IN THE NATIONAL COMPANY LAW APPELLATE TRIBUNAL
COMPANY APPELLATE JURISDICTION

Company Appeal (AT) No. 15 of 2016

(arising out of Order dated 22nd September 2016 passed by NCLT, New Delhi in C.A.No. 92/C-I/2016 in C.P.No. 60(ND)/2015).

R.S.India Wind Energy Private Ltd. **.....Appellant**

Vs.

PTC India Financial Services Ltd. & Ors. **....Respondents**

For Appellant : Mr. Salman Khurshid, Senior Advocate with Mr. Arjun Singh Bhati, Ms. Kamna Singh and Ms. Shrishti Singh, Advocates

For Respondent : Mr. A.K.Ganguly, Senior Advocate with Mr. Mayank Mishra, Mr. Sidharth Sethi and Ms.Pragya Chauhan, Advocates

J U D G M E N T

SUDHANSU JYOTI MUKHOPADHAYA,J.

The present appeal arises out of the impugned order dated 22nd September 2016 passed by the National Company Law Tribunal, New Delhi, (hereinafter referred to as "Tribunal") in an application bearing C.A.No. 92/C-I/2016 filed by the 1st respondent – PTC India Financial Services Limited & Ors. in C.P.No.60(ND)/2015 under Section 213 of the Companies Act,2013. In the impugned order, the Tribunal observed as follows: -

"The petitioner has brought out some apparent malpractices in the working of Respondent 1 Company to show that deeper probe is necessary. There has been complaint of mismanagement in the affairs of Respondent-1 Company. The applicant has also made out a good case by showing that there has been prima facie violations of the provisions of Companies Act in the maintenance of the minutes of various proceedings of the Respondent-1 company. Apparent misdeeds and dishonesty in the maintenance of minutes of the company in contravention of the provisions of the Act cannot be ruled out. Law makes the investigation comprehensive of all sorts of illegalities. Sub clause 1 clause (b) of section 213 is wide enough to include contravention of any law. There has been prima facie existence of malpractices in tampering of records, which cannot be overlooked. In the facts, it appears that deeper probe in the affairs of Respondent No. 1 company is necessary".

2. The facts in a nutshell as pleaded by the Appellant are as follows: -

The appellant is a company incorporated under the Companies Act 1956 to carry out business in the field of renewable energy. The appellant was to setup a 99.45 MW of wind power project at Satara district, Maharashtra by investing Rs. 634 Crores, out of which Power Finance Corporation (hereinafter referred to as "PFC") was funding Rs. 487 Crores and the remaining Rs. 147 Crores was to be infused by the appellant by way of equity.

3. 1st Respondent is a Public Limited Company and a wholly own subsidiary of PTC India Ltd., which in turn is promoted by PFC amongst other entities.

4. 1st Respondent entered into an Equity Subscription Agreement (hereinafter referred to as "ESA") with the appellant, whereby it subscribed to 37% equity share capital of the appellant, after carrying out a thorough due diligence. 1st Respondent invested a total of approximately Rs. 61 Crores in the equity of the appellant till date.

5. One "M/s Vestas RRB Energy" was supposed to supply wind turbine generators (WTG for short) for the aforesaid project, however, it backed out in between and the appellant group and the respondent group discussed the possibilities of entering into the business of manufacturing of WTGs.

6. Accordingly, a sister concern of the appellant, namely, RS India Global Energy Pvt. Ltd. (RSIGEPL for short) entered into a Memorandum of Agreement ("MOA") dated 10th December 2008 with a sister concern of 1st Respondent, namely, PTC Energy Ltd. (hereinafter "PEL") for setting up WTG manufacturing facility in Haryana through a separate company i.e. RK Wind (Proforma 10th Respondent). The two sister concerns were to also set up a 80 MW wind project in Tamil Nadu. The said sister concerns also entered into a equity subscription agreement whereby PTC Energy Ltd. subscribed to 49% equity share capital of RSIGEPL.

