

NATIONAL COMPANY LAW APPELLATE TRIBUNAL
PRINCIPAL BENCH: NEW DELHI

Company Appeal (AT) No. 166 of 2025

[Arising out of the Order dated 16.07.2025, passed by the 'Adjudicating Authority' (National Company Law Tribunal, New Delhi Bench, Court-II), in IA-130/2025 IN Company Petition No.48/(PB)/2024]

IN THE MATTER OF:

1. EXCLUSIVE CAPITAL LIMITED

Through Mr. Achal Kumar Jindal
Registered Office at 7/17, L.G.F.,
Near Hauz Khas Metro Station, Sarvpriya
Vihar,
South Delhi, New Delhi-110016.
Email Address:

company.secretary@exclusivecapital.in

...Appellant No. 1

2. MR. SATYA PRAKASH BAGLA

7/17, LGF, Near Hauz Khas Metro Station,
Sarvpriya Vihar, South Delhi, New Delhi-
110016.
Email Address:

satya@exclusivecapital.in

...Appellant No. 2

3. MR. ACHAL KUMAR JINDAL

7/17, LGF, Near Hauz Khas Metro Station,
Sarvpriya Vihar, South Delhi, New Delhi-
110016.
Email Address:

achal@exclusivecapital.in

...Appellant No. 3

Versus

1. MRS. KANTA AGARWALA

8A, Queen's Park, Ballygunge,
Kolkata - 7000019
Email Address:

kanta.agarwala63@gmail.com

...Respondent No. 1

2. MR. SURESH AGARWALA

8A, Queen's Park, Ballygunge,
Kolkata - 7000019
Email Address:

suresh.agarwala56@gmail.com

...Respondent No. 2

Present:

For Appellant : Mr. Krishnan Venugopal, Sr. Advocate with Mr. Manav Goyal, Mr. Apoorv Agarwal, Ms. Ritika Gusain, Ms. Nandini Kaushik, Ms. Aastha Arora, Advocates.

For Respondent : Mr. Sidhant Kumar, Ms. Manyaa Chandok, Ms. Ekssha Kashyap, Advocates for R-1 & 2.

J U D G M E N T
(Hybrid Mode)

[Per: Justice Mohd. Faiz Alam Khan, Member (Judicial)]

The instant appeal has been preferred by the appellant under Section 421 (1) of the Companies Act, 2013 against the order dated 16.07.2025 passed by Ld. National Company Law Tribunal, New Delhi Bench, Court- II in IA No. 130 of 2025 titled as 'Kanta Agarwala and Anr. Vs. Exclusive Capital Ltd. & Ors.' filed by the Respondents under Section 213 of the Companies Act, 2013 read with Rule 11 of the NCLT Rules, 2016, seeking investigation qua the affairs of the Appellant No. 1 viz. Exclusive Capital Ltd. requesting to pass an order directing investigation into the affairs of the company by the Serious Fraud Investigation Office (SFIO) in CP No. 48/ND/2024 filed under Section 241-242 read with Section 244 of the Companies Act, 2013 whereby the Ld. NCLT has ordered an investigation in to the affairs of Exclusive Capital Ltd. (Appellant No.1) under Section 213 of the Companies Act.

2. The case of the appellant as is evident from the Memo of appeal appears to be that appellant no.1 formerly known as UT Leasing Ltd. and was incorporated on 08.04.1994 under the provisions of the Companies Act, 1956 and appellant no. 2 took over the management of appellant no.1 in the year 2021 by purchasing its equity shares and thereafter on 13.10.2021 appellant no. 2 and 3 were appointed as directors of appellant no.1.

3. It is also stated that it was on 16.12.2021 the appellant no.1 was issued an amended incorporation certificate by the Ministry of Corporate Affairs under its new registered name i.e. 'Exclusive Capital Ltd.' and simultaneously an amended certificate of registration was also issued by the RBI.

4. The appellant no. 2 herein is the promoter director and shareholder of the appellant no. 1 since 08.09.2021 and holds 21,11,844 equity shares being 90% of the total shareholding of appellant No. 1. The appellant no. 3 is the director and authorized representative of appellant no.1, while Respondent No. 1 and 2 are minority shareholders of appellant no.1 and they hold 1,17,325 equity shares each, which they purchased on 05.09.2022 from one of the promoters, shareholder and director of appellant no.1, Mr. Sanjiv Kumar Gupta.

5. It is further stated that due to the goodwill and credibility of appellant no. 1 a company namely, Teesta Retail Pvt. Ltd. (Teesta Retail) invested an amount of Rs. 315,00,00,000/- (Rs. Three hundred and fifteen crores only) in appellant no. 1 against the issuance of optionally convertible debentures (OCD's). The appellants apprehending that the investment to the tune of Rs. 315,00,00,000/- and the consequent issuance of OCDs may topple the leverage ratio took a legal opinion from A. Abhinav and Associates Company Secretary which was accordingly given on 26.08.2022. The appellant no. 1 with complete consent and approval of the board of directors of Teesta Retail took steps to convert the OCD's to compulsorily convertible preference shares (CCPS) for a remedy to the toppling of the leverage ratio and this conversion was done in accordance with law.

6. It is also stated that subsequent to the infusion of investment of Rs. 315,00,00,000/- the Respondent No. 1 and 2 became shareholders of appellant no. 1 by purchasing 117325 shares each from Mr. Sanjiv Kumar Gupta, and erstwhile whole time director. The Respondents invested their money into appellant no. 1 after exercising due diligence with respect to the affairs and management of the appellant no. 1 and they were fully aware of the infusion of funds by Teesta Retail and subsequent conversion of OCD to CCPS.

7. It is also stated that when the Respondents became shareholders of the appellant no. 1 the decision to convert the OCDs to CCPS was discussed and approved in the EGMs held on 06.09.2022 and 17.09.2022.

8. It is further stated that Respondents in furtherance of a conspiracy to take control over the appellant no. 1 filed a Company Petition before Ld. NCLT on 28.02.2024 alleging 'oppression and mismanagement' on the parts of the appellants, claiming relief pertaining to the removal of the appellant no. 2 and 3 as managing director and director of the appellant no. 1 and also the removal of Johnson K. A. as its Director and also to set aside purchase of a luxus luxury car made by appellant no.1 and to further direct the appellant No. 1 to apply to the RBI to extend the validity of the RBI approval and to take all other actions in order to allot 28,83,506 shares to Respondent no. 1 against an infusion of Rs. 5,00,00,000/- by Respondent No. 1.

9. It is further stated that on 15.05.2024 Ld. NCLT disposed of the Company Petition and arrived at a finding that the allegations raised in the Company Petition constitute an act of Oppression and mismanagement

under Section 241 and 242 of the Companies Act and also appointed a former Judge of the Hon'ble High Court of Delhi as an Administrator of the appellant no. 1 to manage its affairs and the board of directors of appellant no. 1 were also suspended and CCPS were also cancelled.

10. It is also stated that the aforesaid order passed by Ld. NCLT was challenged by the appellant no. 2 and 3 before this Appellate Tribunal by way of filing appeals bearing CA (AT) No. 161 -162 of 2024 and vide order dated 22.05.2024 this Bench had directed to maintain a status quo. After passing of the order dated 15.05.2024 by the NCLT, on 21.05.2024 Evaan Holdings Pvt. Ltd. (Evaan) purchased 17.5 Crores CCPS in the appellant no. 1 from Siddhanth Commercials Pvt. Ltd., wherein Teesta Retail had merged, for a sum of Rs. 175 Crores. At the time of the aforesaid transaction, the Respondent No. 1 and 2 held 5% shares each in Evaan. The Respondent No. 1 is further the director of Evaan. It is further stated that at that point of time, 85% shares of Evaan were held by Mrs. Shreya Agarwal i.e., the daughter-in-law of the Respondent No. 1 and 2. It is evident that Evaan is managed by the Agarwala family.

11. It is further stated that on 31.05.2024, this Appellate Tribunal was pleased to modify the order dated 22.05.2024 to the extent of directing Hon'ble Mr. Justice R.K. Gauba to act as an observer in appellant no.1.

12. It is also stated that on 20.06.2024 Respondents filed a representation before Ld. Observer seeking enquiry in to the alleged siphoning off the funds by the appellants. Thereafter, on 21.06.2024, Respondents filed an application before this Appellate Tribunal bearing IA No. 4305 of 2024 seeking recall of the order dated 31.05.2024.

13. On 01.07.2024, Ld. Observer stated to have filed his first report on 23.07.2024. This Appellate Tribunal passed an order in IA No. 4305 of 2024 clarifying that Ld. Observer shall only examine the financial transactions pertaining to alleged siphoning off funds and it was on 04.07.2024, Respondents have filed a contempt application before this Tribunal bearing contempt case (AT) No. 17 of 2024 alleging non-cooperation of the appellants with regard to non-providing requisites details to Ld. Observer.

14. It is also reflected from the memo of appeal that on 17.07.2024, Evaan filed a Writ Petition bearing WP (C)9877 of 2024 before Hon'ble High Court of Delhi and it was on 24.07.2024 direction was passed to file a status report to the RBI pertaining to the enquiry conducted by it into allegations of siphoning of funds by appellant no.2 and 3.

15. It is further reflected that on 08.08.2024 an application bearing IA No. 5932 of 2024 was filed by the Respondents seeking modification of aforesaid order dated 31.05.2024 to the extent of including suspension of the Board of Directors of the company and to direct Ld. observer to act as an administrator in place of Board of Directors.

16. On 23.10.2024, the Hon'ble High Court of Delhi passed various directions with regard to the suspension of the board of directors with immediate effect and appointing interim committee of administrators headed by Hon'ble Justice R.K. Gauba till RBI appoints director of the company with a consequential direction to the said interim committee of administrator and RBI to file a report of the actions taken by them. Appellant No. 2 feeling aggrieved by the aforesaid order filed a letters patent appeal bearing LPA No. 1081 of 2024 before the Division Bench of the

Hon'ble High Court of Delhi and ultimately on 12.02.2025 the aforesaid LPA was dismissed and the order dated 23.10.2024 passed by the Ld. Single Judge of Hon'ble High Court of Delhi was upheld and various directions were issued including the suspension of the Board of Directors and appointment of an interim administrative committee.

17. The appellant no. 2 and 3 challenged the aforesaid order passed by the Hon'ble Division Bench of Delhi High Court before Hon'ble Supreme Court by filing SLP No. 4534 of 2025, 4349 of 2025 and 4540 of 2025 and vide order dated 24.02.2025 the following order was passed by the Hon'ble Supreme Court:

"In this matter, several issues and questions have been raised for consideration. Notably, the scope and ambit of the order passed by the learned single Judge of the High Court of Delhi dated 26.10.2024 is under scrutiny, particularly in the light of the ongoing proceedings concerning oppression and mismanagement before the National Company Law Tribunal/National Company Law Appellate Tribunal, which are currently seized of the matter. The primary prayer in the writ petition pertains to the alleged inaction or failure on the part of the Reserve Bank of India in fulfilling its obligations. However, it is pertinent to note that the interim directions issued by the learned Judge appear to address and adjudicate all issues and contentions inter se the parties, including those that are sub-judice before the NCLT/NCLAT and the RBI.

Issue notice, returnable in the week commencing 14.04.2025. Notice is accepted by Mr. Sahil Tagotra, learned counsel, who is present in court on advance notice/caveat for respondent no. 1.

Hence, notice need be served on the said respondent.

Respondent No. 2, RBI, is represented upon notice being issued to it by this court, vide order dated 17.02.2025.

Notice shall be served upon the unrepresented respondents by all modes, including dasti, upon steps being taken within ten days from today.

As an interim measure, the following directions are issued:

(i) There shall be stay of operation of the directions issued in the order dated 23.10.2024 passed by the learned single Judge in W.P. (C) No. 9877/2024, which supersedes the

Board of Directors of Exclusive Capital Limited and appoints an Interim Committee of Administrators. For the time being and till the date of this order, the payments to be made to the ICA, as per the said order, shall be borne by the writ petitioner.

(ii) The orders passed by the NCLAT in relation to the appointment of the Observer, including the directions and powers given to such Observer, shall, however, continue to operate.

(iii) Till the next date of hearing in the present special leave petition, we find it appropriate to direct that Exclusive Capital Limited shall continue with its day-to-day business activities. However, it shall not enter into any financial transaction exceeding ₹10,00,000/- (Rupees Ten Lakhs only) without prior notice to the Observer. If the Observer deems it appropriate, he may bring the details of such transaction to the notice of the NCLT, where proceedings under Section 242 of the Companies Act, 2013, are pending. The NCLT may, thereupon, pass appropriate orders.

