent No. 1 during the course of hearing on 7th February 2024 cannot be taken on record or relied upon or referred to by the Respondent herein (Original Petitioner) for the purposes of or during the course of hearing of Miscellaneous Application 2070 of 3019 and/ or Company Petition 3638 of 2018;*
 - b. *That this Hon'ble Tribunal be pleased to order and direct that paragraph 22 (e) of Company Petition No. 3638 of 2018 on page 36 A, be deleted and expunged from the records;*
 - c. *That pending the hearing and final disposal of the present Application, the proceedings in the above Company Petition including Miscellaneous Application No. 2070 of 2019 be stayed;*
 - d. *That pending the hearing and final disposal of the present Company Application, this Hon'ble Tribunal, be pleased to*

disregard prayer (e) of paragraph 22 of Company Petition No. 3638 of 2018;

- e. For ad interim and interim reliefs in terms of prayer clauses (a), (b), (c) and (d) above and cost of this Application; and*
- f. For such other orders and reliefs as this Hon'ble Tribunal may deem fit and proper in the nature and circumstances of the present case.*

8. This Tribunal had passed the following Order allowing the amendment in the company petition CP 3638/2018:

“MA 2696/2019 filed by the Union of India, represented by MCA through the Regional Director (Western Region), seeking to amend certain prayers in CO 3638/2018 and further to allow amendment of the cause title of the said CP and further permit the applicant/petitioner to further supplement / enlarge / amend / modify the scope of the reliefs sought and prayers made in the amended petition and lastly permit the applicant / petitioner to seek detailed main reliefs by filing further application, at the appropriate stage, on the basis of findings of the final investigation report or on the basis of any other material brought to the notice of the applicant / petitioner by the SFIO and for any other other reliefs, is allowed.”

9. The Respondents had made following prayers in MA 2696/2019 :

A. “Allow the interim amendment of the petition in the original Company Petition No. 3638/2018, for reading the contents of the following applications and SFIO Interim Reports, as part and parcel of the main petition in Company Petition No. 3638/2018 :-

1. Interim Report dated 30/11/2018 submitted by the SFIO.

2. *Application filed by the Applicant-Petitioner vide Diary No. 3711/2018 on 03/12/2018 for impleadment of additional Respondents namely Mr. Hari Sankaran, Mr. Arun K. Saha, Mr. Ravi Ramaswami Parthasarthy, Mr. Vibhav Kapoor, Mr. K. Ramachandra, Mr. R. C. Bawa, Mr. Pradeep Puri, Mr. S. Rengarajan and Mr. Mukund Sapre, on the basis of the JSI Interim Report submitted by SFIO.*

3. *Application filed by the Applicant-Petitioner vide Diary No. 30457/2018, seeking reliefs under Sections 242(4), 246 r.w. 339 of the Companies Act, 2013 against the additional respondents namely Mr. Hari Sankaran, Mr. Arun K. Saha, Mr. Ravi Ramaswami Parthasarthy, Mr. Vibhav Kapoor, Mr. K. Ramachandra, Mr. R. C. Bawa, Mr. Pradeep Puri, Mr. S. Rengarajan and Mr. Mukund Sapre, on the basis of the JSI Interim Report submitted by SFIO.*

4. *MA No. 1576/2019 filed by the Applicant-Petitioner for impleadment of Mrs. Asha Kiran Bawa and Ms. Akanksha Bawa, wife and daughter of Mr. Ramesh C. Bawa (Respondent No. 315), respectively, as Respondent Nos. 319 and 320, in the main Company Petition No. 3638/2018.*

5. *MA No. 1577/2019 filed by the Applicant-Petitioner seeking extension of orders dated 03/12/2018 (as modified by this Hon'ble Tribunal's order dated 16/01/2019) to Respondent Nos. 319 and 320 restraining them from alienating their moveable and immovable properties.*

6. *2nd Interim Report of IL&FS & its subsidiaries dated 28/05/2019 titled "Investigation Report of IL&FS Financial*

Services Ltd. " submitted to the Applicant-Petitioner by SFIO.

7. MA No. 2071/2019 filed by Applicant-Petitioner for impleadment of Additional Respondents Nos. 321 to 343, on the basis of the 2nd Interim Report submitted by SFIO.

8. MA No. 2070/2019 filed by Applicant-Petitioner for extension of orders dated 03/12/2018 (as modified by orders dated 16/01/2019) passed by this Hon 'ble Tribunal, to the additional respondents Nos. 321 to 343 (except proforma respondents 338 to 341)

B. Allow the amendment of the cause title of the Company Petition No. 3638/2018, to include Section 246 r.w. Section 339, besides the already invoked Section 241 and 242, of the Companies Act, 2013.

C. Permit the Applicant-Petitioner to further supplement / enlarge / amend / modify the scope of the reliefs sought and prayers made in the amended petition in Company Petition No. 3638/2018, by filing any other documents or applications in view of the extraordinary nature of circumstances.

D. Permit the Applicant-Petitioner to seek detailed main reliefs by filing further application, at the appropriate stage, on the basis of findings of the final investigation report or any other material brought to the notice of the Applicant-Petitioner by the SFIO.

E. Pass any other order / directions that this Hon 'ble Tribunal deems fit and proper, in the circumstances as detailed in the instant Application.”