7. To begin with, the appellant had 55% stake and RSIGEPL had 45% stake in Proforma 10th Respondent.

8. Later on, 1st Respondent and its sister concern PEL failed to infuse further funds into the respective projects which led to delay in execution of the projects and severe losses to the appellant and RSIGEPL.

9. On 30th June 2011, the Board of Directors of the Appellant unanimously approved grant of corporate guarantee of Rs. 250 Crores and pledge of shares in favour of Bankers of Proforma 10th Respondent for availing a term loan and working capital facility by the said Respondent. The minutes of the said meeting held on 30th June 2011 were fully approved by the Board of Directors of the Appellant in the meeting held on 28th September 2011. The Nominee Director of 1st Respondent on the Board of the Appellant was present in both meetings and accorded his consent/approval. The said approval was granted as the WTGs to be manufactured by Proforma 10th Respondent for the aforementioned projects.

10. Even the Board of Directors of Proforma 10th Respondent, whose chairman was Mr. Uddesh Kohli (a Director of 1st Respondent) approved the grant of the aforementioned corporate guarantee and pledge of shares by the Appellant in favour of Bankers of Proforma 10th Respondent in its meeting held on 30th June 2011. The minutes of the said meeting were confirmed in the next meeting of the Board of Directors of Proforma 10th Respondent in presence of and with the concurrence of Mr. Uddesh Kohli.

11. Similarly, the Board of Directors of RSIGEPL also approved grant of corporate guarantee and pledge of shares in favour of Bankers of Proforma 11th Respondent.

12. It was only after a lapse of more than one year that 1st Respondent on 30th July 2012 for the very first time raised an objection with respect to grant of corporate guarantee.

13. Three years thereafter i.e. on 7th May 2015, 1st Respondent filed a criminal complaint before the EOW against the Appellant and its Promoters/Directors levelling allegations of fraud and cheating against them. Similarly, the sister concern of 1st Respondent i.e. PEL also filed a criminal complaint against RSIGEPL and its Promoters/Directors before EOW. The EOW carried out a thorough investigation into the affairs of the Appellant and RSIGEPL over a period of seven-eight months and finally closed the aforesaid two complaints as no irregularities were found. In fact, the statements made before EOW by Mr. R.Nagarajan, who is Director (Finance) in PFC and is also a Director in 1st Respondent, and by Mr. T.N. Thakur, who was not only the Chairman of 1st Respondent but was also the Non-Executive Chairman of the Appellant till 23rd February 2011, were exculpatory in nature.

14. As the EOW complaint did not bear any fruitful results for the 1st Respondent and its sister concern PEL, both of them filed separate company petitions before the then Company Law Board ("CLB"for short) under Section 397, 398, 402, 403 and 406 of the Companies Act, 1956 against Appellant and RSIGEPL on identical allegations as contained in their respective criminal complaints. The company petition filed by 1st Respondent was numbered as CP No. 60 of 2015 and one filed by PEL was numbered as CP No. 100 of 2015, which are pending for final hearing.

15. The CLB, as it then was passed an interim order on 12th August 2015 against Proforma 10th Respondent directing it not to incur any debt without

the prior approval of CLB. It was also directed that the aforesaid corporate guarantee should not be invoked.

16. Subsequently, Proforma 10th Respondent filed an application before CLB seeking vacation of the aforesaid interim order dated 12th August 2015 and for deletion of its name from the array of parties.

17. The application filed by Proforma 10th Respondent was dismissed with cost vide order dated 16th October 2015 and the CLB made certain passing observations in the said order to the effect that Proforma 10th Respondent had fabricated the minutes of meeting of the Appellant held on 30th June 2011. In order to arrive at such observations CLB compared the minutes of the meeting filed by Proforma 10th Respondent along with its application with the purported minutes for the said meeting filed by 1st Respondent along with its company petition.