(iv) The proceedings before the RBI, pursuant to its show-cause notice and in view of the liberty granted by this Court, vide order dated 17.02.2025, shall continue and appropriate orders shall be passed, preferably within a period of four weeks from today.

(v) The observations recorded in the order passed by the learned single Judge and in the impugned judgment will not influence the RBI when it takes a decision. The RBI shall also not be influenced by this order, granting stay. It shall take an independent decision on the merits of the matter and proceed in accordance with law.

(vi) Liberty is granted to the writ petitioner and the shareholders, who have moved the NCLT, to move an application before the NCLT/NCLAT seeking appropriate directions. If any such application is filed, the same will be considered and decided in accordance with law, without being influenced by the impugned judgment, including the order of the learned single Judge and the present order, granting stay.

(vii) The proceedings before the NCLT/NCLAT may continue. It will be equally open to the petitioner before us, who is the respondent before the NCLT and the petitioner before the NCLAT, to contest/pursue the proceedings”.

18. It is further stated that Respondents by erroneously interpreting the interim directions issued by the Hon’ble Supreme Court vide its order dated 24.02.2025 moved an application bearing IA No. 115 of 2025 on 09.04.2025

wherein the relief pertaining to the suspension of ECL's Board of Director and an observer to manage its affair was prayed as well as the stay on the scheduled annual general meeting. The Ld. NCLT vide order dated 16.04.2025, restrained appellant no. 1 from holding its AGM on 18.04.2025. Appellant No. 2 filed a modification application bearing IA No. 107192 of 2025 in the SLP (C) No. 4534 of 2025 on 25.04.2025 seeking modification/clarification of the order dated 24.02.2025 of the Hon'ble Supreme Court.

19. It is also stated that again by misconstruing the interim directions issued by the Hon'ble Supreme Court vide its order dated 24.02.2025 the Respondents moved an application bearing IA No. 130 of 2025 on 29.04.2025 requesting for directing an investigation into the affairs of appellant no. 1 and also to refer the matter to be investigated by the serious fraud investigation office in terms of Section 213 of the Companies Act, 2013.

20. The appellants have filed their replies in the aforesaid application and on 24.05.2025 preferred an appeal bearing CA (AT) No. 119 of 2025 against issuance of the notice by the NCLT in the aforesaid application. In the meantime, on 30.05.2025, this Appellate Tribunal passed an order in CA (AT) No. 112 of 2025 to the effect that decision of the NCLT in AGM application will be subject to the outcome of AGM appeal and further orders, which may be passed by the Hon'ble Supreme Court. On 02.06.2025, order was reserved by the Ld. NCLT in IA No. 130 of 2025.

21. It is also stated that on 05.06.2025, appellants filed an application bearing IA No. 143368 of 2025 in SLP No. 4534 of 2025, before the Hon'ble Supreme Court with a prayer to direct Ld. NCLT to refrain from passing any direction in any application including IA No. 115 and IA No. 130 of 2025. In the meantime, a Civil Appeal bearing CA No. 7396 of 2025 was also filed in the Hon'ble Supreme Court under Section 423 of the Companies Act against the order dated 13.05.2025 passed by this Appellate Tribunal. It is on 16.07.2025, Ld. NCLT has passed the impugned order directing an investigation into affairs of the (Exclusive Capital Ltd.) under Section 213 of the Companies Act and aggrieved by the same appellants have preferred instant appeal.

22. It is further stated that the application before the Ld. NCLT has been moved by suppressing relevant facts and the reply filed by the appellants have not been properly appreciated.

23. Respondents has appeared before this Tribunal and have chosen not file any reply and after the matter was heard at length, a statement was made by their counsel on 07.10.2025, when the arguments were concluded, that they will not file any reply to the appeal however they be permitted to file written submissions and all grounds would be taken by them in the written submissions and these written submissions may be treated as their reply. We have accordingly permitted Respondents to file written submissions, which have accordingly been filed by them.

24. It is stated in the Written submissions filed by the Respondents that the standard for directing an investigation under Section 213 (a) of the Companies Act is only "good reasons and the material which has been

placed before the Tribunal was sufficient to meet the threshold of good reasons”.

25. It is also stated that a plain reading of Section 213 (a) of the Companies Act would reflect that consciously a lower threshold of only good reasons has been prescribed for a shareholder (who is an insider) in contrast to the higher standard which has been earmarked for third parties.

26. It is further stated that this Appellate Tribunal in appeals preferred with regard to proceedings undertaken by the Ld. NCLT under Section 241-242 of the Companies Act upheld the orders of the NCLT appointing an observer which was ultimately affirmed by the Hon’ble Supreme Court and the observer in its report confirms that appellants no. 2 and 3 were seeking to denude company of its assets by siphoning funds with a clear intent to defraud the members and creditors of the company.

27. It is further stated that the report of the Ld. Observer also finds that the modus operandi adopted by appellant no. 2 and 3 for siphoning off funds from the company was by granting favorable loans to entities owned and controlled by them, at the cost of the company and also by not taking steps for recovery of these outstanding loans and by purchasing luxury cars at inflated prices from related entities and a question mark was also raised with regard to the possession of these cars.

28. It is further stated that the Ld. Observer in his report has stated that these related party loans were granted without any documentation and were largely unsecured and moreover there was evidence of fabricating board resolutions and minutes of the meetings of the company.

29. It is also stated that the allegations levelled by the Respondents pertaining to siphoning of funds were found to be actionable by the adjudicating authority as also by this appellate tribunal while considering the appeals against the NCLT order and thus it was required that these allegations were further be investigated in order to ascertain the truth.

30. It is also stated that the plea that the reports of the Ld. Observer was pending before this appellate tribunal for adjudication is totally irrelevant as Section 213(a) of the Companies Act does not contemplate forming of a final opinion in relation to the allegations of fraudulent conduct. The adjudicating authority was thus only required to be satisfied of the existence of “good reasons to warrant an investigation” in terms of Section 213(a) of the Companies Act, 2013. It is highlighted that in this case there was ample material before the adjudicating authority to pass the impugned order.

31. It is further stated that the adjudicating authority for the purpose of passing impugned order has taken into consideration the reports submitted by Ld. Observer who is a retired judge of the high court and was appointed for that purpose by the adjudicating authority and his appointment has not been disturbed by any higher forum.

32. It is further stated that the law laid down *in ‘Rohtas Industries vs. S.D. Agarwala and Ors.’ (1969) 1 SCC 325* and *Barium Chemicals Ltd. and Anr. vs. Company Law Board and Ors. (1966) 36 Comp Cas 639* are not applicable to the facts of the instant case.

33. It is further stated that the impugned order has satisfied the requirement of Section 213 (b) of the Companies Act also and the circumstances were sufficient for directing an investigation.

34. It is also stated that adjudicating authority was possessing requisites jurisdiction to pass the impugned order as the company petition filed by the Respondents was not finally disposed of as the final scheme of the management of the company was yet to be considered and the interlocutory order was passed to operate only for a period of 180 days and the erstwhile administrator (now Ld. Observer) was appointed to submit reports to the adjudicating authority on monthly basis. Thus the adjudicating authority was not functus officio. Hon'ble Supreme Court in its order dated 24.02.2025 passed a SLP (C)4534 of 2025 has also clearly noted that the proceedings before the NCLT are ongoing and that's why liberty was granted to the Respondents to file an application to seek appropriate directions before NCLT and it is in pursuance of the said liberty the application under Section 213 of the Companies Act, 2013 was moved.

35. It is further stated that an application was moved by the appellants before the Hon'ble Supreme Court to modify the order dated 24.02.2025 however till date no modification in the said order has been made. It is also stated that any proceeding before the RBI may not bar the proceedings under Section 213 of the Companies Act as the RBI is not an appropriate authority to investigate allegations of siphoning and in this regard the RBI has also filed an affidavit before the Hon'ble Supreme Court in SLP (C) 4534 of 2025 stating that it is not an appropriate authority to investigate allegations of siphoning and thus the RBI Act will not oust the rejection of the adjudicating authority bestowed by the Companies Act.

36. Ld. Counsel for the appellant while drawing our attention towards impugned order submits that the impugned order has been passed by the Ld. NCLT without any jurisdiction as the company petition filed by the Respondents has already been disposed of and nothing was pending before the adjudicating authority and the detailed reply filed by the appellants was not considered in right perspective.

37. It is further submitted that the adjudicating authority has also relied on orders of the enforcement directorate and criminal proceedings initiated by the CBI to justify an order for investigation under Section 213 of the Companies Act, while these proceedings are not having any connection whatsoever with the ECL or its business and the impugned order has been passed in utter disregard and patent misreading of the order of the Hon'ble Supreme Court dated 24.02.2025.

38. It is vehemently submitted that the impugned order is a non-speaking order and has been passed without giving any reasons, clearly reflecting sheer non-application of mind and without recording any good reason or circumstances, suggesting that the affairs of the company are being carried with the intent of defrauding its creditors/members as required under Section 213 of the Companies Act.

39. It is also submitted that Section 213 of the Companies Act has to be read as a whole and it is the duty on the applicant to establish prima facie ingredients of Section 213 (b) (i), (ii) and (iii) regardless of the fact whether the application has been filed under Section 213 (a) or 213 (b) of the Companies Act. Reliance in this regard has been laid on the law laid down by a coordinate bench of this tribunal in **'RS India Wind Energy Pvt. Ltd.**

Vs PTC India financial services', 2016 SCC Online NCLAT 10 and it is emphasized that the tribunal must express explicit satisfaction that the circumstances suggest towards the fact that the companies affairs are being conducted with intent to defraud creditors/members or for unlawful purposes and this satisfaction must be based on material available on record and not on mere conjuncture or suspicion. In this regard the law laid by the Hon'ble Supreme Court in ***Barium Chemicals vs. CLB (1966) 36 Comp Cas 639 and Devas Multimedia Pvt. Ltd. vs. Antrix Corporation Ltd. and Anr. (2023) 1 SCC 216*** has also been highlighted.

40. Ld. Sr. Counsel for the appellants while relying on ***'Lagadapati Ramesh vs. Ramanathan Bhuvaneshwari' (2019) SCC Online NCLAT 1153*** submits that the satisfaction of the tribunal with regard to the circumstances suggesting that business of the company is being conducted with intent to defraud creditors/members or for any fraudulent or unlawful purpose or in a manner oppressive to members or person concerned or management have been guilty of fraud or misconduct, is must. Reliance has been placed in this regard on ***(Capt.) Valadamannati Jaya Pushpakumar vs. Madras Race club and Ors., CA (AT) (CH) No. 17 of 2022*** passed by the NCLAT Chennai Bench, in order to show that the discretionary powers under Section 213 must be exercised honestly and with reasonableness and not arbitrary and also that the investigation cannot be initiated only on the basis of allegations by one shareholder and the same could only be ordered when public interest is involved or when detrimental to members interest.

41. It is also highlighted that to order an investigation under Section 213 of the Companies Act an opinion is required to be formed which is a judicial

act and must confirm to an objective standard as laid down in **Jaswant Sugar Mills Ltd. Vs. Lakshmi Chand (1962) SCC Online SC 20** and in the instant case no such exercise has been done by the tribunal.

42. While drawing our attention towards the law laid down by the Hon'ble Supreme Court in Rohtas Industries (Supra) it is submitted that recording of satisfaction is must before any investigation is directed under Section 213 of the Companies Act and if the required exercise has not been done by the NCLT the order passed by it is open to judicial review and this appellate tribunal may intervene when it is evident that the order is devoid of any reason or application of mind. Reliance in this regard has been placed on **'Rajeev Suri vs. DDA' (2022) 11 SCC 1.**

43. It is also submitted that NCLT has erroneously relied upon the observer's reports in arriving at decision to order investigation without realizing that the reports of the observer stand on the same footing as a commissioner's report and therefore no evidentiary finality could be attached with it and it may not be treated as conclusive and the same would be read along with the objections filed by the appellants. In this regard reliance has been placed by the Ld. Sr. Counsel for the appellant on **'M.P. Rajya Tilhan Utpadak Sahakari Sangh Maryadit vs. Modi Transport Service', (2022) 14 SCC 345** as well as the law laid down by the Hon'ble Bombay High Court in **'Kishor vs. Preeti', 2007 SCC Online Bom 102.**

44. It is also submitted that the exclusive jurisdiction to investigate into the affairs of the company is with the reserve Bank of India, which is an expert body and in this regard Chapter III B of the RBI Act is a complete Code in itself and has been given an overriding effect over all other laws

including companies act by incorporating Section 45 Q. In this regard the law laid down by the Hon'ble Supreme Court in '**Akshay N Patel vs. RBI**' (2022) 3 SCC 694, '**Nedumpilli Finance Company vs. State of Kerala**' (2022) 7 SCC 394 and '**Integrated Finance Company Ltd. Vs. RBI and Ors.**' (2015) 13 SCC 772 have been relied. It is also highlighted that Section 45 N grants wide power to the RBI to inspect an NBFC and does not limit the scope of such inspection, while in the instant case the RBI has already taken cognizance of the same allegations and thus there was no opportunity available to the NCLT to have entertain the application moved by the appellant and to pass an order for investigation.

