2026:DHC:9323

**IN THE HIGH COURT OF DELHI AT NEW DELHI**

***%*** ***Judgment reserved on:22.05.2026***
***Judgment pronounced on:16.10.2026***
***Judgment uploaded on:16.10.2026***

\+ **W.P.(CRL) 1242/2022 & CRL.M.A. 10624/2022, CRL.M.A.17443/2022, CRL.M.A. 17930/2022, CRL.M.A. 18958/2022, CRL.M.A. 19760/2024, CRL.M.A. 29960/2025, CRL.M.A.29961/2025, CRL.M.A. 37241/2025**

**VINOD KUMAR DANDONA & ORS.** .....Petitioners

versus

**UNION OF INDIA & ANR.** ..... Respondent

\+ **W.P.(CRL) 2970/2022**

**ASHISH MITTAL** .....Petitioner

versus

**UNION OF INDIA AND ORS** ..... Respondents

**Advocates who appeared in this case:**

For the Petitioners : Mr. Mahesh Jethmalani, Sr. Adv. with Mr. Arshdeep Singh Khurana, Ms. Neha Nagpal, Mr. Vishvendra Tomar, Ms. Tannavi Sharma, Ms. Khushboo Jain, Ms. Nishta Juneja, Mr. Yashvendra Tomar & Mr. Ajatshatru Singh Rawat, Advs. in W.P.(CRL) 1242/2022
Mr. Shikhar Sharma & Mr. Harsh Kumar, Advs. in W.P.(CRL) 2970/2022

For the Respondent : Mr. Chetan Sharma, ASG, Mr. Amit Tiwari, CGSC, Mr. AmitGupta, Ms. Ayushi Srivastava, Mr. Chetanya Puri, Mr. Divyanshu Bhardwaj, Mr. R.V.Prabhat, Mr.

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Shubham Sharma, Mr. Arpan Narwal, Mr. YashWardhan Sharma, Mr. NamanSingh, Mr. Kushagra Malik, Mr. Ujjwal Tyagi & Ms. VidhiGupta, Advs. along with Mr. Deepak Shokeen, IO, SFIO.Mr. Aman Sheoran, Sr. Prosecutor W.P.(CRL) 1242/2022
Ms. Arti Bansal CGSC (UOI)with Ms. Shruti Goel, Adv.
Mr. Shaurya R. Rai, SPC forSFIO
Mr. Aman Sheoran, Sr.Prosecutor.in W.P.(CRL) 2970/2022

**CORAM**
**HON'BLE MR JUSTICE AMIT MAHAJAN**

**JUDGMENT**

1. The present petitions are filed under Article 226 of the Constitution of India read with Section 482 of the Code of Criminal Procedure, 1973 ('**CrPC**') seeking quashing of Order dated 17.08.2018 bearing No. 1/52/2017-CL II passed by Respondent No.1 under Section 212 (1) (c) of the Companies Act, 2013, directing investigation into the affairs of Educomp Solution Limited ("**ESL**") through Serious Frauds Investigation Office ("**SFIO**").

2. *The Petitioner No. 1/Sh. Vinod Kumar Dandona*was an Independent Director of ESL. *The PetitionerNo.(s) 2 and 3* namely, Sh. Jagdish Prakash and Sh. Shantanu Prakash (founder of ESL) were Directors and Shareholder of ESL. *Petitioner No. 4/Learning Leadership Foundation* ("**LLF**") is a Public Charitable Trust

registered under the Indian Trusts Act, 1882. The Petitioner No. 3 was the Managing Trustee of LLF till February 2020.

3. *The Petitioner in W.P. (Crl.) 2970/2022/Sh. Ashish Mittal,* joined ESL as Senior Vice President in 2013 and was promoted as the Chief Financial Officer ("**CFO**") in 2014.

4. **It is the case of the Petitioners**thatESL was incorporated on 07.09.1994 under the Companies Act,1956 with the ROC, NCT of Delhi and Haryana. Educomp Infrastructure & School Management Ltd. ("**EISML**"), was one of the companies of Educomp Group and Edu Smart Solutions Pvt ("**ESPL**") was incorporated as an independent company in the year 2009 andbecame a subsidiary after 2013/14.