10. Accordingly, this Tribunal allowed, amongst others, 2nd Interim Report of IL&FS & its subsidiaries dated 28/05/2019 titled "*Investigation Report of IL&FS Financial Services Ltd.*" submitted to the Union of India by SFIO and contents thereof to be read as part and parcel of the main petition in Company Petition No. 3638/2018.
11. On the basis of the findings of the IFIN Investigation Report, Respondent No. 1 filed MA No. 2070 of 2019 ("MA 2070") in June 2019 seeking that the assets and properties of, amongst others, the Applicant be frozen. Along with this, Respondent No. 1 also filed MA No. 2071 of 2019 ("MA 2071") for impleadment of, amongst others, the Applicants in CP 3638.
12. The Respondent No. 1 placed on record a compilation of documents, stated to be extract from IFIN Investigation Report which was already allowed to be read as part and parcel of CP 3638 of 2018 by this Tribunal, during the hearing of the captioned matter held on 7th February 2024. The Applicants have challenged this compilation of documents on numerous grounds which are being discussed hereunder.
13. Since all these applications have identical facts and seeks common relief, except CA 93 of 2024 which also requires deletion of paragraph 22(e) in CP 3638 of 2018, we consider it appropriate to decide these applications by common order and take the facts in CA 65 of 2024 for the purpose of adjudication of these applications. The prayer for deletion of paragraph 22(e) in CP 3638 of 2018 has already been dealt by us in Order in C.A. 60 of 2024 in CP 3638/2018 and shall stand adjudicated for the reasons stated in that order.

CA No. 65 of 2024

Submissions of Applicant

14. The Applicant, being Respondent No. 326 in Misc. Application No. 2070 of 2019 ("M.A. 2070 of 2019") filed in Company Petition No. 3638 of 2018, is the erstwhile statutory auditor of IL&FS Financial Services Ltd. ("IFIN"), a subsidiary of Infrastructure Leasing & Financial Services Limited & Ors. ("IL&FS"). The Respondent No. 1 herein/ Original Petitioner filed application for impleadment of applicant in Company Petition No. 3638 of 2018 against IL&FS under Section 241-242 of the Companies Act, 2013 on the basis of the 2nd Interim SFIO Report. Respondent No. 1 herein/ the Original Petitioner thereafter filed M.A. No. 2070 of 2019 in CP no. 3638 of 2018 for reliefs more particularly prayed thereunder.
15. The Applicant/ Org. Respondent No.326 by way of the present application is challenging the admissibility of the said Compilation before this Tribunal, and further that the said Compilation is inadmissible and Respondent No. I herein/ the Original Petitioner ought not to be permitted to rely on the said Compilation for the adjudication of M.A. 2070 of 2019 and/or the captioned Petition and the same ought to be rejected by this Tribunal.
16. It is submitted that the said Compilation is inadmissible and Respondent No. 1 herein/the Original Petitioner ought not to be permitted to rely on the said for the adjudication of M.A. 2070 of 2019 and/or the captioned Petition and the same ought to be rejected by this Tribunal.

17. Respondent No. 1 herein/ the Original Petitioner has filed M.A. 2070 of 2019 seeking inter alia the following reliefs against the Applicant:

"(a) To direct that the orders dated 03/12/2018, as modified by orders dated 16/01/2019 passed by this Hon'ble Tribunal, in company petition CP No. 3638/2018, be extended to additional Respondent Nos. 321 to 343 (except proforma respondent no. 337 to 341), (b) To permit the applicant/ petitioner to examine any unusual transaction or transfer of funds by respondent no. 321 to 343 (except proforma respondent no. 337 to 341) to determine the diversion of siphoning of funds from 01.10.2018 (i.e. the date of filing of the petition), (c) Pass any other order(s) as deemed fit and proper, under the circumstances by this Hon'ble Tribunal."

18. It is submitted that the said Compilation tendered by Respondent No. 1 herein/the Original Petitioner in respect of M.A. 2070 of 2019 is not admissible and the said Compilation ought to be rejected by this Tribunal for inter-alia the following reasons:

- a. As per the submissions made by Respondent No. 1 herein/the Original Petitioner on 7th February 2024 submitted at the time of tendering the said Compilation, that the documents contained therein all form part of the 2nd Interim Report dated 28th May 2019 submitted by the Serious Fraud Investigation Office ("2nd Interim SFIO Report"). It is submitted that the 2nd Interim SFIO Report has admittedly been issued under Section 212 of the Companies Act, 2013 ("the Act"). Under Section 212(15) of the Act, an investigation report of the SFIO prepared under

the said section and filed with the Special Court for framing of charges is deemed to be a report filed by a police officer under Section 173 of the Code of Criminal Procedure, 1973 ("Cr. PC"). Further, as is evident from Section 223 of the Act a report issued under Section 212 of the Act is not an inspector's report and as such not admissible. It is submitted that under the provisions of both, the Companies Act 2013 and the Cr. PC, a report under Section 212 i.e., the 2nd Interim SFIO Report, which is akin to a report of a police officer, is not admissible in the present proceedings and as such the said Compilation ought to be rejected by this Tribunal.

- b. Section 223(4) of the Act provides that an inspector's report shall be admissible in any legal proceeding as evidence in relation to the matters contained therein. Equally, Section 223(5) provides that nothing in Section 223 shall apply to a report prepared under Section 212. That is to say, unlike an inspector's report, a report prepared under Section 212 (which is deemed to be a report filed by a police officer under Section 173 of the Cr. PC) shall not be admissible in any legal proceeding as evidence in relation to the matter contained in the said report.
- c. It is submitted that the scheme of Chapter XIV of the Act, which includes both Sections 212 and 223 and provides that only an inspector's report will be admissible in legal proceedings, is consistent with the scheme under the Companies Act, 1956 ("the 1956 Act") wherein Section 246 thereof provided that an inspector's report prepared under

Section 235 or 237 of the 1956 Act shall be admissible in legal proceedings as evidence of the opinion of the inspector on any matter contained in the report.