45. It is further submitted that Respondents are guilty of forum shopping and they desperately approached different courts and forums for the same relief and an investigation has been sought by moving an application while the matter was seized with the RBI.

46. It is also contended with considerable force that on the basis of judicial propriety also the impugned order may not withstand the test of law as even after becoming functus officio and having disposed of the Company Petition No. 48/ND/2024 on 15.05.2024 and expressly writing that the petition stands disposed the application of the Respondent for initiation of the investigation has been entertained against all judicial propriety and established procedure resulting in labelling the impugned order as vide ab initio. Reliance in this regard is placed on '**Jaipur Vidyut Vitran Nigam Ltd. & Ors. vs. Adani Power Rajasthan Ltd. & Anr.**' (2024) SCC Online SC 313, '**State of UP vs. Brahm Datt Sharma**' (1987) 2 SCC 179 and

‘Ajay Kumar Jain vs. State of UP’ (2024) IN SC 958 as well as on ‘Ajay Mohan vs. HN Rai,’ (2008) 2 SCC 507.

47. Finally it is submitted that the Hon’ble Supreme Court in SLP (C) No. 4534 of 2025 granted liberty to the Writ Petitioner and shareholders to move application before the NCLT/NCLAT for decision in accordance with law without being influenced by prior judgments or orders and this order did not direct or mandate the Ld. NCLT to decide any pending applications and thus Ld. NCLT incorrectly assumed that the Hon’ble Supreme Court granted liberty to decide all pending IA’s and moreover the Hon’ble Supreme Court order may not revive NCLT’s jurisdiction once it had seized with the matter by deciding it finally and this illegality renders the impugned order as per se illegal.

48. Ld. Counsel for the appellant has relied on ***‘AR Antulay vs. R S Nayak’, (1988) 2 SCC 602 and ‘Rajasthan SRTC vs. Zakir Hussain’, (2005) 7 SCC 447*** and it is submitted that the impugned order with stand the test of law as laid down in the aforesaid case laws and is liable to be dismissed.

49. We have already discussed the written submissions filed by respondents no. 1 and 2 at the appropriate place. However, we are very briefly mentioning here the submissions made by Ld. Counsel for the respondents. It has been submitted that Section 213(a) of the Companies Act contemplates showing of only “good reasons”. The allegations against the appellants are concerning siphoning of funds and related-party dealings. Respondents collectively hold at least 10% voting rights, satisfying Section 213(a) threshold. Lower threshold of only “good reasons” is kept for

insider's/minority shareholders. Observer, who is retired High Court judge, has found transactions showing directors siphoned funds via related entities, extended loans of huge amount and bought luxury cars at inflated prices through related parties, fabrication of board resolutions/minutes, amounting to an offence under Section 447.

50. It is further submitted that material available on record far exceeds “good reasons” and that the NCLT only required to see credible basis for inquiry, while reliance on Observer’s report is Proper. The RBI enquiry could not bar proceedings under Section 213 of the Act as RBI itself stated in its affidavit that it is not the appropriate authority to investigate siphoning allegations.

51. It is also highlighted that NCLT’s earlier orders were interlocutory and Hon’ble Supreme Court’s 08.08.2025 order only transferred pending NCLT applications to NCLAT for consideration and affirmed AGM-related directions, it did not bar or modify order dated 24.02.2025, thus NCLT had jurisdiction to pass the impugned order. RBI Act Chapter III B and Section 45Q do not displace Companies Act remedies for shareholder protection. Proceedings under Section 213 culminates in prosecution for fraud under Section 447, RBI lacks such authority to prosecute the offenders of fraud under section 447 of the Act.

52. It is also submitted that NCLAT’s 30.05.2025 order and Hon'ble Supreme Court’s 08.08.2025 order addressed AGM and transfer aspects and did not undermined NCLT’s competence to decide Section 213(a) application that culminated in the impugned order on 16 July 2025. Reliance has been placed on **Ganesh Bank of Kurundwad Ltd. v. Union of India, (2006) 10**

SCC 645, Lagadapati v. Ramesh v. Ramanathan Bhuvaneshwari, 2019 SCC OnLine NCLAT 1153, Vijay Pal Garg and Ors v. Pooja Bahry, (2020) 219 Comp Cas 260, M. Srinivas v. Smt. Ramanathan Bhuvaneshwari, (2020) 220 Comp Cas 89, Nedumpilli Finance (Supra), Shonkh Technologies Ltd. v. Union of India (2008) 144 Comp Cas 218 (Del) , Rohtas Industries(Supra), R S India Wind EnergyPvt Ltd.(Supra), Hari Shankaran vs Union Of India and Ors, (2019) 6 Scc 584, Shonkh Technolgies Ltd vs Union Of India and Ors,2006 SCC Online Del 1609.

53. We have heard Ld. Counsels for the parties in depth and have perused the record.

54. Perusal of the record would reflect that Respondents are shareholders of appellant no.1 holding its 117325 equity shares which amount to 10% of the total shareholding of the company. This fact has not been denied by the appellants thus the share of Respondent Nos 1 and 2 is admittedly is 10% of the total shareholding of the company, thus, the threshold required for initiating the proceedings under Section 213 of the Companies Act, appears to be satisfied.

55. It is also reflected that Respondents have filed a company petition bearing CP No. 48/PB/2024 under Section 241-242 of the Companies Act in NCLT New Delhi Bench -II with the allegations against the appellant of committing oppression and mismanagement with regard to the affairs of the appellant company including violations of directions and guidelines issued by the RBI, siphoning of funds by the board of the appellant company, causing resignations of key managerial personnel's by intimidation and harassment, failure in disclosing material information to the board, misuse

of funds of the company purchase of luxury car at high price for personal use from the funds of appellant company and various other acts of corporate mis governance etc. including illegal conversion of OCD's to CCPS's without approval of the RBI, misappropriation of funds taking from Respondents. Various reliefs were claimed by the Respondents(Petitioners) including directions to appellant no. 1 to apply to the RBI to extend the validity of the RBI approval and to take all other actions in order to allot 2883506 shares to the Respondents against infusion of Rs.5,00,00,000/- (five crores) allegedly made by them and also removal of Respondent No. 2 and 3 (of the petition) from the Managing Director and Director of the Company along with other consequential reliefs.

56. It is also reflected that on 15.05.2024, the NCLT finding substance in the allegations levelled by the Respondents (Petitioners) took a decision of appointment of an administrator to manage the functions and affairs of the company and proceeded to appoint Shri Justice R.K. Gauba, former Judge of Hon'ble Delhi High Court as administrator of the company with following consequential directions:

“A. The Ld. Administrator so appointed would cause to be prepared with respect to the company: -

(a) a complete inventory of

(i) all assets and liabilities of whatever nature;

(ii) all books of account, registers, maps, plans, records, documents of title and all other documents of whatever nature;

(b) a list of shareholders and a list of creditors showing separately in the list of creditors, the secured creditors and unsecured creditors;

.....

(e) proforma accounts of the company, where no up-to-date audited accounts are available; and

(f) a list of workmen of the company and their dues referred to in subsection (3) of section 325.

B. The Ld. Administrator would also take over all the functions of the board qua the Respondent No.1 and the power and function of the board would remain in abeyance for a period of 180 days.

C. The OCDs/CCPS issued by the Respondent No.1, in violation of the RBI regulations, shall stand cancelled and money, thereof, shall be returned to respective holders and necessary formalities in this regard would be completed.

D. The Ld. Administrator will take appropriate steps after consulting the CC PS holders with regard to the above, and for this purpose, he would be at liberty to deal with the assets of Respondent No.1 as he deems fit and as per applicable law.

E. For the purpose of verifying the allegations regarding dubious financial transactions, including those with related parties, for siphoning of funds from the respondent company, a transaction audit for the relevant period of such transactions be carried out. The Ld. Administrator will appoint a reputed Auditor/ Audit Firm for the purpose.

F. The Ld. Administrator would appoint/engage Key Managerial Persons and skilled professionals to assist him in managing the affairs of the company (Respondent No.1) and to ensure that the provisions of Non-Banking Financial Company-Non-Systemically Important Non-Deposit taking Company (Reserve Bank) Directions, 2016 as also the letter dated 30.05.2023 issued by RBI are complied with and no defiance thereof persist.

G. For a period of 180 days, the Board of Directors would remain in suspended position. Nevertheless, the Respondent Nos.2 to 4 would be paid the same pay and allowances as they are drawing as on date.

H. On expiry of the period of 150 days the Ld. Administrator would evolve a scheme regarding composition of fresh Board of Directors and running the affairs of the company. While doing so, the Ld. Administrator would consult all stakeholders. In the meantime, the Ld. Administrator will file a monthly report regarding the affairs of the Respondent No.1 before this Tribunal, by way of IAs.

I. An appropriate application for approval of the scheme/plan to be evolved by Ld. Administrator (as above) shall be filed before this Tribunal by way of an IA, before expiry of 180 days. Nevertheless, if circumstances warrant, an application for extension of time may be filed by the Ld. Administrator. During this period, the Ld. Administrator will file a report at the end of every month apprising this Bench of the development during the month.

J. The Ld. Administrator shall do all acts as necessary, keeping in view the complications involved in the present case.

K. All parties are directed to cooperate with the Ld. administrator and the management of Respondent no.1 are directed to make available all documents information requisition by the learned administration.

L. The Ld. Administrator would be entitled to same pay, allowances and facilities as are admissible to CEO/MD of the Respondent.

M. The Ld. Administrator is at liberty to approach this Bench for any clarification/direction with regard to the issues before him.

N. Nothing observed/stated hereinabove would be perceived to have ramification to disqualify the Respondent Nos.2 to 3 from holding the position of Director qua any company. The Petition stands disposed of. No Cost”.

57. It is also transpired that aggrieved by this order appellant preferred appeal no. 161, 162 of 2024 before this appellate tribunal and an order of status quo was passed by this appellate tribunal dated 22.05.2024.

58. It was on 31.05.2024, this appellate tribunal modifies the order of status quo in following terms:

“5. The appellants have substantially argued the matter and the Respondents shall be arguing on the next date. At this stage, we modify the interim relief of grant of status quo in respect of the impugned order vide our order dated 22.05.2024, to the extent that, we hereby direct let Hon’ble Justice Mr. R.K. Gauba to act as an Observer, and he shall preside over the Board of Directors’ Meetings and no major policy decision be taken by the Board and let there be no alienation of assets of R3(Exclusive Capital Ltd) till the next date of hearing. The Ld. Observer in the meantime may prepare a complete inventory of all assets of R3 and also a list of shareholders and a list of secured and unsecured creditors. The Observer shall verify the allegation qua the financial transactions, including those of related party qua siphoning of funds. All the parties to cooperate with the Ld. Observer and to make available to him all documents/information as requisitioned by the Ld. Observer.

6. Ld. Observer shall be entitled to pay and allowances and facilities as admissible to the CEO/Managing Director of Respondent No.2.

7. *The Ld. Observer shall be at liberty to approach this Tribunal for any clarifications or directions.*
8. *List the appeal on **3rd and 5th July, 2024** for further hearing”.*

59. On 24.05.2024, Evaan Holdings Pvt. Ltd. send a detailed complaint to RBI with regard to the alleged misappropriation of funds and mismanagement in the appellant company. In the meantime, a writ petition bearing WP (C) 9877 of 2024 was filed in Hon’ble Delhi High Court by Evaan Holdings Pvt. Ltd. (Evaan) praying amongst other, directions to RBI to enquire into the affairs of the appellant company, directions to do special audit and also of removal of the board and other consequential directions. A contempt petition was also filed by the Respondents and an application to recall order dated 31.05.2024, was also filed by the appellants on which this appellate tribunal had passed an order on 23.07.2024, operative part of which is reproduced as under:

“4. We have gone through the order dated 31.05.2024. The Ld. counsel for the appellant is aggrieved of the fact the said order dated 31.05.2024 requires the Ld. Observer to verify all the allegations made in the pleadings including those related to siphoning of funds and related parties. We have perused the order dated 31.05.2024, we clarify such directions were to examine the financial transactions qua siphoning of funds and of related parties.