5. It has been set-out that thegenesis of present prosecution is the corporate-rivalry which the directors and promoters of ESL had with its erstwhile business partner, namely Raffles Group. In this regard, it is alleged that in the year 2008, a Singapore-based corporate entity namely Raffles Group, headed by Mr. Hua Seng Chew entered India through Raffles Education Corporation Limited ("**RECL"**). In the course of time the Raffles group partnered with ESL to form joint venture companies operating in the field of educational sector, one of them being Educomp Raffles Higher Education Limited ("**ERHEL**").

6. After partnering with Raffles group, the Petitioner No.3, who was not only a director in ESL but was also the President of one Jai Radha Raman Educational Society ("**JRRES**") registered under the Societies Registration Act, 1860, inducted Mr. Chew as a life member

and Chairman in JRRES along with eight other Singaporean nationals of Chinese origin of the Raffles group. As per the petitioners, the inter-se fight for taking over the management and assets of this JRRES, is the cause behind initiation of the present prosecution against the petitioners.

7. Around 2011& December 2012, ESLand ESPL availed of various loan facilities from approximately 13 Banks forming the Consortium Lenders during this period. Around 2012, ESL raised an External Commercial Borrowing from one M/s. International Finance Corporation (**"IFC**") and M/s Proparco through a common term agreement between ESL, IFC and M/s Proparco.

8. In the year 2013, ESL faced a liquidity crunch and ESL underwent corporate debt restructuring ("**CDR**") twice between 2013 and 2016. As per the petitioners, the first restructuring was approved by the CDR Empowered Group with majority lenders led by State Bank of Patiala under which the financial decisions of ESL stood vested in a Monitoring Committee comprising of State Bank of Patiala, Axis Bank, ICICI Bank and State Bank of India. The lead bank i.e. State Bank of Patiala ("**SBI**"), after conducting due diligence and a thorough investigation into the affairs and banking transactions of ESL, categorically certified *vide* letter/Certificate dated 13.01.2014 that there was no diversion of funds or any other form of fraud or wilful default or misfeasance in ESL (or its subsidiary).

9. For the second restructuring of 2015-16, the consortium appointed Grant Thornton India LLP to forensically audit the accounts

of ESL from 01.04.2012 to 31.03.2016, which submitted it's report dated 07.11.2026 and also did not find any instance of diversion or misapplication of borrowings, or fraud concerning sales, revenue or receivables.

10. Thereafter, in 2017, two lenders of ESL i.e. IFC and M/s. Proparco filed a complaint with the MCA against ESL. The complaint was forwarded to RoC on 05.03.2017 for examination and the Respondent No. 1 also ordered an inspection into the books of account of ESL on 18.05.2016 under Section 206(5) of the Companies Act, 2013.

11. Pursuant to the inspection, which was completed between August – September 2017, the Regional Director submitted a Report dated 31.03.2017 under Section 208 of the Act, identifying only regulatory, secretarial disclosure and accounting-standard related defaults, all of which were compoundable in nature. The Regional Director found no evidence of defalcation, siphoning or misappropriation of funds and, accordingly, recommended that no further investigation be undertaken under the Companies Act, 2013. The Regional Director submitteda supplementary report dated 31.07.2017 under Section 208 of the Act, again finding no substance in the allegations made and as such found no basis for action under Section 447 of the Act. No further investigation under Section 210 or 212of the Companies Act, 2013 was recommended. It is also stated that pursuant to the Regional Director's report, show-cause notices were issued to ESL from time to time in respect of the compoundable

offences identified therein. According to the petitioners all such offences were compounded by the ACMM, Special Acts, Tis Hazari Courts, between July 2021 and July 2022.