- d. As such, it is evident that it is only an inspector's report that is admissible in legal proceedings and not any other report including but not limited to a report under Section 212 of the Act, which is deemed to be a report of a police officer under Section 173 of the Cr. PC.
- e. In the present case, the 2nd Interim SFIO Report is admittedly and in fact a report prepared under Section 212 of the Act and not an Inspector's Report and hence, the 2nd Interim SFIO Report is not admissible in any legal proceeding as evidence in relation to the matters contained in the said report. Since the said Compilation is nothing more than extracts of parts of the 2nd Interim SFIO Report and/or the supporting documents forming part thereof, the said Compilation is not admissible before this Tribunal. In fact, one of the documents relied on in the said Compilation is extract of statement made by one of the Directors of IL&FS Financial Services ("IFIN") made before the Serious Fraud Investigation Office which is akin to a statement made before a police officer, which in any event can never be admissible before this Tribunal.
- f. It is submitted that for the very reasons contemplated under the Act, it would cause irreparable prejudice to the Applicant herein for the 2nd Interim SFIO Report and the said Compilation to be considered by this Tribunal in the present proceedings. This is because the 2nd Interim SFIO Report

as a whole (including annexures thereto), of which the said Compilation is admittedly an extract, has in fact been submitted to the Special Court constituted under the Act and forms the basis of the Criminal Complaint No. 20 of 2019, filed inter-alia against the Applicant. On 28th November 2023, the Hon'ble Special Court took cognizance of Criminal Complaint No. 20 of 2019 and issued process against the Applicant for commission of offence punishable under Sections 36, 68, 129, 143, 147, 211, 447, 448 and 628 of the Act along with Sections 417, 420, 120-B of the Indian Penal Code, 1860. It is submitted that the trial against inter-alia the Applicant herein will occur on the basis of the 2nd Interim SFIO Report. As such, for the Applicant herein to deal with and make submissions in relation to the said Compilation, which is admittedly part of the 2nd Interim SFIO Report, would force the Applicant herein to deal with the said Compilation and disclose its defence thereby causing irreparable harm, prejudice and injury to the Applicant herein. This may lead not only to self-incrimination but also to the possibility of inconsistent findings. Such an approach would be contrary to law and ought not to be permitted by this Tribunal. As such, Respondent No. 1 the Original Petitioner ought not to be permitted to rely on the said Compilation and/or the 2nd Interim SFIO Report.

- g. It is submitted that the said Compilation appears to contain documents which form part of the documents in support of the 2nd Interim SFIO Report, which are annexures to the

2nd Interim SFIO Report and form an integral part thereof. As such and for the reasons stated herein, since the 2nd Interim SFIO Report is not admissible in the present proceedings before this Tribunal, it is submitted that the documents being annexures to the 2nd Interim SFIO Report and forming an integral part thereof (which are contained in the said Compilation) are also not admissible for the reasons set out herein.

- h. Without prejudice to the above and strictly in the alternative, it is submitted that Respondent No. 1 the Original Petitioner has not pleaded or otherwise made out any case in relation to the documents forming part of the said Compilation. Neither does M.A. 2070 of 2019 nor any of the affidavits filed by Respondent No. 1 herein/the Original Petitioner, contain any pleadings or averments in relation to any of the documents forming part of the 2nd Interim SFIO Report or the said Compilation. It is submitted that in the absence of any pleadings including as to how these documents are admissible in the present proceedings, how these documents are relevant to M.A. 2070 of 2019 or what case is made out against the Applicant therein on the basis of the said documents, Respondent No. 1 herein/the Original Petitioner cannot and ought not to be permitted to rely on the same. It is trite law that a party can be permitted to rely on documents/material/evidence only if it is supported by necessary pleadings and a party cannot be permitted to go beyond its pleadings. The said Compilation is a clear attempt on the part of Respondent No. 1 the Original Petitioner to go

beyond its pleadings and improvise its case which ought not to be countenanced by this Tribunal. To do so would not only be against the settled principles of law and opposed to the principles of natural justice but would also cause undue harm and prejudice to the Applicant herein who, due to lack of pleadings, has had no opportunity to respond to the case now sought to be advanced by Respondent No. I/Original Petitioner, at this belated stage.

Respondent's Submissions

19. It is the Respondent's submission that the Applicants' contentions are based on a misreading of the law since:

- a. Given the scheme of the Act (conferring powers onto the SFIO) and the language of Section 212 (15) of the Act, it is clear that Section 212(15) of the Act does not intend to equate an investigation report with the final report of a police officer for all intents and purposes. The deeming fiction created under Section 212(15) of the Act is clearly specific and cannot be expanded in this manner.
- b. To contend that the SFIO Investigation Report is merely an opinion of a police officer under Section 173 of the CrPC would be to do violence to the language of the provisions of the Act which confers wide powers onto the SFIO.
- c. Section 223(4) of the Act essentially stipulate how an investigation report other than an investigation report under Section 212 of the Act needs to be authenticated to be admitted into evidence. It cannot be interpreted to mean that

an investigation report under Section 212 of the Act cannot be used in evidence at all.

20. It is submitted that to appreciate the intent and purpose of Section 212(15) of the Act, it is necessary to first set out the powers conferred on the SFIO under the Act. Section 211 of the Act confers statutory recognition to the SFIO and is a specialized investigative body that is headed by a director consisting of eminent experts from the fields of banking, corporate affairs, taxation, forensic audit, capital market, information technology, law, etc. Being a specialized body consisting of eminent experts, the scheme of the Act confers on the investigating officers' unique investigating powers. An Investigation by the SFIO is triggered by a direction to investigate by the Ministry of Corporate Affairs under Section 212(1) of the Act. Once the SFIO has been directed to investigate into the affairs of a Company, Section 212(2) provides that no other investigative agency of the Central Government or any State Government shall proceed with investigation in such case in respect of any offence under this Act. Thus, once triggered the SFIO has exclusive jurisdiction to investigate into the affairs of a company. Section 212 (4) of the Act specify the Investigating Officer so appointed shall have the powers of an inspector under Section 217 of the Act. Section 217 of the Act applies to all the investigation under the Chapter XIV and Section 217 (4) of the Act provides for an inspector's powers to examine an individual on oath. Pursuant to this, Section 217(7) of the Act sets forth that notes of examination so taken during such examination may be used in evidence against the individual.