5. In the circumstances let the requisite information as desired by the Ld. Observer in connection to above be supplied and compliance report be filed by the appellant within two weeks.

*List on **9th August, 2024**”.*

60. In the meantime, on 24.07.2024, Hon’ble Delhi High Court in the writ petition mentioned earlier, directed RBI to file a status report with regard to the outcome of the proceedings conducted by it so far and also to specify if

any action is proposed. Accordingly, RBI filed a status report on 12.08.2024, interalia stating the fact of non-submissions of essential returns/documents by the appellant company for financial year 2023-2024 and 2022-2023 and further stated that if after scrutiny of the company appropriate action would be taken if the company is found to have contravened any provision of the RBI Act or any statutory directions.

61. The writ petition filed by the Evaan was disposed of on 23.10.2024 by the Hon'ble Delhi High Court and following directions were issued:

“(i) It is hereby directed that the Board of Directors of Respondent no. 2 company shall remain suspended with immediate effect till further orders;

*(ii) As a consequence, an interim arrangement is made appointing an Interim Committee of Administrators headed by Hon'ble Mr. Justice R.K. Gauba (Retired) [**Mobile No. 9650411919, email ID: rkgauba@gmail.com**] in order to protect any further pilfering, siphoning or misappropriation of funds of the respondent No.2 company, with Mr. Mr. Mahesh Aggarwal as Chartered Accountant [**Member No. 085013, Mobile No.9871324000, email ID: ip1387ma@gmail.com**] and Mr. R. Maheswaram, a retired Banker [**email ID: maheswaramlalitha@gmail.com Mobile No. 9892182640**], as the financial expert and to perform all such duties which are required to be performed by or vested with the Board of Directors of the respondent No.2 company till such time the respondent No.1/RBI appoints Directors for running the affairs of the respondent No.2 company in terms of Section 45ID of the RBI Act;*

(iii) In view of above (ii), the present Board of Directors shall submit all the records including the books of accounts besides all movable and immovable properties at the disposal of the Interim Committee of Administrator forthwith;

(iv) Further, as an interim measure Sabadra & Associates, Chartered Accountant firm (IBA no. 120 in the list) is appointed a statutory auditor to conduct special audit under Section 45MA of the RBI Act and conduct statutory audit under the Companies Act, 2013 to finalize the accounts of respondent No.2 company within a period of four weeks;

(v) The said statutory audit of respondent No.2 company shall be conducted for the financial years 2022-23 & 2023-24;

(vi) It is also provided that the respondent No.1/RBI shall be at liberty to appoint any competent person on its own in the interim committee of the Administrators.

(vii) A detailed report with regard to action taken by the Interim Committee of Administrators and respondent No.1/RBI shall be placed before this Court within five weeks from the date of this order;

(viii) Hon'ble Mr. Justice R.K. Gauba (Retired) shall be paid honorarium of Rs. 9,50,000/- per month. Likewise Shri Mahesh Aggarwal, Chartered Accountant shall be paid professional fees @ Rs.5,50,000/- per month; and Shri Mr. R. Maheswaran, a retired Banker, shall be paid professional fee @ 3,50,000/- per month. This shall be paid from the date of taking over charge of such duties. The Court Master of this Court shall send the contact details to Hon'ble Mr. Justice R.K. Gauba (Retired) along with a copy of this order. (ix) Sabadra & Associates shall be paid a minimum fee of Rs.10,00,000/- for audit of the books of accounts as per the financial year, and further fee if justified by the Interim Committee of Administrator of the Administrator appointed by the RBI, as the case may be.

35. The aforesaid directions are passed without prejudice to the rights and powers of the respondent No.1/RBI to take appropriate actions on finding out commission of any act of criminal nature or violation of other laws during the course of investigation by respondent No. 1/RBI in accordance with law.

36. A copy of this order be given dasti to all the concerned parties through their counsels under the signature of the Court Master for necessary compliance.

37. Re-notify for compliance on **02.12.2024**".

62. It is also pertinent to mention here that letters patent appeals were filed against the aforesaid order by appellants being LPA No. 1080, 1081 and 1083 of 2024 and on 28.10.2024, the operation of the impugned directions issued by the impugned order was stayed, however, it was clarified that this will not preclude the RBI or the NCLT/NCLAT to proceed with the matter and take appropriate action as per law after examining complaints made by the writ petitioner. It is further clarified that the direction in the impugned

order to the respondent no. 2(RBI) to examine the complaints of the private respondent is not being stayed.

63. It is also necessary to mention here that Ld. Observer filed his first status report on 01.07.2024, wherein various stances of non-compliance qua furnishing of information/record was highlighted and following request was made.

“Request for Directions: -

25. In view of the responsibility cast upon me by Ld. NCLAT, bare necessary information in the possession of the said company has been requisitioned by me in order to carry out the task delegated to me. There has been a stoic silence till date and further information/ records/ documents have not been forthcoming, without which the responsibility cast upon me cannot be completed. In light thereof, the company, its Directors and all concerned may be directed by the Ld. NCLAT to comply with the information/records/ documents requisitioned by me, at the earliest”.

64. The record would further reflect that on 02.12.2024, Ld. Observer has filed his second status report wherein again complaint was made pertaining to the reluctance of management of appellant company to share necessary information. It was also complained that the management of ECL is installing requests of Ld. Observer for sharing of information or records and also that some information has been provided. So far a siphoning of funds and other allegations qua financial transaction is concerned Ld. Observer stated as under:-(As mentioned by the NCLT in Impugned order and has not been disputed so far as contents are concerned)

“I. Sulojay Realty Private Limited ('SRPL')

16. SRPL is a related party. The material available confirms that Mr. SP Bagla and Mr. Achal Jindal, Directors in ECL are also directors in SRPL, being shareholders with effect from 02.06.2022. Two loans were extended by ECL

to SRPL, one on 14.01.2022 for Rs. 5 crores and the second on 04.06.2022 for Rs. 12 crores.

17. In absence of any material to such effect or explanation being offered on the subject, the undersigned is of the view that both the above loan transactions were indulged in against all norms or sense of prudence. There seems to be no formal loan application taken, the purpose of loan not even clearly ascertained (vague expression uses is business and personal), no sanction obtained from the board and the rates of interest (7% and 9%, respectively) at which the facilities were extended being abnormally low. It needs to be remembered that both these loans were unsecured and therefore the risk of loss has been unduly high. In spite of being specifically asked in this regard ECL has not disclosed any provision made to meet the eventuality of default or the borrower going insolvent. In fact, SRPL already faces the possibility of going through the CIRP process (Order dated 13.11.2024 in C.P. (IB)/69 (KB)2024 titled 'Sanjay Kumar Bhuwalka vs. Sulojay Realty Pvt. Ltd.')

18. There is no record reflecting any exercise of prudence in the nature of credit assessment or ascertainment of end use. The documentation seems to be wholly callous; some spaces having been left blank, no precautions having been taken even in securing signatures of attesting witnesses (please see promissory note as given in CA report). There is mismatch in the terms, since the promissory note relating to first said loan mentions 9% as the rate of interest which renders the documents questionable.

19. What is alarming is that the rate of interest respecting the second loan is 9% as per the agreement but actually charged interest was 7%, as reflected in the ledger, there being no document shown for justification of such loss being suffered. The loan had become due for repayment on 04.06.2023 but no payment was made till 31.07.2024. There is no disclosure made as to what steps were taken for recovery.

20. The material available reflects that to the knowledge of Mr. Bagla and Mr. Jindal, they being the common directors, most of the assets of SRPL were already mortgaged to ICICI Bank under loans taken in the name of SRPL, SK Bagla and M/s Exclusive Motors Pvt. Ltd. ('EMPL'). A perusal of the financial statements of SRPL, as downloaded from the website of MCA, by the CA, reflect that the company does not have any ongoing operations/businesses and therefore it is questionable as to how the loan which was secured on the asset of SRPL was used or expected to be repaid. It is further questionable as to how ECL could have given a loan to SRPL on unsecured terms at such concessional rates of interest. The purpose of loans

extended by ECL to SRPL seems to be other than what has been projected.

III. Mr. Satya Prakash Bagla

25. As per the material shared, ECL disbursed a loan of Rs. 4.90 crores to Mr. Satya Prakash Bagla, serving as Managing Director of ECL, against loan agreement/sanction letter dated 14.06.2022. There is virtually no documentation shown, no loan application or business proof or audited financial or end use of funds or source of re-payment of loan etc. taken at least for the record. In the disclosures, there is a vague reference made to some policy adopted on 23.12.2022. What was the said policy or how it is relevant for this transaction has not been explained. Assuming that it was necessary to abide by such policy, in absence of the document it cannot be said that it was adhered to. It is claimed that there was board approval taken on 28.09.2023. No such board resolution has been shown. In spite of being asked specifically vide Observer's Note No. 7, there is no disclosure made as to whether any provision was made in the books to cover the eventually of default in repayment, as per Income Recognition and Asset Classification (IRAC) norms issued by the RBI, which would apply to one and all, be it the MD of the company, he being an individual and therefore an entity distinct from the company.

26. The above transaction appears to have resulted in financial loss to ECL in as much as the ledger for the period beginning 01.04.2023 till 15.02.2024, reveals that no repayment was made for about 10 months and yet the borrower was spared of being declared as a NPA or incur liability to pay penal interest, as is the IRAC norm.

V. Jayant S. Mirani

30. The documents made available include loan application letter, sanction letter, process note, loan agreement with hypothecation mentioned, PAN, Aadhaar card, GST registration certificate and two Proforma Invoices, the purpose of the loan described as purchase of a car by Mr. Jayant S. Mirani. As per the books of accounts the loan of Rs. 2.05 crores with interest @ 9% was sanctioned on 05.11.2021 and disbursed on 10.11.2021 to EMPL from whom the car was said to be purchased. Inexplicably, the loan application is dated 08.11.2021, made after the sanction.

31. It is a matter of serious concern that the car for purchase of which the above loan was extended was also being subjected to lien of Bank of Baroda (BoB) against a loan being taken by Mr. Mirani, from the said bank, this fact admittedly known since it was so reflected in the process note. There is no explanation given in spite of specific query raised by the Observer's Note No. 7 as to

why loan was granted for purchase of a vehicle on which BoB had a prior lien and as to why no pari-passu charge was created with BoB for such additional loan facility. Even in respect of this transaction, no provision is shown to have been made to cover the eventuality of default in repayment as per IRAC norms. Again, there are no board approvals taken for such a transaction which emerges as highly imprudent.

32. The above loan transaction appears to have resulted in actual losses for ECL in as much as the books of account show no repayment till 31.07.2024.

33. The ledger for the period 01.04.2022 to 31.07.2024, against the disbursement of Rs. 2.05 crores, the borrower had repaid Rs. 1 crore till August 2022, the balance principal amount being Rs. 1.05 crores transferred as interest bearing loan on 25.05.2022, on which interest and instalments were made applicable. The said balance was not paid nor any interest recovered. By letter dated 25.05.2022, the amount of Rs. 1 crore was made interest free. There is no interest charged on the principal sum from the date of loan. Such terms are too benevolent and exposing ECL to loss.

34. ECL appears to have been too indulgent towards Mr. Mirani since the disclosed material reveals a further loan of Rs. 9.32 lacs having been extended to him on 07.09.2023 even while he was in default against the previous transaction.

VIII. Other questionable acts of commission/omission:

44. As per the data provided by ECL, its assets include 3 vehicles, viz. Bentley Bentayga (value Rs. 6.65 crores), BMW X5 (value Rs. 1.11 crores) and Mulsanne (value Rs. 9 crores), as on 13.06.2024. The invoices relating only to Mulsanne have been shared. It is not clear as to when the first said two vehicles purchased. In absence of documents in the nature of insurance policy etc., it is not possible to verify their actual value. As already mentioned in the context of Bentley Mulsanne, there is no expenditure booked in respect of such luxury vehicles to cover their running expenses, maintenance etc. Since requisition for further material by Observer's Note No. 7 has not been complied with, serious doubts arise as to whether these vehicles are actually controlled by, or in use of, ECL. Possibly, this Tribunal may have to direct production of all these vehicles for physical inspection and evaluation."

65. Thereafter the Observer also filed his third report raising allegations of various nature against appellants, however reply vis a vis the reports of the

Ld. Observer was also filed by the appellants, denying the allegations levelled by the observer in his reports in a detailed manner.