12. While the disputes between the Raffles Group and the management of ESL were ongoing,in the interim, around May, 2017, in order to resolve its debt, ESL initiated the insolvency process under Section 10 of the IBC by filing a Petition before the NCLT, which was admitted *vide* Order dated 30.05.2017. The petitioners have urged that the Resolution Professional had conducted an investigation into the accounts of the Corporate Debtor i.e. ESL and *vide* Affidavit dated 08.10.2018, filed before the NCLT, ascertained that there was no transaction which fell within the ambit of Section 43, 45, 50 or 66 of the Code.

13. It is alleged that a series of fictitious and motivated news reports started appearing in media, with the intention to prevent the resolution process, which, as per the petitioners, formed the basis of complaints which were filed by Raffles before the various authorities seeking their intervention and initiation of criminal proceedings against the ESL and its directors and office bearers.

14. As per the petitioners, on 28.03.2018, complaint filed by Raffles Group was lodged with the Prime Minister's Officeto investigate ESL's affairs. On 03.04.2018, 26.04.2018 and 03.07.2018, a series of motivated articles were published online, on *Telecom Tiger* and "*the Wire*" in relation to ESL making various allegations against ESL and the Petitioner No. 3.Thereafter, on 04.04.2018, Mr. P.P. Chauhan, MP,

filed a complaint with the NCLT to investigate the affairs of ESL. The Raffles Group addressed multiple complaints to SFIO and to the CVC, with copies marked to the Director, SFIO and the Director, CBI, PMO seeking investigation in the affairs of ESL.

15. On, 17.08.2018, the Impugned Order bearing no. 1/52/2017-CL II was passed by the Respondent under Section 212(1)(c) of the Companies Act, 2013, directing investigation into the affairs of ESL.

16. Subsequent thereto, one of the lender banks of ESL i.e. YES BANK filed a complaint with EOW. As per the petitioners, the EOW conducted a detailed enquiry and did not find commission of any offence, and thus, the complaint was closed.

17. Thereafter, on 16.05.2019, the Raffles Group filed another complaint along with certain forged and bogus documents (fabricated ledger statements purporting them to be ledger statements of the two educational societies i.e. Learning Leadership Foundation Society and Richmond Education Society) *qua* the Petitioners and ESL and its connected entities alleging that the Petitioners were diverting monies from borrowings by ESL to purchase lands through two educational societies.

18. Thus, on 14.11.2019, the Learning leadership foundation/Petitioner No. 4, filed a complaint which led to the registration of FIR No. 222 of 2019 dated 14.11.2019 by EOW Delhi against the Raffles Group and its executives as LLF's false ledger statements/documents were submitted along with the afore-mentioned complaint dated 16.05.2019. Another FIR No. 1313 of 2019 was

registered by Gautam Buddh Nagar, Police Station at the behest of Petitioner No. 3, which was later transferred and clubbed with FIR no. 222 of 2019.

19. After the first complaint of SBI, which did not get converted to an FIR, the SBI filed another complaint with CBI on 06.02.2020, which lead to registration of an FIR No. RCBD1/2020/E/0002 dated 10.02.2020. *W.P (Crl) No 645 of 2020* was filed by the petitioner challenging the FIR dated 10.02.2020.As per the petitioners, AXIS Bank also filed a complaint against ESL on 15.09.2020 before the EOW Gurgaon, which was also closed.

20. In relation to FIR No. 222/2019,The EOW filed a Final Report dated 21.03.2022 u/s 173(8) of the CrPC and found that the material(s) relied upon by members of Raffles Group are forged. Moreover, the Final Report affirmed its earlier conclusions and charged the directors/officials of Raffles u/s 465, 469, 471, 506 and 120-B of the IPC.

21. Thus, aggrieved, that the direction by the Respondent No. 1 ordering a SFIO investigation has been passed in violation of statutory framework of the Companies Act and prompted as a result of private corporate rivalry, the present petition bearing W.P. (Crl.) 1242 of 2022 has been filed.

22. *Vide* order dated 26.05.2022, this Court passed an order that no coercive steps be taken against the petitioners.

23. On 13.10.2022, *OSN Infrastructure and Projects Pvt. Ltd.* filed a civil writ petition seeking quashing of the Impugned Order dated

17.08.2018 passed by MCA. The said Writ Petition was dismissed by the coordinate Bench of this Court on the ground that it was premature, without adjudication on the merits and with liberty toapproach at the appropriate stage.