18. According to Appellant while comparing the two, CLB committed an error as it failed to note that the minutes filed by Proforma 10th Respondent were the signed ones and they were exactly the same as the one filed by the Appellant along with its reply to the company petition, whereas the minutes filed by 1st Respondent were not even signed. In this background it is alleged that the genuineness and reliability of the minutes filed by 1st Respondent was extremely doubtful.

19. However, as CLB had noted in the said order dated 16th October 2015 that the observations were only prima facie and were not an expression of final opinion and that the main petition shall be heard uninfluenced by the

said observations, no appeal was preferred by the Appellant against the said order.

20. Thereafter, when the company petitions came up for hearing before the CLB on 14th December 2015, the counsel for the 1st Respondent, without specifying any particular document, submitted that certain documents and information were required by the 1st Respondent for adjudication of the main petition. Considering that the said prayer must have been made with respect to the documents and information pertaining to the Appellant company, the counsel appearing for the Appellant in a bonafide manner submitted before the CLB that the counsel for the 1st Respondent may send a communication for the required information/document(s) and the same shall be furnished by the Appellant within two weeks from receipt of such communication.

21. On 15th January 2016, the 1st Respondent wrote a letter to the Appellant seeking a series of documents/information pertaining to not just the Appellant but also pertaining to various other companies such as R.S.India Infrapower Private Ltd., Anandrao Infrastructure Pvt. Ltd. and Powerwind Ltd. knowing fully well that the said companies were separate legal entities and the information with respect to those companies were confidential and could not have been provided for the asking and that too by the Appellant.

22. Learned Senior Counsel for the Appellant contended that the contents of the letter dated 15th January 2016 sent by the 1st Respondent itself shows

that the 1st Respondent is only interested in a fishing and roving enquiry into the affairs of the Appellant Company and nothing else, which is wholly impermissible in law.

23. According to the Appellant it provided almost the entire information/documents sought by the 1st Respondent vide letter dated 15th January 2016 with respect to the Appellant Company. However, as regards the information sought by the 1st Respondent with respect to the other companies, the Appellant expressed its inability to provide the information as those companies are separate legal entities. Moreover, the information sought for had no relevance to the petition filed by the 1st Respondent. The information/documents provided by the Appellant to the 1st Respondent also contained minutes of meetings of the Board of Directors held between the year 2007 and 2011, Audited Annual Accounts or the year(s) 2007-08 to 2010-11, Certified books of accounts etc. of the Appellant. The Appellant did not withhold any information sought by the 1st Respondent and provided all the information in a bonafide manner.

24. Having received the aforesaid documents from the Appellant, the 1st Respondent filed the application bearing No. CA 92/C-I/2016 before the Tribunal which came into existence since 1st June 2016, alleging that on comparing the minutes of meetings of the Board of Directors supplied by the Appellant on 1st February 2016, against the copies of the minutes for the said meeting supplied by the Appellant to the 1st Respondent at the contemporaneous period of time, were different and there are

variations/discrepancies in about ten of those minutes. The 1st Respondent alleged that there were differences in the two sets of minutes of meetings of the Board of Directors of the Appellant Company held on 11th February 2008, 11th April 2008, 30th August 2008, 22nd September 2008, 27th December 2008, 31st March 2009, 26th May 2009, 15th October 2009, 18th May 2010 and 30th June 2011. The 1st Respondent further alleged that there are fabrication of minutes and that the Appellant was maintaining multiple versions of the minutes book. On hearing the parties Tribunal directed the SFIO to carry out an investigation into the financial irregularities and fraudulent conduct of the controlling shareholders in the affairs of the Appellant Company as well as Proforma 10th Respondent. It is the order passed by the Tribunal, New Delhi, in CA 92/C-I/2016 which is under challenge in the present appeal.