66. It was on 12.02.2025, Division Bench of the Hon'ble Delhi High Court dismissed the letters patent appeal filed by the appellants and aggrieved by the same a SLP No. (Civil 4534 of 2025) was filed by the appellants before the Hon'ble Supreme Court and on 24.02.2025, interim directions were issued therein, which are reproduced as under:

“As an interim measure, the following directions are issued:

(i) There shall be stay of operation of the directions issued in the order dated 23.10.2024 passed by the learned single Judge in W.P. (C) No. 9877/2024, which supersedes the Board of Directors of Exclusive Capital Limited and appoints an Interim Committee of Administrators. For the time being and till the date of this order, the payments to be made to the ICA, as per the said order, shall be borne by the writ petitioner.

(ii) The orders passed by the NCLAT in relation to the appointment of the Observer, including the directions and powers given to such Observer, shall, however, continue to operate.

(iii) Till the next date of hearing in the present special leave petition, we find it appropriate to direct that Exclusive Capital Limited shall continue with its day-to-day business activities. However, it shall not enter into any financial transaction exceeding ₹10,00,000/- (Rupees Ten Lakhs only) without prior notice to the Observer. If the Observer deems it appropriate, he may bring the details of such transaction to the notice of the NCLT, where proceedings under Section 242 of the Companies Act, 2013, are pending. The NCLT may, thereupon, pass appropriate orders.

(iv) The proceedings before the RBI, pursuant to its show-cause notice and in view of the liberty granted by this Court, vide order dated 17.02.2025, shall continue and appropriate orders shall be passed, preferably within a period of four weeks from today.

(v) The observations recorded in the order passed by the learned single Judge and in the impugned judgment will not influence the RBI when it takes a decision. The RBI shall also not be influenced by this order, granting stay. It

shall take an independent decision on the merits of the matter and proceed in accordance with law.

(vi) Liberty is granted to the writ petitioner and the shareholders, who have moved the NCLT, to move an application before the NCLT/NCLAT seeking appropriate directions. If any such application is filed, the same will be considered and decided in accordance with law, without being influenced by the impugned judgment, including the order of the learned single Judge and the present order, granting stay.

(vii) The proceedings before the NCLT/NCLAT may continue. It will be equally open to the petitioner before us, who is the respondent before the NCLT and the petitioner before the NCLAT, to contest/pursue the proceedings”.

67. In the meantime, an order was also passed by the RBI on 21.03.2025, pertaining to not to pursue any further the proceedings initiated against appellant company.

68. The record would further reveal that an IA No. 115 of 2025 was filed by Respondents on 09.04.2025 for various prayers including the prayer to suspend the board of management of ECL, staying the oppression of notice dated 10.03.2025, concerning 29th and 30th AGM of the appellant company and it was on 16.04.2025 interim order was passed by this appellate tribunal not to hold the AGM on 18.04.2025.

69. It is also pertinent to mention here that an affidavit was filed in the meantime, by the RBI before the Hon’ble Supreme Court in the pending SLP filed by the appellants and relevant portion of the same is also reproduced as under:

“10. Further, with respect to the allegations of siphoning of funds made by the Respondent No.1, Emaan Holding Pvt. Ltd., vide email to the RBI on 21.06.2024, and referred to in the Writ Petition (W.P. (C) 9877/2024) filed before Hon’ble Delhi High Court and in the Counter Affidavit

dated 10.04.2024 filed before this Hon'ble Court, it is humbly submitted that the RBI may not be the appropriate authority to investigate the allegations referred therein".

70. It is at this juncture, IA No. 130 of 2025 was filed by Respondents praying for an order to direct investigation under Section 213 of the Companies Act wherein the impugned order has been passed. However, in the meantime, an appeal bearing CA (AT) No. 112 of 2025 was filed requesting to set aside order dated 16.04.2025, passed by the Ld. NCLT and also to hold that NCLT has become functus officio after passing order dated 15.05.2025 in CP No. 48 of 2025 and it was on 30.05.2025 a coordinate bench of this tribunal took a decision that any decision of IA No. 115 of 2025 pending before the Ld. NCLT shall be subject to the outcome of the appeal.

71. It is also to recollect that against the order dated 01.05.2025 passed by the NCLT in IA No. 130 of 2025, wherein impugned order has been passed CA (AT) 119 of 2025 was filed against the order whereby a show cause notice was issued to the appellant company.

72. It is also reflected that the appellants again moved Hon'ble Supreme Court by filing IA No. 143368 of 2025 in SLP No. 4534 of 2025 requesting to restrain Ld. NCLT from passing any order in IA No. 115 of 2025 and IA No. 130 of 2025 in CP No. 48/ND/2024 and on 15.07.2025, Hon'ble Supreme Court passed an order in the aforesaid IA as well as in Civil Appeal No. 7396 of 2025 and contempt petition no. 433 of 2025.

"1. Having regard to the fact that there are four connected matters, it would be appropriate that brief written submissions dealing the facts of each case be provided by counsel representing both the sides. Such brief submissions may be filed by 23.07.2025.

*2. List on **28.07.2025**".*

73. Hon'ble Supreme Court on 08.08.2025 disposed of the Civil Appeal No. 7396 of 2025 moved by the appellants filed under Section 423 of the companies act by passing the following order:

“We have heard learned Senior Counsel for the appellants as well as learned senior counsel for the respondents at length.

2. We dispose of this Civil Appeal by observing that the appeals are still at large before the National Company Law Appellate Tribunal (NCLAT).

3. In the circumstances, we reserve liberty to all parties to advance arguments on their respective contentions before NCLAT.

4. Further, I.A. No. 115/2025 as well as any other application (s) which has been filed before the NCLT in respect of the appeals which are pending before the NCLAT shall stand transferred to the NCLAT for being considered along with the pending appeals by NCLAT.

5. The NCLAT is at liberty to decide the applications either by itself or to remit the same to the NCLT as it deems fit and in accordance with law.

Pending application(s), if any, shall stand disposed of”.

74. Perusal of the impugned judgment would reveal that the adjudicating authority has passed the impugned order taking into consideration the gravity of the allegations levelled by the Respondents against the appellants. The three reports of the Ld. Observer dated 01.07.2024, 02.12.2024 and 18.03.2025 and in these reports the Ld. Observer inter alia concluded that the board of the appellant no. 1 is engaged in fraudulent transaction detrimental to the interest of its members and creditors. The allegations of siphoning off funds by the board of the appellant company, loans granted to the related companies without interest or security, purchase of luxury cars at a very high price whereabouts of those was stated to be not known, obstruction of enquiry by Ld. Observer which was being conducted under the orders of this appellate tribunal, violating guidelines and directions

issued by the RBI, fabricating minutes of meetings of the Board of Directors filed before the Registrar of companies and other allegations levelled by the appellant and the conduct of non-cooperation of the appellants in furnishing the relevant material and information to Ld. Observer and also the criminal cases initiated against one the Managing Director i.e. Mr. Satya Prakash Bagla, were also taken into consideration by the Ld. Tribunal for directing investigation under Section 213 of the Companies Act.

75. The contention of Ld. Sr. Counsel appearing for the appellants is that the material which was placed before the tribunal was not at all sufficient, in the background of the defence taken by the appellants, to order such investigation. It is submitted that the order has been passed without any prima facie evidence without recording any satisfaction with regard to existence of good reasons or circumstances suggesting that the affairs of the company are being carried on with the intent of defrauding its creditors/members as required under Section 213 (b), (i), (ii)&(iii) of the companies act and the tribunal has mechanically relied on the pleadings of the Respondents. It is highlighted that the ingredients provided under Section 213 (b), (i), (ii) and (iii) regardless of whether the application is filed under Section 213(a) or 213 (b) are necessary to be satisfied and the tribunal must express explicit satisfaction that circumstances suggest that the companies affairs are being conducted with intent to defraud creditors/members or for unlawful purposes or in a manner oppressive to members and this satisfaction must be based on material/evidence available on record and no such order could be passed on mere conjecture or suspicion. In this regard reliance has been placed on the law laid down in **RS India wind energy Pvt.**

Ltd., Barium Chemicals, Devdas Multimedia, Lagadapati Ramesh , Capt. Valdamanatti Jayapushpakumar, Jaswant Sugar Mills Ltd., Rohtas Industries and Rajiv Suri (Supra), in order to emphasize that the threshold provided under Section 213(b) is a condition precedent and investigation as provided in Section 213 of the Companies Act could only be directed if the tribunal is satisfied that circumstances suggest the ingredients as provided under section 213 (b), (i), (ii) and (iii) of the Companies Act.

76. Ld. Counsel for the Respondents on the other hand submits that the appellants have requisite threshold under Section 213 (a) of the companies act wherein the threshold is different and easier than provided under Section 213 (b) of the Companies Act.

77. Elaborating further it is submitted that a plain reading of Section 213 (a) would reveal that the parliament has consciously stipulated a lower threshold of “good reasons” for a shareholder who is an insider to approach NCLT which is opposed to a higher threshold for third parties (who are strangers to the affairs of the company and may only move an application under section 213 (b) of the Companies Act). In this regard reliance has been placed on **‘Ganesh Bank of Kurundwad Ltd. Vs. Union of India’ (2006) 10 SCC 645** wherein the term good reasons has been interpreted in the context of Section 45 of the Banking Regulation Act, 1949 and it was inter alia hold that it is a term of wide amplitude required to be construed in terms of the primary objective of the act itself.

78. It is also submitted that Ld. Observer (Administrator) was appointed by the NCLT to enquire into allegations of siphoning off funds and this appellate tribunal in appeal has only changed his nomenclature from

administrator to an observer and this has been affirmed by the Hon'ble Supreme Court also.

79. We at this stage intend to set out the principles on the basis of which the allegations levelled against the appellant company and its board may be evaluated in the background of the law relied down by the Ld. Counsel for the parties.

80. In **RS wind energy Pvt. Ltd. (supra)**, a coordinate Bench of this appellate tribunal after considering Barium Chemicals Ltd. (supra) opined as under:

“38. The questions arise for determination are:

(i) whether the Tribunal was correct in observing that sub-clause (i), clause (b) of Section 213 is wide enough to include contravention of any law,

(ii) whether the Tribunal was bound to refer the ingredients mentioned in sub-clause (i) to (iii) of clause (b) of Section 213, and

(iii) whether the ingredients as referred in sub-clause (i) to (iii) of clause (b) of Section 213 only can be looked into on an application made to the Tribunal by 'any other person' i.e. other than members or 'otherwise' even if the circumstances so suggest.

In other words, whether the Tribunal can rely on the ingredients as mentioned in sub-clause (i) to (iii) of clause (b) of Section 213 in an application made by the members under clause (a) of Section 213?

46. Following the principle aforesaid if Section 213 is read as a whole in its context, we find as follows: -

A. Under Section 213 the Tribunal can entertain an application only if it is made by-

(a) (i) not less than one hundred members or members holding not less than one-tenth of the total voting power, in the case of a company having a share capital; or

(ii) not less than one-fifth of the persons on the company's register of members, in the case of a company having no share capital, and supported by such evidence as may be necessary for the purpose of showing that the applicants have good reasons for seeking an order for conducting an investigation into the affairs of the company; or

(b) 'any other person', who may include an individual whoever is aggrieved, including a member who otherwise do not come within clause (a)(i) and (ii) above, the creditors, depositors etc; and

(c) otherwise that means the Tribunal can otherwise also may look into any matter suo moto, if it comes to its notice while dealing with any case.

B. "Satisfaction of Tribunal": -

The Tribunal is required to be satisfied that the circumstances so suggest that offences has been committed as mentioned at sub-clause (i), (ii) and/or (iii) of clause (b).

C. Rules of Natural Justice: -

The Tribunal is required to pass order, after giving a reasonable opportunity of being heard to the parties concerned, that the affairs of the company ought to be investigated by an inspector or inspectors appointed by the central government”.

48. *The basic principle of justice delivery system involving offence resulting punishment is that if any allegation is made by any person before a court of law or Tribunal such person is required to support the allegation by bringing on record some evidence to suggest that a prima facie case is made out and there are good reasons for seeking an order. Therefore, the sentence "supported by such evidence as may be necessary for the purpose of showing that applicants have good reasons for seeking an order for conducting an investigation into the affairs of the company", as mentioned below clause (a) of Section 213 is applicable in all cases and the applicants), whoever prefers application under Section 213, whether they belong to category as mentioned in clause (a) or clause (b), such evidence is required to be relied upon not only to justify the allegations, but also to show that from its opinion there is a good reason for seeking an order, to enable the Tribunal to form its opinion*

49. *The other basic principle of justice delivery system that a court or a Tribunal while passing an order is not only required to give good reason based on record/ evidence but also required to show that after being satisfied itself the Court/Tribunal has passed such order.*

50. *For the reason aforesaid, we hold that the sentence if it is satisfied that there are circumstances suggest" mentioned in clause (b) of Section 213 is applicable to all cases, irrespective of the category to which the applicants) belong i.e. clause (a) or clause (b) of Section 213 of the Act.*

51. *The provision requires the Tribunal to form opinion in regard to ingredients as mentioned in sub-clause (i), (i) and*

(li) of clause (b) of Section 213. But the Tribunal is not required to form opinion objectively, and is only required to satisfy itself on the basis of materials/evidence on record that there are good grounds to order investigation. The material/evidence taken on consideration should reflect the satisfaction of the Tribunal to order investigation. Detailed evidence etc., thereafter, required to be collected by the inspectors) during the investigation to hold an accused guilty for one or other offence i.e. fraud.