21. This is a marked departure from the powers conferred on police officers under the Code of Criminal Procedure, 1973 (CrPC) and it is due to these powers, the Hon'ble Punjab & Haryana High Court has held that a SFIO Investigation Officer cannot be equated to ordinary police officers as SFIO Investigation Officers/Inspectors have been conferred with wider powers. [Vivek Harivyasi vs. Serious Fraud Investigation Office, 2019 SCC OnLine P&H 4989 (Para 40)].

22. Apart from this, Section 217(5) of the Act confer powers of a civil court under the Code of Civil Procedure onto the inspectors in respect of certain matters. Section 217(5) of the Act is as follows:

(5) Notwithstanding anything contained in any other law for the time being in force or in any contract to the contrary, the inspector, being an officer of the Central Government, making an investigation under this Chapter shall have all the powers as are vested in a civil court under the Code of Civil Procedure, 1908 (5 of 1908), while trying a suit in respect of the following matters, namely:—

(a) the discovery and production of books of account and other documents, at such place and time as may be specified by such person;

(b) summoning and enforcing the attendance of persons and examining them on oath; and

(c) inspection of any books, registers and other documents of the company at any place.

23. An investigation by the SFIO under the Act culminates into an interim report under Section 212(11) of the Act and an Investigation Report under Section 212(12) of the Act. This investigation report under Section 212(12) of the Act is contemplated to be submitted to the Central Government who on considering the same can direct the SFIO to initiate prosecution before special courts designated under the Act.

24. Section 212 is a complete code and confers special powers on the SFIO to conduct an investigation which are separate and distinct from that conferred on a police officer under the CrPC. [*Ashish Bhalla vs. State & Anr.*, CRL.M.C. 298/2023, CRL.M.A. 12731/2023 & CRL.M.A. 21779 (Para 34)]. Section 217 of the Act (which is extended to an SFIO Investigating Officer) confers additional powers onto an SFIO investigating officer.

ii. An investigating officer of the SFIO appointed under the Act has powers akin to a civil court in certain cases. They also possess the power to examine an individual and the notes of examination can be considered in evidence against them. The bail conditions specified under the Act are also distinct – it provides for twin conditions to be granted bail. Finally and crucially, Section 212(14A) of the Act provides that proceedings can be filed for holding the perpetrators of the fraud liable on the basis of not only an Investigation Report but also an Interim Report.

iii. The powers conferred onto the SFIO are extremely wide given the nature and gravity of economic offences and are

to enable the SFIO to uncover complex financial and economic fraud.

25. On receipt of the investigation report by the Central Government from SFIO, the Central Government in exercise of its powers under Section 212 (14) of the Act may direct the initiation of criminal proceedings before the Special Courts designated to adjudicate offenses under Section 447 of the Act. Consequently, Section 212 (15) of the Act prescribes that the investigation report filed with the Special Court for the purpose of framing charges will be deemed to be a police officer's report under Section 173 CrPC.
26. From a bare reading of Section 212(15) of the Act, it is clear that Section 212(15) of the Act introduces a legal deeming fiction. It is settled law that a deeming fiction can be introduced by the legislature, but its purpose must be ascertained and any interpretation of such deeming provision must be limited to the context in which it is introduced. In other words, a deeming provision ought not to be given a larger scope [Sant Lal Gupta and Ors. vs. Modern Cooperative Group Housing Society Limited and Ors., (2010) 13 SCC 336 (Para 14)]. Applying this, it is clear that the deeming fiction that Section 212(15) of the Act seeks to introduce is specifically for the Investigation Report filed with the Special Court for the purpose of framing of charges. The words "*filed with the Special Court for the framing of charges*" are crucial. This is so since these words dictate that the scope and context in which the deeming fiction has been introduced is for the purposes of framing charges and progressing trial in the same way as a case instituted on a police report proceeds under the CrPC.

27. Qua Section 212 (14A) of the Act, it was sought to be contended that the said provision simply provides for filing of a Petition. This contention is wholly without merit and frivolous. The contention if accepted will effectively mean that though the Central Government has the power to file proceedings basis a report under Section 212(14A) of the Act, the NCLT cannot consider the proceeding/petition. It is inconceivable that the legislature would provide for simply the power to file proceedings and nothing further. This would render the provision completely otiose and toothless.
28. Section 223 of the Act titled Inspector's Report outlines what a report submitted by an inspector conducting an investigation under Section 210 of the Act must conform to. Section 223 (1) of the Act thus first sets out the types of reports that can be submitted/called for. This is a provision akin to Section 212(11) and (12) of the Act which is a provision pertaining to SFIO Investigations. Section 223(2) of the Act then specifies that the reports must be in writing and Section 223 (3) of the Act provides that a copy of the investigation can be obtained from the Central Government (which is akin to Section 212(13) of the Act. Section 223(5) of the Act excludes the operation of Section 223(4) of the Act and simply seeks to provide that an Investigation Report of the SFIO need not be authenticated to be treated in evidence.
29. The Act in terms of the provisions of Section 212(14) and Section 212(14A) of the Act specifically contemplate the filing of proceedings pursuant to or based on an investigation report under Section 212(12) of the Act. The reading that Section 223(4) and (5) of the Act read together contemplates a bar on the SFIO being

considered or even looked at will render the said provisions of law as being meaningless and completely redundant.