25. Learned Senior Counsel appearing for the Appellant submitted that the application under Section 213 of the Companies Act 2013 was filed in March 2016 under Regulation No. 44 of the Company Law Board Regulations 1991 when Section 213 was not in force. It came into effect much later w.e.f. 1st June 2016. In spite of the same the impugned order has been passed by Tribunal under sub-clause (b)(i) of Section 213 of the Companies Act, 2013. The said sub-clause (b)(i) of Section 213 confers the authority upon Tribunal to pass orders for investigation into the affairs of a Company under the said provision, even "otherwise" than an application made to it by the members of a Company or by any other person.

26. It is further contended that an order can be passed by the Tribunal under sub Section (b) of Section 213, "otherwise" than an application filed by the members of the Company or any other person, if the ingredients laid down in either one or more of the sub-clauses (i) to (iii) thereof is satisfied. According to Learned Senior Counsel for the Appellant, the ingredients laid down in either one or more of sub-clauses (i) to (iii) thereof have not been satisfied in the present case.

27. Reliance was also placed on Supreme Court decision in ***Barium Chemicals Limited and Another Vs. Company Law Board and Ors. AIR 1967 SC 295*** wherein the Apex Court held that the essential ingredients that need to be satisfied before directing investigation into the affairs of a Company under sub Section (b) of Section 237 of the Companies Act 1956, which is ***"pari materia"*** with sub Section (b) of Section 213. of the Companies Act 2013.

28. Learned Senior Counsel also contended that if the present case is tested on the touchstone of law laid down by the Supreme Court in ***Barium Chemicals Limited*** it is apparent that impugned order passed by the Tribunal is an outcome of non-application of mind and is clear departure from the well established canons of law pertaining to investigation into the affairs of a company.

29. Further, according to Learned Senior counsel for the Appellant, the discretionary power conferred upon the Tribunal by virtue of sub Section (b) of Section 213 can be exercised only on being satisfied about the existence

of circumstances suggesting any one or more of the ingredient(s) specified in sub-clause (i) to (iii). But the Tribunal in the instant case has recorded only a prima facie satisfaction that the minutes book of the Appellant company has not been maintained as per provisions of the Companies Act, 1956. It is contended that there is no jurisdiction outside the section which empowers the Tribunal initiation of investigation. An action, not based on circumstances suggesting an inference of the enumerated kind, will not be valid.

30. Learned Senior Counsel for the Appellant placed reliance on a tabular chart filed on behalf of the Appellant regarding alleged variance in minutes of meeting. Therein discrepancies as were alleged before the Tribunal by the 1st Respondent have been explained by the Appellant to justify the minutes of meeting. For example, with regard to minutes of meeting dated 11th February 2008, the discrepancy pointed out by the 1st Respondent related to missing of last two pages supplied on 1st February 2016. Stand of the Appellant is that it was inadvertently missed out while photocopying the pages. Similarly, with regard to proceeding dated 11th April 2008, it was contended that the minutes allegedly supplied by Appellant at the contemporaneous period of time are not even signed. Hence, their genuineness is extremely doubtful.

31. It was further contended that the Appellant adduced sufficient material before the Tribunal to show that all steps were taken in accordance with resolutions passed in the minutes of the meeting of the Board of

Directors of the Appellant and were duly reflected in the Audited Balance Sheets of the Appellant which were approved by the Board of Directors and in the respective AGM meeting.

32. It was also contended that the Tribunal erroneously held that "it is immaterial whether the alleged alterations/improper recording of the minutes has extended any advantage to the Appellant Company or not", or 'whether such alterations were not within the knowledge of 1st Respondent'. The main thrust of the argument was that the Tribunal passed the impugned order without recording its satisfaction in regard to ingredients suggested under sub Section (b)(i) of Section 213 of the Companies Act 2013.