52. The Tribunal is not expected to refer all the evidence to form opinion about the malpractice or for fraud mentioned in sub-clause (i), (ii) and (iii). It is the job of the Inspecting Authority (Inspector) to go through the evidence before coming to a conclusion and forming opinion that malpractice or fraud mentioned under sub-clause (i) or (ii) or (iii) has been committed by one or other member or directors) or person(s) or the company.

53. In case the Tribunal fail to disclose any material and does not record the reasons for its satisfaction, it is always open for the Appellate Tribunal to interfere with such decision”.

81. Thus, this appellate tribunal after considering the law laid down by the Hon’ble Supreme Court in Barium, which is also been relied by Ld. Sr. Counsel appearing for the appellant, came to a conclusion that the a court or a tribunal while passing an order is not only required to give only good reasons based on record/evidence but also required to show that after satisfied itself has passed the order and in this backdrop it is held that the sentence “ if it is satisfied that there are circumstances suggest” mentioned

in clause (b) of Section 213 is applicable to all cases, irrespective of the category to which the applicant belong i.e. Clause (a) or (b) of Section 213 of the Act. It is also highlighted that the tribunal is not required to form opinion objectively and it is only required to satisfy itself on the basis of material/evidence available on record that there are good grounds to order such investigation and the subjective opinion is also to be formed with regard to the ingredients of sub clause (i),(ii) and (iii) of sub section (b). The other condition which has been highlighted by this tribunal is that the material/evidence available taken into consideration should also reflect the satisfaction of the tribunal for ordering such investigation. It is also emphasized that all the evidence or material is not expected to be referred in the order to form an opinion, as it would be for the inspecting authority to go through the evidence/material and in case the tribunal fail to disclose any material and does not record its reasons for arriving at the requisite satisfaction the appellate tribunal may interfere.

82. In **Devas Multimedia Pvt. Ltd. (Supra)**, which was the case pertaining to the winding up of the company, while taking into consideration Section 439 (1) (f), 243 and 237 (b) of the Companies Act, 1956, Hon'ble Supreme Court opined as under:

“31. Thus a combined reading of Sections 439(1) (f), 243 and 237(b), of the 1956 Act shows that: (i) fraud in the formation of the company; (ii) fraud in the conduct of affairs of the company; and (iii) fraud on the part of the persons engaged in the formation or conduct of the affairs of the company, though not listed as some of the circumstances under Section 433 of the 1956 Act, were still available for the winding up of the company, even under the 1956 Act. But there were 3 requirements to be satisfied. They are: (i) the perpetration of one or the other types of fraud mentioned above are reflected in a report of investigation; (ii) the petition under these provisions is to be filed only by a person authorised by the Central Government; and (iii) the petition should be premised on the ground that it is just and equitable to wind up the company”.

83. Similarly, in **Lagadapati Ramesh (supra)** a coordinate Bench of this appellate tribunal in the context of Section 213 (b) of the Companies Act, held as under:

“34. In terms of clause (b) of section 213, on an application made to it by any other person ("resolution professional") or otherwise (suo motu), if the National Company Law Tribunal is satisfied that there are circumstances suggesting that (i) the business of the company is being conducted with intent to defraud its creditors, members or any other person or otherwise for a fraudulent or unlawful purpose, or in a manner oppressive to any of its members or that the company was formed for any fraudulent or unlawful purpose as alleged by the "resolution professional" in the present case and or by ; (ii) persons concerned in the formation of the company or the management of its affairs have in connection therewith been guilty of fraud, misfeasance or other misconduct towards the company or towards any of its members, etc. (which is also the allegation made by the "resolution professional"), in such case, the Tribunal after giving a "reasonable opportunity" of being heard to the parties concerned, that the affairs of the company ought to be investigated by an "Inspector" or "Inspectors" appointed by the Central Government and where such an order is passed, in such case, the Central Government is bound to appoint one or more competent persons as Inspectors to investigate into the affairs of the company in respect of such matters and to report thereupon to it in such manner as the Central Government may direct.

37. In view of the aforesaid position of law, we hold that the Tribunal/Adjudicating Authority, on receipt of

application/complaint of alleged violation of the aforesaid provisions and on such consideration and being satisfied that there are circumstances suggesting that defraud etc. has been committed, may refer the matter to the Central Government for investigation by an Inspector or Inspectors as may be appointed by the Central Government. On such investigation, if the investigating authority reports that a person has committed any offence punishable under section 213 read with section 447 of the Companies Act, 2013 or sections 68, 69, 70, 71, 72 and 73 of the "I and B Code", in such case, the Central Government is competent to refer the matter to the Special Court itself or may ask the Insolvency and Bankruptcy Board of India or may authorise any person in terms of sub-section (2) of section 236 of the "I and B Code" to file complaint.

42. In view of the aforesaid position of law, we are of the view that the Adjudicating Authority was not competent to straight away direct any investigation to be conducted by the "Serious Fraud Investigation office". However, the Adjudicating Authority (Tribunal) Being competent to pass order under section 213 of the Companies Act, 2013, it was always open to the Adjudicating Authority/Tribunal to give a notice with regard to the aforesaid charges to the promoters and others, including the appellants herein and after following the procedure as laid down in section 213, if prima facie case was made out, it could refer the matter to the Central Government for investigation by the Inspector or Inspectors and on such investigation, if any, actionable material is made out and if the Central Government feels that the matter requires investigation through the "Serious Fraud Investigation", it can proceed in accordance with the provisions as discussed above.

Impugned order shows parties have been heard on the charges claimed by the "resolution professional".

The above mentioned case would reveal that the tribunal had straight away directed investigation to be conducted by SFIO and the order was passed on an application moved by Resolution Professional of a Corporate Debtor i.e. M/s Bhuvana Infra Projects Pvt. Ltd. and it is in this background this tribunal has stated that a decision with regard to the forum which may conduct the investigation is to be taken by the central government. It is to be remembered that this case pertaining to a case wherein an application was moved by resolution professional of a CD on which the impugned order was passed. Thus the facts of this case appears to be different than the case at hand.

84. In **Capt. Valdamanthi Jayapushpkumar (supra)** a coordinate Bench of this Tribunal in paragraph no. 46, 47, 48, 49 and 50 held that an investigation into the companies' affairs cannot be initiated simply on the basis of allegations made by a shareholder and merely because a shareholder feels aggrieved about the manner in which the business of the company is being carried on. It was emphasized that an investigation into the affairs of a company could only be ordered when public interest is involved or the management of the company is conducted to the detriment to the member's interest. It is also highlighted that the tribunal on the basis of material placed before it must be satisfied that a deeper probe into the companies affair is desirable. We are also in full agreement with the opinion of a coordinate Bench of this Tribunal. Certainly the investigation as contemplated under Section 213 of the Companies Act cannot be directed

without being satisfied of the necessity of it, having regard to the quality of material produced in support of the allegations.

85. Ld. Counsel for the appellant has also relied on **Jaswant Sugar mills (Supra)** wherein the guidelines for forming an opinion of subjective nature has been highlighted which does not require any scrutiny as it would be obligatory on any authority forming an opinion to take reasonable care and caution and consider the material placed before it in right perspective in order to form such opinion.

86. In **Rohtas Industries, (supra)** relied by the appellants in context of Section 235, 236 and 237 of the Companies Act, 1956, it is opined that the similar power given to the Central Government by virtue of Section 237 of the Companies Act, 1956 could only be exercised when the Central Government has formed an opinion that there are circumstances suggesting that the business of the company is being conducted with the intent to defraud its creditors, members or any other persons or for a fraudulent or unlawful purpose or in a manner oppressive to any member or for any other unlawful purpose.

87. In **Rajeev Suri (Supra)**, the safeguards which should be kept in mind while forming a subjective opinion have been highlighted by Hon'ble Supreme Court in para 193, 194 and 196 of the report.

“193. Another dimension to be kept in mind is the factum of subjective satisfaction of the executive. The law regarding the involvement of constitutional courts in public interest in cases involving subjective satisfaction is well settled. The interference of courts is neither warranted to look into the quality of material relied upon by the

Government to approach a decision nor to adjudicate upon the sufficiency of such material. These matters are of a subjective character and if legislature permits subjective powers on one organ of the State, the other (in the name of judicial review) is not expected to substitute its own subjective relevancy of the material relied upon to take a decision in order to see that the decision is not devoid of application of mind. It is based on the basic idea that the structure of a subjective decision stands on the foundation of objective reasons. The Court may interfere when a decision is devoid of any reason or affected by mala fides or when the decision is reached in the aftermath of statutory violations.

194. *In Barium Chemicals, the Court while dealing with an order in the exercise of statutory powers, adverted to the exposition of privy Council and observed thus: (AIR p. 323, para 60)*

"60. ...Even if it is passed in good faith and with the best of intention to further the purpose of the legislation which confers the power, since the Authority has to act in accordance with and within the limits of that legislation ,its order can also be challenged if it is beyond those limits or is passed on grounds extraneous to the legislation or if there are no grounds at all for passing it or if the grounds are such that no one can reasonably arrive at the opinion or satisfaction requisite under the legislation."

196. *The aforesaid principles are restated in Rohtas Industries wherein this Court noted thus: (SCC p. 341, para 11)*

"11. ... For the reasons stated earlier we agree with the conclusion reached by Hidayatullah and Shelat, JJ. in Barium Chemicals case that the existence of circumstances suggesting that the company's business was being conducted as laid down in sub-clause (1) or the persons mentioned in sub-clause (2) were guilty of fraud or misfeasance or other misconduct towards the company or towards any of its members is a condition precedent for the Government to form the required opinion and if the existence of those conditions is challenged, the courts are entitled to examine whether those circumstances were existing when the order was made. In other words, the existence of the circumstances in question are open to judicial review though the opinion formed by the Government is not amenable to review by the courts. As held earlier the required circumstances did not exist in this case."

(emphasis in original)

88. It may be safely deduced from the above precedents that at the stage of making a subjective opinion with regard to taking a decision of investigation under section 213 of the Companies Act, the tribunal is required to take into consideration the material/evidence placed before it in right perspective and to apply its mind in order to satisfy itself that there are not only 'good reasons' but also to record its subjective satisfaction with regard to the necessity of desired investigation. As has been held in **RS India Wind Energy Ltd.** (Supra) the tribunal is not required to form opinion objectively and what is required is only to satisfy itself that there are good grounds to order such investigation and also that the material/evidence

which has been taken into consideration by the tribunal must reflect the satisfaction of the tribunal to order such investigation, keeping in view the requirement of sub section (i), (ii) and (iii) of sub section (2), however the meticulous exercise of appreciation of facts and evidence and recording of objective satisfaction with regard to the allegations is not required at this stage as the allegations are yet to be investigated by the officer appointed by the central government. Thus it is on the basis of these principles the Tribunal was required to appreciate the material/evidence placed by the parties in order to arrive at the decision of referring the matter for investigation into the affairs of the company. We will discuss the factual aspect with regard to the potency of material, later on in this judgment, which was placed before the tribunal.

89. The other submission which has been made by Ld. Sr. Counsel appearing for the appellant is in terms that Ld. NCLT has erroneously relied upon the reports submitted by Ld. Observer the evidentiary value of which is analogous to that of a commissioner's report which may be submitted under relevant provisions of the Code of Civil procedure, 1908 and more so when the same is pending for adjudication before this Appellate Tribunal.

90. It is also highlighted by him that detailed objections with regard to these reports have been filed and these reports have not yet been adjudicated and therefore the reports cannot be relied and may not form the basis for any adverse finding or direction for ordering an investigation under section 213 of the Companies Act. In this regard reliance has been placed on the law laid down by the Hon'ble Apex Court passed in '**MP Rajya Tilhan Utpadak Sahakari Sangh Maryadit vs. Modi Transport Service**', (2022)

14 SCC 345, para 36,37 and the decision of Hon'ble Bombay High Court passed in '**Kishore vs. Preeti**', (2007) SCC Bom 102 in para 8 as under:

"8. Normally, when this court is ceased (sic: seized) of the matter, it is expected of the subordinate courts to stay their hands away. It is difficult to understand as to what was an alarming urgency to proceed further and dismiss the petition when the learned Judge of the Family Court was very well aware that the order dated 15th September, 2006 was challenged before this court by the present petitioner. No doubt, that the learned Family Court is right in observing that there was no stay by this court. But as a matter of propriety and when the learned Judge was very much aware about pendency of the petition before this Court, the learned Judge ought to have stayed his hands away and waited till further orders to be passed by this Court. In that view of the matter, I am inclined to allow the petition".