30. It is submitted that it is settled law that when interpreting statute, a harmonious construction must be adopted to give effect to all provisions. From the above, it is clear that the interpretation sought to be attributed to Section 223 (4) and (5) of the Act as well as Section 212(15) of the Act will render certain provisions and/or words as indicated above completely meaningless and nugatory.
31. It is essential to note that after completing the investigation into IFIN, SFIO submitted the IFIN Investigation Report, and on the basis of the aforesaid report, Respondent No.1 filed MA 2071 seeking impleadment of additional parties (including the Applicant) who were named in the IFIN Investigation Report as Respondents thereto, whereas, MA 2070 was filed for extension of the freeze order dated December 3 Order to the said Respondents. Pertinently, the IFIN Investigation Report was the basis for both MA 2070 and MA 2071. The issue of impleadment as prayed for in MA 2071 was considered first and by the July 18 Order, the Respondents therein including the Applicant were impleaded to CP 3638. It is pertinent to note that this Tribunal impleaded the Respondents (including the Applicant) by relying on the findings of the IFIN Investigation Report to opine that they were necessary and/or proper parties to CP 3638. Aggrieved by the July 18 Order, inter alia the Applicants herein filed Appeals before the Hon'ble NCLAT. In the Appeals, the Applicants challenged their impleadment on the basis that the IFIN Investigation Report cannot be relied on inter alia due to the operation of Section 223(4) and (5) of the Act; and that the Impugned Order wrongly considers the 2nd

Interim SFIO Report as evidence and prima facie cause for impleadment of the Appellant. The same is contrary to the provisions of the Act. The Act clearly provides that no report of the SFIO, much less the 2nd Interim SFIO Report can be considered as evidence. Accordingly, the allegations in the 2nd Interim SFIO Report need to be proved in accordance with law before the competent authority/court.

32. In fact, some of the arguments / submissions made by the Applicants in the present Application have also been expressly taken in the said Appeals. There arguments/submissions are submissions on Section 212(15) of the Act as well as in respect of the word “nothing” contained in/appearing in Section 223(4) and (5) of the Act. By an order dated March 4, 2020, the Hon’ble NCLAT was pleased to uphold the July 18 Order of impleadment of inter alia the Applicants hereto to CP 3638. Notably, the March 4 Order recorded the submissions of some of the Applicants thereto that the IFIN Investigation Report cannot be relied upon inter alia as set forth above. After recording these submissions, the Hon’ble NCLAT considered that the basis of the Impugned Order was the IFIN Investigation Report and upheld the same. This makes it amply clear that even the Hon’ble NCLAT considered that the Hon’ble NCLT did not err in its consideration of the IFIN Investigation Report and thus upheld the July 18 Order passed by this Tribunal. From the order dated March 4, 2020 (March 4 Order) passed by the Hon’ble NCLAT the Appellants filed a Civil/Statutory Appeal before the Hon’ble Supreme Court. In this Appeal, the same issue was raised yet again as regards Section 212(15) and Section 223(4) and (5) of the Act. The Appeals before

the Hon'ble Supreme Court from the March 4, 2020 order were withdrawn/dismissed. As such the impleadment of the Applicants on the basis of the IFIN Investigation Report was upheld. Accordingly, the impleadment of Applicants on the basis of the IFIN Investigation Report has been affirmed upto the Hon'ble Supreme Court along with the position that the IFIN Investigation Report can be considered in the form it is placed before Tribunal.

33. It is submitted that the Applicants' have sought to contend that the dismissal by the Hon'ble Supreme Court was an in limine dismissal and cannot be accepted. In this regard, it is submitted that the appeals before the Hon'ble Supreme Court were statutory civil appeals and not special leave petitions. Under the circumstances, the dismissal / disposal by the Hon'ble Supreme Court will stand as res judicata in light of the decisions in Kunhyammed v. State of Kerala 2000 (6) SCC 359 and Experion Developers Private Limited vs. Himanshu Dewan and Sonali Dewan, 2023 SCC OnLine SC 1029]

34. Even otherwise, it is submitted that even if the contention was not expressly taken by the Applicants' it is submitted that the Hon'ble Supreme Court in a catena of decisions has held if a contention that ought to have been taken has not been taken even though it is covered under the same subject matter, therefore, raising it again would be an abuse of the process of the court. Such a situation would be covered under the principles of constructive res judicata. [Experion Developers Private Limited vs. Himanshu Dewan and Sonali Dewan, 2023 SCC OnLine SC 1029; State of UP vs. Nawab Hussain, (1977) 2 SCC 806]

35. Thus, the Applicant's contention that this issue was never raised during the consideration of MA 2071 because the merits of the case were never considered at the stage of impleadment is untenable. The Respondents (including the Applicant) were in fact impleaded based on the findings of the IFIN Investigation Report and this impleadment has been upheld by the Hon'ble Supreme Court. Therefore, the Applicants' application is barred by the principles of res-judicata/constructive res judicata.

Discussion and Decision

36. Heard the Learned Counsel and perused the material on record.

37. The question before us, in this application, is whether the 2nd Interim Report submitted by SFIO in IFIN Investigation can be taken in evidence for the purpose of deciding MA 2070 of 2019 seeking an interim order in form of directions to Applicants to refrain from transferring, alienating, disposing of or dealing with their assets in any manner, more appropriately in the form and in the manner as ordered in other cases vide Order dated orders dated 03/12/2018, as modified by orders dated 16/01/2019 passed by this Tribunal in CP 3638 of 2018. It is undisputed fact that this Tribunal had allowed the impleadment of the Applicants vide its order dated July 18, 2019 basis 2nd Interim Report of SFIO and the said Order was upheld by Hon'ble NCLAT, and attained finality upon dismissal/withdrawal of appeals by the applicants before Hon'ble Supreme Court. It is also not in dispute that the issues raised in this Application against the admissibility of 2nd Interim Report of SFIO were also agitated before Hon'ble NCLAT in the appeal against Order allowing impleadment.