33. On the other hand according to learned counsel for the 1st Respondent it is well within the jurisdiction of the Tribunal to order investigation into the Company's affairs if the member(s) satisfy the condition(s) mentioned under clause (a) of Section 213 of the Companies Act 2013. If the application is supported with evidence and good reasons, the Tribunal on being satisfied may order investigation by an Inspector or Inspectors appointed by the Central Government.

34. It was alleged that despite giving undertaking before the CLB, the Appellant Company failed to provide or refused to provide most of the requisitioned documents/information. It is also alleged that some minutes of the meeting provided by the Appellant company on 1st February 2016 are at variance from the minutes of the meeting which were provided to the

Nominee Directors of the 1st Respondent. Referring the Tabular Chart filed by the Appellant, Learned Senior Counsel of the 1st Respondent pointed out various discrepancies/alterations in the minutes of the meeting held between 11th February 2008 and 30th June 2011.

35. Similar submission was also made on behalf of the 1st Respondent before the Tribunal, which having gone through the minutes of meeting held on 11th February 2008, 11th April 2008, 30th August 2008, 22nd September 2008, 27th December 2008, 31st March 2009, 26th May 2009, 15th October 2009, 18th May 2010 and 30th June 2011, observed that a comparison of minutes reveals that there has been difference in signatures; difference in presence of Directors in the meeting; difference in the agenda recording; variation in briefing of the agenda items; inclusion of some additional agendas and even there has been a differences in the text of the meeting. In the aforesaid background, the Tribunal observed that there is a prima facie violation of the provisions of the Companies Act in the maintenance of the minutes of various proceedings of the Appellant company and apparent misdeeds and dishonesty in the maintenance of minutes of the company in contravention of the provisions of Act cannot be ruled out. The Tribunal further observed that sub-clause (i), clause (b) of Section 213 is wide enough to include contravention of any law. There has been prima facie existence of malpractices in tempering of records, which cannot be overlooked.

36. We have heard Learned counsel for the parties and perused the record. On the directions of this Appellant Tribunal, the Appellant Company also produced the originals of the relevant minutes of meeting. The 1st Respondent also produced the Photostat copies of the minutes of meeting of the same period which were forwarded to the 1st Respondent for confirmation.

37. From minutes of meeting dated 22nd September 2008, we find that signatures of CMD appears to be different in two sets of minutes. The meeting dated 27th December 2008 also show that one Mr. Arun Bhalla's (Nominee Director of 1st Respondent) name was inserted in the minutes which was supplied to the 1st Respondent, even though the said officer had not attended the meeting. Therein also the signatures of CMD appears to be different in two sets of minutes. Similar is the position with regard to minutes of meeting dated 31st March 2009. Apart from the fact that the signatures of CMD appears to be varying and different, the font size is also different. Agenda No. 4 in the minutes supplied at the contemporaneous time shown as Agenda No. 3 in the minutes supplied subsequently. Agenda No. 8 regarding review project activities is missing in the minutes supplied later on. There are other infirmities which are not required to be highlighted at this stage.

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?

39. Section 213 of the Companies Act 2013 empowers the Tribunal to order investigation by an Inspector or Inspectors appointed by Central Government on an application made by qualified number of members or by any other person or otherwise, if it is satisfied that there are circumstances suggesting that the offence appears to have been committed.

40. Before discussing and interpreting the provision Sec. 213, it is desirable to notice the basic principle of interpretation of statute.

Justice G.P.Singh in his Book "Principles of statutory Interpretation", 13th Edition – 2012 at synopsis 3 – Captioned "Statutes must be read as a whole in its context" and observed:-

"When the question arises as to the meaning of a certain provision in a Statute, it is not only legitimate but proper to read that provision in its context. The context here means, the statute as a whole, the previous state of the law, other statutes in pari material, the general scope of the statute and the mischief that it was intended to remedy. This statement of the rule was later fully adopted by the Supreme Court.