91. Ld. Counsel for the Respondents on the other hand submits that an order under Section 213 (a) of the Companies Act may be passed if the requisites parameters/ingredients of that Section are satisfied and if there are good reasons and also the threshold as prescribed therein are met then the Ld. NCLT in its discretion may pass such an order and while passing the order the prima facie satisfaction of the tribunal is necessary and it is only to arrive on such satisfaction and to ascertain good reasons and in this regard the three reports submitted by Ld. Observer has been taken into cognizance by the Ld. Tribunal.

92. It is vehemently submitted that Ld. Observer is a Hon'ble former Judge of the High court and there is no element of biasness alleged against him and the reports submitted by the observer would clearly demonstrate that the appellants were extremely non-cooperative and they did not comply the directions given by Ld. Observer and it is to be noted that Ld. Observer was inquiring into the allegations of siphoning of funds under directions of

this tribunal and it has been clearly observed by Ld. Observer that appellants no. 2 and 3 are working to denude the company of its assets through siphoning of funds with a clear intent to defraud the members and the creditors of the company by the specific acts mentioned therein i.e. by granting favorable loans to entities owned and controlled by the them and taking no steps for the recovery for such outstanding loans and also purchasing luxury cars at inflated prices and it was also highlighted by Ld. Observer that these related party loans were granted without any documentation and were largely unsecured which supports the allegations levelled by the Respondents in their application moved before Ld. NCLT.

93. Keeping in view the rival submissions made by Ld. Counsel for the parties we have looked into the case laws submitted by Ld. Sr. counsel appearing for the appellant.

94. In the first case law relied on by the Ld. Sr. Counsel appearing for the appellant i.e. **MP Rajya Tilhan Utpadak Sahakari Sangh Maryadit (Supra)**, the observations of the Hon'ble Supreme Court in para no. 36 and 37 have been made with regard to the evidentiary value of a commissioner's report appointed by a Civil Court order 26 rule 9 of the CPC and the second case namely **Kishore (supra)** propounded by the Hon'ble Bombay High Court is pertaining to the judicial propriety of the subordinate courts to stay their hands away when their earlier order has been challenged before an higher forum.

95. We are afraid that appellants may not get any benefit from both the cases relied upon by them and mentioned herein before. It is to be recalled that to take a decision under Section 213 of the Companies Act the tribunal

is required to take into account all the relevant material presented by the parties and to consider the material/evidence produced by the parties only for ascertaining good reasons and sufficient cause for directing such investigation and this satisfaction is only for the purpose of ordering an investigation and thus at that stage the Ld. NCLT is not required to arrive at a conclusive proof of such allegations. It would be sufficient if the satisfaction as required under Section 213 coupled with the good reasons is arrived at by pursuing the material/evidence available on record and the impugned order passed by the Ld. tribunal is also reflecting the material which has been considered by him and also the satisfaction on the three reports of Ld. observer and also the contents of these reports. Ld. tribunal has in fact quoted the relevant parts of the reports submitted by the Ld. observer where in various allegations have been levelled against appellants. In our considered opinion satisfaction and good reasons as required under section 213 of the Companies Act may not be bind in any straight jacket formula and it will depend on the facts and circumstances of each case as to whether the case is fit to be investigated. Thus there has to be a prima facie case which would be sufficient. After all, only an order of investigation is being passed by Ld. Tribunal and these allegations which have been levelled are yet to be investigated by inspector or inspectors, which may be appointed by the Central government. To put it otherwise if the requirement would be of drawing a finding of conclusive nature then there will not be requirement of any investigation. The investigation is to be done to investigate the truthfulness or otherwise of the allegations. Therefore, in every such case having regard to the allegations levelled, a question is to be

asked by the tribunal to itself as to why the investigation is necessary and if the answer to this query is in affirmative the tribunal may pass the order of investigation into the affairs of the company. However, answer to the query must also reflect in its order. Thus in our considered opinion above placed submission of Ld. Sr. Counsel appearing for the appellant that the reports of the observer could not be taken into consideration by the tribunal, in our considered opinion, is not sustainable.

96. It is also submitted by Ld. Sr. Counsel for the appellant that the Respondents are indulging in forum shopping and it is argued that on this score the impugned order is bad. We do not want to discuss this submission meticulously as it is an admitted fact that Ld. NCLT is having jurisdiction to entertain the application moved by a party under Section 213 of the Companies Act and it has also surfaced that many cases of various nature are pending between the parties. An offshoot of the same submission has been vehemently emphasized by Ld. Sr. Counsel for the appellant that Ld. NCLT after passing the order dated 15.05.2024, in Company Petition No. 48/ND/2024 had become functus officio and when it has categorically recorded that the petition stands disposed of and when the said order has been challenged by filing appeals before this Appellate tribunal there was no jurisdiction left with the Ld. NCLT to consider IA No. 130 of 2025 filed by the Respondents, that too nearly a year after, in the same disposed of petition seeking an investigation under Section 213 of the Companies Act. In this regard Ld. Sr. Counsel for appellant has relied on **Jaipur Vidyut Vitaran Nigam Ltd. (Supra), Ajay Kumar Jain (Supra)**.

97. In this regard Ld. Counsel for the Respondents submits that this submission is misconceived as direction no. (g),(h) and (i) of para no. 73 of the order dated 15.05.2024 clearly demonstrates that this order was an interlocutory order and the administrator appointed by Ld. NCLT (nomenclature changed to Ld. Observer by this appellate tribunal) was required to report to the Ld. NCLT and the final scheme of the management of the company was yet to be considered and final reliefs sought by the Respondents were still pending, thus in his opinion the petition was not disposed of.

98. It is further submitted that Hon'ble Supreme Court in its order dated 24.02.2025 passed in SLP (C) No. 4534 of 2025 has clearly noted that the proceedings before NCLT are ongoing and consequently granted liberty to the Respondents to file an application to seek appropriate directions and it is with regard to this liberty application was moved by the Respondents where on the impugned order has been passed and other application bearing IA No. 115 of 2025 with regard to seeking injunction against the appellants from holding AGM was moved and the appellants were accordingly restrained by the Ld. NCLT on 16.04.2025 against which CA (AT) No. 112 of 2025 was filed before this Appellate Tribunal which is pending for consideration and this appellate tribunal on 30.05.2025 passed an order that the further proceedings of the application would be subject to the final order which may be passed by this appellate tribunal and this order of this appellate tribunal was challenged by filing Civil appeal no. 7396 of 2025 ,wherein the Hon'ble Supreme Court passed an order dated 08.08.2025 whereby liberty was granted to all parties to advance arguments

on their respective contention before this appellate tribunal and thus IA No. 115 of 2025 and any other application which was filed before the NCLT in respect of the appeals pending before this appellate tribunal were transferred to this appellate tribunal and the Hon'ble supreme Court did not modify its order dated 24.02.2025, despite a modification application was moved by the appellants.

99. Perusal of the impugned Judgment in the background of the aforesaid submissions would reveal that this argument has been dealt with by Ld. NCLT in para no. 25 and 26 of the impugned judgment and it was stated therein that the tribunal had not given quietus to the issue and was to monitor the affairs of the administrator (observer) of the company and it is only because this appellate tribunal is seized of the appeal preferred against the order dated 15.05.2024 there was no question of compliance of aforementioned directions and when the Hon'ble Supreme Court has passed an order (dated 24.02.2025 in SLP (C) No. 4534 of 2025). It was difficult for the NCLT to refuse to entertain the SFIO application. It is also stated by Ld. NCLT in the same paragraph that the Counsel for the appellants asked Ld. Tribunal to interpret the order dated 24.02.2025 passed by the Hon'ble Supreme Court in a way that the expression NCLT used in clause (vi) of the order should be read as NCLAT but this is not permissible for the tribunal as it has to follow the view taken by the Hon'ble Supreme Court.

100. During the course of deliberations, it appeared to be an admitted fact that a modification application was moved by the appellant before the Hon'ble Supreme Court with regard to the order dated 24.02.2025 and no

order pertaining to the modification of above mentioned order has been passed till now.

101. We have perused the order of the Hon'ble Supreme Court dated 24.02.2025 and are of the considered view that after noticing that the order passed by the Ld. Single Judge of the High Court of Delhi dated 26.10.2024, addresses and adjudicate all issues and contentions inter se the parties, including those which are sub judice before the NCLT/NCLAT and the RBI and thereafter in direction no. (vi) liberty was granted to the writ petitioners and the shareholders who had moved the NCLT to move application before the NCLT/NCLAT seeking appropriate directions with a further direction that if a such application is filed the same will be considered and decided in accordance with law without being influenced by the judgment passed by the Hon'ble Delhi Court dated 26.10.2024 and the order of the Hon'ble Supreme Court dated 24.02.2025. Significantly in para no. (vii) of this order the Hon'ble Supreme Court directed to continue the proceedings before the NCLT/NCLAT leaving open to the petitioner before the Hon'ble Supreme Court who was the Respondent before the NCLT and Petitioner (appellant) before the NCLAT, to contest/pursue the said proceedings.

102. Keeping in view this order of the Hon'ble Supreme Court we do not find any illegality in the observations made by the Ld. NCLT in para no. 25 and 26 of the impugned order and we are satisfied that Ld. NCLT was having jurisdiction to entertain application on which the impugned order has been passed.

103. Another submission which has been raised by the Ld. Sr. Counsel appearing for the appellant is with regard to the fact that according to him

the exclusive jurisdiction to investigate into the affairs of the company is bestowed upon the RBI and also that when the matter was being enquired by the RBI on the complaints made by the Respondents there was no opportunity for the Ld. NCLT to have passed the impugned order, encroaching upon the jurisdiction of the RBI and in this way the NCLT has violated the principle of regulatory supremacy of expert statutory bodies. In this regard the law laid down by the Hon'ble Supreme Court **Akshay N. Patel (Supra), Nedumpillai finance company, integrated finance company ltd. (supra)** and Section 45 N as well as Section 45Q of the RBI Act has been highlighted in order to canvass that Section 45 Q of the RBI Act provides that Chapter III-B overrides all other laws and Section 45 N provides for inspection to be carried out of NBFC under the directions of the RBI and thus the investigation of such nature was under the exclusive domain of the RBI, which has been already done by the RBI.

104. Contrary to this Ld. Counsel for the Respondents submits that any proceedings before the RBI concerning the company does not bar the proceedings under Section 213 of the Companies Act especially when the allegations are pertaining to the siphoning of money from the company. In this regard an affidavit filed by the RBI of date 24.04.2025 before the Hon'ble Supreme Court in SLP (C) 4534 of 2025 has been highlighted and on this basis, it is submitted that in this affidavit the RBI in para no. 10 has specifically stated that with respect to the allegations of siphoning of funds made by the Respondent no. 1, Evaan holding Pvt. Ltd., the RBI may not be the appropriate authority to investigate the allegations referred to therein.

105. It is vehemently submitted that the relevant provisions of the RBI act and Section 213 of the companies act are covering different situations, as the proceedings under Section 213 of the companies act would ultimately culminate in the prosecution of officers of the company who are found to have committed fraud as defined under Section 447 of the companies act and the RBI may not be having any authority to investigate or to prosecute any offences stipulated under the Companies Act and also that the Companies Act is concerned with the interest of shareholders while the Banking Regulations Act and Reserve Bank of India Act is mainly concerned with the interest of regulations of the financial system and interest of depositors.

106. It is further submitted that Section 45Q and 45N of the RBI act may not be interpreted as canvassed by Ld. Sr. Counsel appearing for the appellant as the RBI is not concerned with, in any manner with the offences separately defined in the companies act for which the investigation has been directed. Reliance has been placed by Id. Counsel for the Respondents on the law laid down by the Hon'ble Delhi High Court in '**Shonkh Technologies vs. Union of India and Ors.**' (2008) 144 Company Case 218.