38. The Applicant argued before us that Section 223 deals with Inspector's Report under the Chapter XIV and sub-section (5) of the Companies Act, 2013 specifically excludes the report referred to in section 212. Accordingly, the 2nd Interim Report of SFIO and compilation of documents which is nothing but an abstract of said report, is a report, undisputedly, under section 212 of the Act, hence the same can not be taken in evidence for the purpose of relief prayed in CP 3638 of 2018 as well as MA 2070 of 2019. It was further contended that Section 212(15) of Companies Act, 2013 specifically treats the investigation report as a Report of police officer under section 173 of the Code of Criminal Procedure, 1973, and accordingly the conclusions in the said Report are no more than as Opinion of Investigating officer. It was further argued that the process in Criminal Complaint No. 20 of 2019 has been issued and these opinions are subject to scrutiny of Criminal Court in the trial, which is pending. It was also argued that they are not barred from raising the issue of admissibility of said report before this Tribunal, Order dated July 18, 2018, which is stated to be challenged on similar grounds and upheld by the Appellate authorities, does not preclude them on the principal of Res-Judicata from raising this ground.

39. Learned Senior Advocate and Learned Counsel appearing for Applicant relied upon the following decisions to support his arguments :

- a. ***M.C. Mehta (TAJ Corridor Scam) v. Union of India and Others (2007) 1 Supreme Court Cases 110*** holding that "The result of the investigation by the police is not legal evidence" as well as that "The decision to accept or reject

the report of the SP shall be that of the court/Special Judge concerned, who will decide the matter in accordance with law”;

- b. ***Bachhaj Nahar v. Nilima Mandal and Anr. (2008) 17 Supreme Court Cases 491*** expressing that “*The object and purpose of pleadings and issues is to ensure that the litigants come to trial with all issues clearly defined and to prevent cases being expanded or grounds being shifted during trial*”.
- c. ***K Veeraswami v. Union of India and Ors. (1991) 3 Supreme Court Cases 655*** expressing that “*In fact, the report under Section 173(2) purports to be an opinion of the Investigating Officer that as far as he is concerned he has been able to procure sufficient material for the trial of the accused by the court..... The details of the offence are required to be proved to bring home the guilt to the accused at a later stage i.e. in the course of the trial of the case by adducing acceptable evidence.*”
- d. ***Ramji Dayawala and Sons (P) Ltd. Vs Invest Import (1981) 1 Supreme Court Cases 80*** holding that “*If the truth of the facts stated in a document is in issue mere proof of the handwriting and execution of the document would not furnish evidence of the truth of the facts or contents of the document. The truth or otherwise of the facts or contents so stated would have to be proved by admissible evidence, i. e. by the evidence of those persons who can vouchsafe for the truth of the facts in issue.*”.
- e. ***Dharani Sugars and Chemicals Limited v. Union of India and Ors. (2019) 5 Supreme Court Cases 480*** reiterating

that “*If a statute confers power to do a particular act and has laid down the method in which that power has to be exercised, it necessarily prohibits the doing of the act in any manner other than that which has been prescribed*”.

f. *M. Pentiah and Others v. Muddala Veeramallappa and Ors. 1960 SCC Online SC 37* re-iterating that “*Negative words are clearly prohibitory and are ordinarily used as a legislative device to make a statute imperative.*”

g. *Vijender v. State of Delhi (1997) 6 Supreme Court Cases 171* holding that “*The result of investigation under Chapter XII of the Criminal Procedure Code is a conclusion that an Investigating Officer draws on the basis of materials collected during investigation and such conclusion can only form the basis of a competent court to take cognizance thereupon under Section 190(1)(b) CrPC and to proceed with the case for trial, where the materials collected during investigation are to be translated into legal evidence. The trial court is then required to base its conclusion solely on the evidence adduced during the trial, and it cannot rely on the investigation or the result thereof. Since this is an elementary principle of criminal law, we need not dilate on this point any further.*”

h. *Jagir Singh v.s Ranbir Singh and Anr. (1979) 1 Supreme Court Cases 560* to contend that “*To carry out effectually the object of a Statute, it must be construed as to defeat all attempts to do, or avoid doing, in an indirect or circuitous manner that which it has prohibited or enjoined*”;

i. Daryao and Others v. State of U.P. and Ors. 1961 SCC OnLine SC 21 expressing that “If a writ petition is dismissed in limine and an order is pronounced in that behalf, whether or not the dismissal would constitute a bar would depend upon the nature of the order. If the order is on the merits it would be a bar; if the order shows that the dismissal was for the reason that the petitioner was guilty of laches or that he had an alternative remedy it would not be a bar, except in cases which we have already indicated. If the petition is dismissed in limine without passing a speaking order then such dismissal cannot be treated as creating a bar of res judicata.”

j. Wipro Limited v. Oushadha Chandrika Ayurvedic India (P) Limited 2008 SCC Online Mad 172, abd Exphar SA and Another v. Eupharma Laboratories Ltd. and Another (2004) 3 Supreme Court cases 688 to contend that even constructive Res-Constructive does not bar the Applicant to raise the plea of admissibility in the present application.

40. Per Contra, the Respondent submitted that Section 223(5) of the Act only excludes the applicability of section 223, as the provisions contained therein except sub-section (4), are already forming part of the Section 212 and accordingly, sub-section (5) seeks to exclude only the procedure as contained in Sub-section (4), which provides for the manner in which Report of Inspector as specified in section 223 shall be admissible in legal proceedings, from its application to Report contemplated in section 212 of the Act. It was further argued that Section 212(4A), which was inserted w.e.f. 14.8.2019, specifically provides for filing of an Application before this

Tribunal by the Central Government on the basis of report under sub-section (11) or sub-section (12) of Section 212 stating 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. Accordingly, if it is concluded that in terms of section 223(5), the SFIO report can not be admissible as evidence, it shall make the provisions of Section 212(4A) nugatory. The Ld. Counsel emphasised that the Investigating officer appointed for carrying out Investigation in terms of Section 212 are bestowed with powers of an Inspectors as contained in Section 217 of the Act, which vests the power of discovery, summoning and examining on oath, and inspection provided in Code of Civil Procedure. Further, section 217(7) further provides that the notes of any examination under sub-section (4) shall be taken down in writing and shall be read over to, or by, and signed by, the person examined, and may thereafter be used in evidence against him. The Ld. Counsel emphasised that the issue of admissibility of 2nd Interim Report of SFIO has attained finality as this ground was also raised by the applicants in an appeal before Hon'ble NCLAT against the Order dated July 18, 2019 and this issue having already been dealt in the appellate proceedings before NCLAT can not be re-agitated again before this Tribunal. It is not disputed by the Applicants that such ground was raised before Hon'ble NCLAT as well as Supreme Court, and the fact that the Hon'ble NCLAT upheld the Order passed by this Tribunal permitting the impleadment on the basis of findings contained in 2nd Interim Report of SFIO.