It is a rule now firmly established that the intention of the Legislature must be found by reading the statute as a whole. The rule is referred to as an "elementary rule" by VISCOUNT SIMONDS; a "compelling rule" by LORD SOMERVELL OF HARROW; and a "settled rule" by B.K. MUKHERJEE, J. "I agree", said LORD HALSBURY, "that you must look at the whole instrument inasmuch as there may be inaccuracy and inconsistency; you must, if you can, ascertain what is the meaning of the instrument taken as a whole in order to give effect, if it be possible to do so, to the intention of the framer of it". And said LORD DAVEY: "Every clause of a statute should be construed with reference to the context and other clauses of the Act, so as, as far as possible, to make a consistent enactment of the whole statute or series of statutes relating to the subject-matter." It is spoken of construction "ex visceribus actus". "It is the most natural and genuine

exposition of a statute", laid down LORD COKE "to construe one part of a statute by another part of the same statute, for that best ex-presseth the meaning of the makers". To ascertain the meaning of a clause in a statute the court must look at the whole statute, at what precedes and at what succeeds and not merely at the clause itself, and, "the method of construing statutes that I prefer", said LORD GREENE, M.R. "is to read the statute as a whole and ask oneself the question: 'In this state, in this context, relating to this subject-matter, what is the true meaning of that word'?" As stated by SINHA, C.J.I.: "The court must ascertain the intention of the Legislature by directing its attention not merely to the clauses to be construed but to the entire statute; it must compare the clause with the other parts of the law, and the setting in which the clause to be interpreted occurs."

41. A Constitution Bench of the Supreme Court in "Padma Sundra Rao Vs. State of Tamil Nadu (T.N.)," (2002) 3 SCC 533, while dealing with principle of construction observed: -

"12. The rival pleas regarding rewriting of statute and casus omissus need careful consideration. It is well-settled principle in law that the court cannot read anything into a statutory provision which is plain and unambiguous. A statute is an edict of the legislature. The language

employed in a statute is the determinative factor of legislative intent. The first and primary rule of construction is that the intention of the legislation must be found in the words used by the legislature itself. The question is not what may be supposed and has been intended but what has been said. "Statutes should be construed, not as theorems of Euclid". Judge Learned Hand said, "but words must be construed with some imagination of the purposes which lie behind them". (See Lenigh Valley Coal Co. V. Yensavage.) The view was reiterated in Union of India v. Filip Tiago De Gama of Vedem Vasco De Gama.

13. *In D.R. Venkatchalam v. Dy. Transport Commr: it was observed that courts must avoid the danger of a priori determination of the meaning of a provision based on their own preconceived notions of ideological structure or scheme into which the provision to be interpreted in somewhat fitted. They are not entitled to usurp legislative function under the disguise of interpretation.*

14. *While interpreting a provision the court only interprets the law and cannot legislate it. If a provision of law is misused and subjected to the abuse of process of law, it is for the legislature to amend, modify or repeal it, if deemed necessary. (See Rishabh Agro Industries Ltd. v.*

P.N.B. Capital Services Ltd.). The legislative casus omissus cannot be supplied by judicial interpretative process. Language of Section 6(1) is plain and unambiguous. There is no scope for reading something into it, as was done in Narasimhaiah case. In Nanjudaiah case the period was further stretched to have the time period run from date of service of the High Court's order. Such a view cannot be reconciled with the language of Section 6(1). If the view s accepted it would mean that a case can be covered by not only clause (i) and/or clause (ii) of the proviso to Section 6(1), but also by a non-prescribed period. Same can never be the legislative intent.