107. So far as reliance placed by learned senior counsel for the appellant on **Nedumpilli (supra)** is concerned, in order to show that having regard to section 45Q and 45N as well as the scheme of the chapter III-B of the RBI Act, when identical allegations are being investigated by the Reserve Bank of India, no order for investigation could be passed by the tribunal for investigation under section 213 of the Companies Act. In the aforesaid case

the whole scheme of chapter III-B of the RBI act has been discussed by the Hon'ble Supreme Court in the background of the fact that some state legislations were enacted by the states, which according to the appellants before the Hon'ble Supreme Court, was already covered by chapter III-B of the Reserve Bank of India Act 1934 and it is in this background Hon'ble Supreme Court has made observations in para no. 55 of the judgement that no NBFC can commence or carry on business without obtaining the certificate of registration under the RBI Act and also that the supervision and regulation of NBFC is to be performed by the RBI from the time of its birth till the time of death of the NBFC. There may not be any quarrel with the proposition that the day to day business of NBFC is to supervised by the RBI so far as the interest of depositor and NBFC is concerned and no NBFC can commence its business in violation of provisions contained under Chapter III-B of the RBI Act. However, we have perused whole of the chapter III-B of the RBI Act and could not find any provision in this chapter which may be pertaining to any investigation which may be done by the Reserve Bank of India with regard to the allegations of Fraud and siphoning of funds by a NBFC or wherein provision for prosecution of offenders of such offence has been provided. In other words, Chapter III-B of the RBI Act in our considered opinion only regulates and provides for the control on the business of the NBFC and even the power to move for the winding up of NBFC has been provided to the RBI under Section 45MC of the RBI Act. It is also to be noted that the RBI Amendment Act of 51 of 1974 had come into effect from 13.12.1974 whereby section 45 O and Section 45 P of the RBI Act were deleted which were pertaining to the 'penalties' and 'cognizance of

offences'. It itself shows that the inspection and other supervisory powers provided to the RBI under the relevant provisions of Chapter III-B of the RBI Act were not with regard to any penal consequences while the investigation as provided under section 213 of the Companies Act is with regard to the prosecution of the offender under section 447 of the Companies Act.

108. It is also pertinent to mention here that in **Nedumpilli (supra)** in para number 37, 37.1 to 37.6, 38 and 39 it is highlighted that in order to make in depth study of the role of NBFC and to suggest regulatory and control measures to ensure healthy growth and operations of these companies the RBI had constituted a working group under the chairmanship of Doctor AC Shah in May 1992 and it is with regard to these terms of reference the working group recommended that though NBFCs were being regulated by the directions issued under chapter III-B of the RBI Act and chapter V of the NHB Act, it would be better to enact a separate legislation. Therefore, it was this recommendation which led to the promulgation of the Reserve Bank of India (Amendment) Ordinance 1997 on 9th January 1997 and thereafter a bill was introduced which became the Reserve Bank of India (Amendment) Act 1997, which has completely revamped chapter III-B by inserting certain new provisions and it is after the amendment of this chapter by Act 23 of 1997 this chapter has become a complete code insofar as NBFCs are concerned.

109. In **Akshay N. Patel (supra)**, relied on by Ld. Counsel for the appellant Hon'ble Supreme Court highlighted the expertise of the RBI in para No. 57 and 62 of the report and also stated that the Courts should not interfere

with the economic or regulatory policy adopted by the government. we do not find much relevancy of this so far as the case at hand is concerned.

110. Ld. Sr. counsel for the appellant has also relied on para No. 44, 45, 46, 47 and 48 of **Integrated Finance Company Ltd vs RBI and others, (2015) 13 SCC 772** in order to canvass that Chapter III-B of the RBI Act is a complete code in itself and has been given an overriding effect over all other laws including Companies Act in view of section 45 Q of the RBI Act. The appellant in this case was an NBFC and RBI inspected the books of accounts of it under Section 45 N of the same and the inspection report disclosed various violations of the provisions of the RBI Act. Appellant company in order to overcome problems being faced by it proposed a scheme of compromise with its creditors i.e. depositors and bond holders, which was approved by the Board of directors of the appellant company. It was this compromise which was presented under Section 391 of the Companies Act 2013 to the High court wherein the direction was given to convene the meeting of deposit holders. The meeting was accordingly held and the report was filed before the Hon'ble High Court and the Scheme of the appellant was approved. This order was challenged before the Division bench of the Same High Court in Intra Court appeal and the Judgment was set aside and in this way the matter came before the Hon'ble Supreme Court and the primary issue before the Court was as to whether the scheme may be sanctioned without complying the provisions contained under section 45QA of the Chapter III-B of the RBI Act and an argument in this regard was advanced by the appellant in terms that Section 45 QA of the RBI Act is not having an overriding effect over the provisions contained in Companies Act

and these Acts operate in distinct and different fields. This submission was repelled by Hon'ble Supreme Court. Certainly so far as the regulation of the business of the NBFC and other connected matters are concerned, it is the RBI which would take a decision as to how the work of the NBFC is to be regulated and in this regard there is no contradiction in both the acts and even if there is any repugnancy the RBI Act would prevail but here we are dealing with a totally different factual position where the investigation into the affairs of the company has been directed for the purpose of its prosecution under section 447 of the Companies Act, if the allegations are found truthful in investigation. Thus, making a harmonious interpretation of these provisions of both the Acts, we do not find any contradiction or repugnancy therein.

111. In **Shonkh Technologies Limited (supra)** In paragraph number 27 it has been opined by Hon'ble Supreme Court that merely filing of a complaint by SEBI for violation of the provisions of Securities Exchange Board of India does not in any manner curtail or bar investigation under section 237 (b) Of the Companies Act 1956, once the provisions of the said section are satisfied. The fact that SEBI has filed prosecution, is not a bar for such investigation. It is also highlighted that a different offence under a separate enactment cannot be condoned because proceedings have been initiated for violation of another enactment.

112. A coordinate bench of this appellate tribunal in **Lagadapati Ramesh vs Ramnathan Bhuvaneshwari, 2019 SCC Online NCLAT 1153**, in paragraph 34,35, 36 and 37 of the report considered the scheme of section 213 of the Companies Act 2013 till its culmination and it is highlighted that

under section 213 of the Companies Act the NCLT if satisfied with regard to the ingredients of the section may order for investigation into the affairs of a company to be investigated by an inspector or inspectors appointed by the central government and when such an order is made the central government would be bound to appoint one or more competent persons as inspectors to investigate into the affairs of the company in respect of such matters and to report thereupon to it in such manner as the central government may direct. It is also held there in that if after investigation it is proved that the business of the company is being conducted with intent to defraud its creditors, members or any other persons or otherwise for a fraudulent or unlawful purpose, or that the company was formed for any fraudulent or unlawful purpose or any person concerned in the formation of the company or the management of its affairs have any connection there with being guilty of fraud then every officer of the company who is in default and the person or persons concerned in the formation of the company or the management of its affairs shall be punishable for fraud in the manner as provided in section 447 of the Companies Act 2013.

113. It is also highlighted that for the purpose of punishment for a fraud in the manner as prescribed in Section 447 of the Companies Act 2013 the matter is required to be tried by a special court as established under section 435 of the Act which provides speedy trial for offences under the Companies Act 2013. Thus it is highlighted that the investigation commences with the direction passed under section 213 of the Companies Act 2013 and if after investigation the allegations are found truthful the same would result in the prosecution of the wrong doer and the trial would take place before a special

Court and the guilty may be punished under section 447 of the Companies Act 2013. Therefore it is evident that the purpose of investigation under section 213 of the Companies Act 2013 is for the purpose of prosecution of the wrong doers before a special court and in this background we find substance in the contention of the affidavit, dated 24th April 2025, filed by the Reserve Bank of India in the SLP (C)No. 4534 of 2025 wherein it has been specifically stated that the Reserve Bank of India may not be the appropriate authority to investigate the allegations with regard to the siphoning of funds (Fraud) as alleged against the Appellants.

114. This may be seen from another angle, as even after adhering to the guidelines of the RBI and even after following the relevant provisions of the RBI Act as provided under chapter III-B, fraud as described under Section 213 and 447 of the Companies Act may be committed by a wrong doer and since Chapter III-B of the RBI Act is a complete Code so far as NBFC is concerned and there is no provision of prosecution and trial therein, an accused of fraud may go scot free. We afraid this may not be the intention of the law. In our considered opinion the investigation as provided under 213 of the Companies Act is for the purpose of prosecution of the wrong doer for committing offence under Section 447 of the Act, while Chapter III-B of the RBI Act is for regulating the business of the NBFC and also for the protection of depositors, therefore, we do not find any contradiction or repugnancy between the two.

115. Therefore, for the reasons mentioned here in before we are of the considered view that even if similar allegations have been inquired by the Reserve Bank of India against the appellants and even if the proceedings

have been dropped the same may not be sufficient to divest the NCLT for directing investigation as provided under Section 213 of the Act. It is also for the reason that the enquiry which has been done by the Reserve Bank of India and the investigation which has been directed by Ld. NCLT are with regard to achieve distinct results by such inquiry or investigation, as the case may be. For the reasons mentioned herein before we do not have any reason to disbelieve the contention of Reserve Bank of India as projected in their affidavit filed before the Hon'ble Supreme Court of India in the above mentioned proceedings between the same parties and accordingly we do not find any illegality in the order impugned, on this score.

116. In **Hari Sankaran (Supra)** Hon'ble Supreme Court has opined that the three provisions i.e. 130, 211/212 and Sections 241/242 of the Companies Act are required to be considered conjointly and also that while passing order in a particular provision the endeavour should be to see that the orders passed other provisions of the Companies Act are given effect to or passed in furtherance of the order passed under other Sections and on this basis it is submitted by Ld. Counsel for the respondents that the earlier orders passed by the Tribunal with regard to oppression mismanagement and pertaining to other illegalities going on in the management of affairs of the company cannot be ignored. We have already stated herein above that the Tribunal in order to arrive at required subjective satisfaction so far as the need for investigation is concerned can look into all the material/evidence produced on record, though subjectively in order to take a decision whether the investigation as warranted under section 213 of the Companies Act is required at all?

117. We have perused the allegations levelled by the respondents against the appellants in their application moved before the NCLT as well as the material and evidence enclosed therewith. Three reports dated 1st July 2024, 2nd December 2024, and 18th March 2025 have been submitted by Ld. Observer wherein various allegations of the nature that the Board of Appellant No. 1 are engaged in fraudulent transactions, detrimental to the interests of its members and creditors have been levelled. In paragraph No. 29 of the impugned judgment Observer Report No.1 has been noticed wherein certain Data Gaps were highlighted by the Observer in the information provided by the Appellants. In paragraph No. 30 of the impugned order the tribunal has discussed the 2nd Report of the Observer wherein he indicated that the information sought by him were not made available and the detail of secured and unsecured creditors was not clear qua the liabilities of the company, he also expressed concern regarding the financial facilities extended by the company without creating charge on any security and with regard to the prescribed rate of interest and the rate of interest actually charged. The tribunal in fact quoted the para No.11 to 49 of this report in the impugned judgment and we do not want to quote the same again, however serious allegations have been levelled by the Observer against the appellants, also touching upon the financial irregularities and siphoning of funds of the Company. In paragraph no.31 of the impugned judgment Tribunal has discussed the 3rd report of the Observer and also quoted Paragraph No. 7 to 12 of the same, wherein also serious complaints have been made with regard to non-cooperation by the appellants.

118. No doubt reply with regard to these reports have been filed by the appellants but we prima facie do not find any element of bias in these reports submitted by Ld. Observer, who is a former judge of the High Court. There are also allegations of siphoning of funds from the Company. It is to be recalled that to order an investigation under 213 of the Companies Act conclusive proof with regard to the allegations is not required. It would be sufficient if the Tribunal, on the basis of taking into consideration the material/evidence produced on record, may form an opinion subjectively to satisfy itself that there are good grounds and reasons and prima facie case to order such investigation and such satisfaction must also be reflected in the order. We are of the considered view that in the impugned order sufficient satisfaction and reasons are shown by the tribunal with regard to the material/evidence considered by it and the same in our opinion was sufficient to order the investigation as contemplated under section 213 of the Companies Act. After all the allegations are yet to be investigated by the Inspector(s) and the truthfulness of the same could only be verified/surfaced during the investigation. we clarify that we have consciously not discussed the material/evidence relied on by the Tribunal with regard to its evidentiary value, as our satisfaction or dissatisfaction with regard to the same may tilt the investigation either way, but we are of the firm view that it is a fit case where the investigation, into the affairs of Appellant no.1, should have been directed. Thus, we do not find any good grounds to interfere in the impugned Judgment.

119. In result, we do not find any force in the appeal and the same is hereby **dismissed**. Pending IA's if any are also closed. No order as to Costs.

[Justice Mohd. Faiz Alam Khan]
Member (Judicial)

[Naresh Salecha]
Member (Technical)

New Delhi.
21.11.2025.

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