41. Ld. Counsel Sh. Aditya Sikka appearing for the Respondent Union of India relied upon the following decisions to support his arguments :

- a. ***Experion Developers Private Limited v. Himanshu Dewan and Sonali Dewan and Ors. Civil Appeal No. 1434 of 2023;***
- b. ***Sant lal Gupta and Ors. V. Modern Cooperative Group Housing Society Limited and Ors. (2010) 13 Supreme Court Cases 336*** to contend that “*Even if a legal fiction is created by the legislature, the court has to ascertain for what purpose the fiction is created, and it must be limited to the purpose indicated by the context and cannot be given a larger effect.*”
- c. ***Jagdish Singh v. Lt. Governor, Delhi and Ors. (1997) 4 Supreme Court cases 435*** to contend that “*It is a cardinal principle of construction of a statute or the statutory rule that efforts should be made in construing the different provisions, so that, each provision will have its play and in the event of any conflict a harmonious construction should be given. Further a statute or a rule made thereunder should be read as a whole and one provision should be construed with reference to the other provision so as to make the rule consistent and any construction which would bring any inconsistency or repugnancy between one provision and the other should be avoided. One rule cannot be used to defeat another rule in the same rules unless it is impossible to effect harmonisation between them. The well- known principle of harmonious construction is that effect should be given to all the provisions, and therefore, this Court has held in several*

cases that a construction that reduces one of the provisions to a "dead letter" is not a harmonious construction as one part is being destroyed and consequently court should avoid such a construction.”

- d. ***Ranjitsing Brahmajeetsing Sharma v. State of Maharashtra and Anr. (2005) 5 Supreme Court Cases 294*** holding that at para 44 “*Section 21(4) of MCOCA, therefore, must be construed reasonably. It must be so construed that the court is able to maintain a delicate balance between a judgment of acquittal and conviction and an order granting bail much before commencement of trial. Similarly, the court will be required to record a finding as to the possibility of his committing a crime after grant of bail. However, such an offence in futuro must be an offence under the Act and not any other offence. Since it is difficult to predict the future conduct of an accused, the court must necessarily consider this aspect of the matter having regard to the antecedents of the accused, his propensities and the nature and manner in which he is alleged to have committed the offence.”*, also holding at para 46 that “*The duty of the court at this stage is not to weigh the evidence meticulously but to arrive at a finding on the basis of broad probabilities. However, while dealing with a special statute like MCOCA having regard to the provisions contained in sub-section (4) of Section 21 of the Act, the court may have to probe into the matter deeper so as to enable it to arrive at a finding that the materials collected against the accused during the investigation may not justify a judgment of conviction. The findings recorded*

by the court while granting or refusing bail undoubtedly would be tentative in nature, which may not have any bearing on the merit of the case and the trial court would, thus, be free to decide the case on the basis of evidence adduced at the trial, without in any manner being prejudiced thereby.”

- e. ***Vivek Hariviyasi v. Serious Fraud Investigation Office 2019 SCC Online P&H 4989*** wherein at Para 34 it was held that “*However, this court finds substance in the argument of the learned Counsel for the SFIO that the offences involved in this case are the economic offences, therefore, the factors and the criteria laid down by the Supreme Court for consideration for granting bail in economic offences have to be considered by this court. The said criteria have found elucidation in several judgments of the Supreme Court. Even in case of Nitin Johari (Supra) the Supreme Court had emphasized the fact that in case of consideration of bail to the accused in case of economic offences, the factors and criteria mentioned by the Supreme Court in case of Y.S. Jagan Mohan Reddy (Supra) are to be followed.*”

- f. ***Ashish Bhalla v. State & Anr. CRL.M.C. 298/2023, CRL.M.A. 12731/2023 & CRL.M.A. 21779- 21780/2023***

42. We note that the decisions cited by Learned Senior Advocate and Counsel deals with the law of interpretation, nature of Police Report and Principal of Res-judicata. The legal propositions set out in these decisions are not disputed.

43. Section 223 deals with Inspector’s Report and sub-section (1) thereof provides that “*An inspector appointed under this Chapter*

may, and if so directed by the Central Government shall, submit interim reports to that Government, and on the conclusion of the investigation, shall submit a final report to the Central Government.” It is not in dispute that section 210, 212 and 213, under which the Inspection or Investigation can be carried in the affairs of a company, falls within Chapter XIV, and the Investigation under each of these three section arises in different circumstances. Section 213 deals with the Investigation into the affairs of a Company on an Order passed by this Tribunal, pursuant to which the Central Government appoints 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; Section 210 deals with the Investigation arising from a Report of ROC submitted u/s 206 or an application by a company or in public interest; and Section 212 deals Investigation only by Serious fraud Investigation Office, and Section 212 (11) & (12) provides for submission of Interim or Final Report to the Central Government. There is no specific provision in section 210 or 213 requiring the Inspector to submit the Report, and the same is mandated by Section 223(1). Sub-Section (2) & (3) applies to the Reports referred in Section 223(1) only. Section 212(13) explicitly provides for obtaining copy of Report filed u/s 212(11) or (12) by any Person. Section 223(4) provides for authentication of Inspectors Report under Chapter XIV and Section 223(5) excludes the Report referred in Section 212 from the application of section 223. This clearly suggests that the Section 223 deals only with the Inspector’s Report filed in terms of Section 210 or 213 of the Act. Section 223(5) of the Act excludes

the application of inter alia Section 223(4) of the Act to Reports under Section 212 of the Act. We are of the considered view that this only means that a Report under Section 212 of the Act need not be authenticated in the manner prescribed under Section 223(4) of the Act to be admissible.