15. *Two principles of construction – one relating to casus omissus and the other in regard to reading the statute as a whole appear to be well settled. Under the first principle a casus omissus cannot be supplied by the court except in the case of clear necessity and when reason for it is found in the four corners of the statute itself but at the same time a casus omissus should not be readily inferred and for that purpose all the parts of a statute or section must be construed together and every clause of a section should be construed with reference to the context and other clauses thereof so*

that the construction to be put on a particular provision makes a consistent enactment of the whole statute. This would be more so if literal construction of a particular clause leads to manifestly absurd or anomalous results which could not have been intended by the legislature. "An intention to produce an unreasonable result", said Danckwerts, L.J., in Artemiou v. Procopiou (at All ER p. 544-I), "is not to be imputed to a statute if there is some other construction available". Where to apply words literally would "defeat the obvious intention of the legislation and produce a wholly unreasonable result", we must "do some violence to the words" and so achieve that obvious intention and produce a rational construction. [Per Lord Reid in Luke v. IRC where at AC p. 577 he also observed: (All ER p. 664-I) "This is not a new problem, though our standard of drafting is such that it rarely emerges.]"

42. Following the aforesaid principles, if the intention of the legislature is to be noticed, it is desirable to read Section 213 as a whole in its context.

43. Chapter XIV of the Companies Act 2013 relates to inspection, inquiry and investigation. While the Registrar of Companies has power to call for information, inspection of books and conduct for inquiries under Section 206, the Central Government for formation of its opinion may also order to

investigate into the affairs of a company under Section 210 and Section 212.

44. The Tribunal is also empowered under Sec. 213 to investigate into the company's affairs in other cases–

(a) On an application made by the certain number of members of the company; and/or

(b) On an application made by any other persons or otherwise.

45. Section 213 of the Companies Act, 2013 reads as follows: -

"213. The Tribunal may, —

(a) on an application made by—

(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) on an application made to it by any other person or otherwise, if it is satisfied that there are circumstances suggesting that—

(i) the business of the company is being conducted with intent to defraud its creditors, members or any other person or otherwise for a fraudulent or unlawful purpose, or in a manner oppressive to any of its members or that the company was formed for any fraudulent or unlawful purpose;

(ii) persons concerned in the formation of the company or the management of its affairs have in connection therewith been guilty of fraud, misfeasance or other misconduct towards the company or towards any of its members; or

(iii) the members of the company have not been given all the information with respect to its affairs which they might reasonably expect, including information relating to the calculation of the commission payable to a managing or other director, or the manager, of the company,

order, after giving a reasonable opportunity of being heard to the parties concerned, that the affairs of the company ought to be investigated by an inspector or

inspectors appointed by the Central Government and where such an order is passed, the Central Government shall appoint one or more competent persons as inspectors to investigate into the affairs of the company in respect of such matters and to report thereupon to it in such manner as the Central Government may direct:

Provided that if after investigation it is proved that—

(i) the business of the company is being conducted with intent to defraud its creditors, members or any other persons or otherwise for a fraudulent or unlawful purpose, or that the company was formed for any fraudulent or unlawful purpose; or

(ii) any person concerned in the formation of the company or the management of its affairs have in connection therewith been guilty of fraud,

then every officer of the company who is in default and the person or persons concerned in the formation of the company or the management of its affairs shall be punishable for fraud in the manner as provided in section 447."

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.

47. The rest part of the provision relates to the action, thereafter, to be taken by the Central Government. On investigation by the Inspector(s) if offence is proved, the officer(s) of the company in default or any person concerned in the formation of the company or the management are punishable for fraud in the manner as provided in Section 447 of the Companies Act,2013.

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 applicant(s), 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 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 applicant(s) 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), (ii) and (iii) 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 Inspector(s) during the investigation to hold an accuse 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 director(s) 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.

54. In the present case as we find that the Tribunal has relied on certain record/evidence, applied it mind, satisfied itself and given good grounds to order investigation, we find no reason to interfere with the impugned order. For the reason aforesaid and in absence of any merit, we dismiss the appeal. However, in the facts and circumstances there shall be no order as to cost.

Mr. Balvinder Singh)
Member (Technical)

(Justice S.J. Mukhopadhaya)
Chairperson

NEW DELHI
DECEMBER 23rd 2016

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