44. At this juncture, we note that Section 212(14A), inserted w.e.f. 15.08.2019, 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*”. If the contention of the applicant is accepted, this would make the proceedings filed u/s 212(14A) before this Tribunal meaningless, unless the Report is subjected to trial before the Special Court and the Court’s findings are available to this Tribunal. We are of considered view that proceedings u/s 212(4A) are civil proceedings intended to make good the loss caused to the Company by alleged fraudulent conduct of the various persons and are independent of Criminal proceedings filed by SFIO for prosecution of wrongdoers. Any other reading would render various provisions of the act including section 212(14A) as well as the scheme of the Act referred to above as completely otiose. We find that this interpretation is in fact in consonance with the

decisions cited by Learned Senior Counsel which mandate harmonious construction.

45. In this backdrop, let us examine the provisions of Section 212(15) providing that “*Notwithstanding anything contained in this Act or in any other law for the time being in force, the investigation report filed with the Special Court for framing of charges shall be deemed to be a report filed by a police officer under section 173 of the Code of Criminal Procedure, 1973.*” We note that Section 212(14) provides for direction by Central Government on the basis of Report received by it under section 212(11) & (12) to Serious Fraud Investigation Office to initiate prosecution against the company and its officers or employees, who are or have been in employment of the company or any other person directly or indirectly connected with the affairs of the company. On a plain reading of section 212(15), we note that the investigation report is deemed to be report filed by a Police Officer for the purpose of framing of charges. This is in consonance with the procedure laid down in Code of Criminal Procedure also. However, it can not be read to mean that the facts stated in the report and inferences drawn therefrom shall be meaningless even for passing of interim order(s) to protect the public interest. The Applicant has argued vehemently that if the Report, which is in trial before the Special Court in the prosecution case, is admitted as evidence by this Tribunal, it would lead not only to self-incrimination but also to the possibility of inconsistent findings. We are of considered view that the Applicants are not precluded from arguing their case before this Tribunal and challenge the findings of the SFIO in its Report. The deeming fiction in Section 212(15) applies to the proceedings before the

Special Court for the purpose of framing of charges only. We consider it appropriate to clarify that this Tribunal is vested with of power of discovery, summoning and examining on oath and inspection provided in Code of Civil Procedure and is competent enough to examine the facts and inferences in the report produced before it before making any order after taking into consideration the findings of its discovery and examination. The argument that it may result into inconsistent findings is pre-mature and if it happens so, the same is subject to test of appellate court.

46. We find that MA 2070/2019 seeks the extension of orders dated 03/12/2018 (as modified by orders dated 16/01/2019) passed by this Tribunal, which are in nature of interim relief to be provided on consideration of facts of each case and not a final declaration. Needless to say, the Applicants are not precluded from making their submissions on the contents of the Report, which this Tribunal is bound to consider while making any interim order as prayed in MA 2070/2019 or final declaration in CP 3638/2018 in relation to the Applicants.

47. We also take note of the fact that it is the contents of 2nd SFIO Interim Report, which led to the order allowing impleadment of Applicants in the CP 3638/2018 by this Tribunal and this Tribunal, in appeal before Hon'ble NCLAT, was upheld by the appellate authority after taking into consideration of the allegations in 2nd SFIO Interim Report. It is noteworthy that the applicant had raised the similar grounds before NCLAT in their appeal against order allowing impleadment, and had not succeeded. The Order in appeal gets merged with the order passed by this Tribunal. The objection

to consideration of the 2nd SFIO Interim Report for making orders to allow impleadment came to be whittled down by Hon'ble NCLAT as well, and this further fortifies our conclusion that the 2nd SFIO Interim Report does not become meaningless in the proceedings before this Tribunal even in the light of Section 212(15) of the Act, which creates a deeming fiction only for the purpose of consideration of report for framing charges before Special Court.

48. The Applicant has also contended that in the absence of any pleadings including as to how these documents are admissible in the present proceedings, how these documents are relevant to M.A. 2070 of 2019. However, we note that this Tribunal vide Order dated 18 July 2019 had allowed the reading of contents of said report as part and parcel of the main company petition and M.A. 2070 of 2019 seeks interim orders in the company petition itself. Accordingly, this argument does not have any force.
49. Accordingly, we are of considered view that the 2nd Interim SFIO Report or Compilation of documents consisting of extracts from said Report can be considered by this Tribunal for the adjudication of interim reliefs as well as final declaration.
50. In view of the above, **IA 65 of 2024, IA 117 of 2024, IA 118 of 2024, and IA 19 of 2024** are **dismissed and disposed of** accordingly.

THE NATIONAL COMPANY LAW TRIBUNAL
MUMBAI BENCH-I

CA No. 65 of 2024
IA 117 of 2024
IA 118 of 2024
IA 19 of 2024
CA 93 of 2024
In
CP NO. 3638 OF 2018

51. This Tribunal had already held in order dated 22.07.2024 passed in IA CA 60 of 2024 in CP 3638 of 2018 that this Tribunal does find any infirmity in action of the Respondent Union in inserting Prayer clause (e) in the company petition. In view of this, CA 93 of 2024 is also dismissed for the reasons recorded above and in our order dated 22.07.2024 passed in IA CA 60 of 2024 in CP 3638 of 2018.

Sd/-

PRABHAT KUMAR
MEMBER (TECHNICAL)

Sd/-

JUSTICE VIRENDRASINGH BISHT
MEMBER (JUDICIAL)