24. During the pendency of the above captioned Writ, *Sh. Ashish Mittal/Petitioner in connected W.P. (Crl.) 2970 of 2022* also filed a petition seeking quashing of the Impugned order dated 17.08.2018 and all consequential proceedings, including the investigation/prosecution emanating therefrom. It has been alleged that he had joined ESL as Senior Vice President on 01.11.2013 and was promoted to the position of Chief Financial Officer on 26.05.2014. He had resigned from ESL w.e.f. 24.02.2018 and vacated office w.e.f. 31.05.2018.

25. The Short Reply dated 28.10.2022was filed on Behalf of the Respondent through Sh. Harvinder /Sr. Assistant Director, SFIO. It was disclosed therein that the investigation into the affairs of ESL was not ordered on the basis of the documents provided by the Raffles Group, but was ordered based on the deliberations of the Oversight Committee on 28.06.018 and various complaints received against ESL. As per the petitioner, this was the first time when the minutes of the Oversight Committee dated 28.06.2018 surfaced in the present matter and reliance on the same was made by Respondent No.2, justifying the commencement of its investigation.

26. On 12.12.2022, SFIO filed a Criminal Complaint (through Senior Assistant Director Sh. Harvinder) with the Ld. Special Court, Dwarka, with an Investigation Report dated 30.11.2022 for

prosecution under Section 447 (punishment for fraud), 448 (punishment for false statement) and 449 (punishment for falsification of books) r/w Section 212 of the Companies Act. As per the SFIO, the complaint arises from SFIO's investigation (initiated *vide* order dated 17.08.2018) into alleged financial irregularities at ESL and associated companies. Key allegations included fraud involving manipulation of accounts, fictitious entries, siphoning/diversion of funds, round-tripping of loans, sale of group companies at undervalued prices, and wilful default on loans (e.g., IDBI, IFCI), allegedly causing wrongful loss to creditors/investors.

27. The Additional Affidavit dated 13.01.2023 was filed by the Petitioners,contending that the Impugned Order is premised on false and frivolous allegations by a corporate rival, confirmed by the minutes of the Oversight Committee and the investigation report; no order under Section 210 of the Companies Act was passed and there is no application of mind on this aspect; constitution of the Oversight Committee and delegation of powers to it is illegal; decision of the Oversight Committee is a non-speaking order reflecting non-application of mind and violates natural justice; no investigation in public interest could have been ordered once the inspection reports of the Regional Director, MCA, under Sections 206/208 of the Companies Act were available and the Committee failed to consider them.

28. The Reply dated 10.02.2023 was filed by the Respondents through Sh. Harvinder /Sr. Assistant Director, SFIO. It was disclosed

that Investigation Report into the affairs of ESL had been submitted to the MCA on 30.11.2022. Criminal Complaint bearing No. 990/2022 against the Petitioner has been already filed by the SFIO before the Ld. ASJ & Special Judge (Companies Act), Dwarka on 12.12.2022. The *eight principal sets of allegations* in the prosecution complaint concern alleged fraud through paper entities and promoter contribution; alleged diversion of funds towards acquisition of shares/assets relating to Educomp Child Care/Little Millennium and The Millennium School; alleged divestment of shares in Vidya Mandir Classes Ltd.; alleged fraud in relation to Mussoorie International School; alleged bogus capital advances; alleged acquisition of land at inflated prices in Rajasthan and Hyderabad; and alleged cheating through Inland Letters of Credit. The Respondents alleged that Sh. Ashish Mittal, being the CFO of ESL, occupied a strategic position in the company and was responsible for the preparation and approval of its financial statements and balance sheets, which were alleged to have been fraudulently prepared and falsified during his tenure. It was further alleged that the financial statements failed to present a true and fair view of the state of affairs of ESL and instead projected a distorted financial position. The Respondents also alleged that Sh. Ashish Mittal was closely associated with the promoters of ESL, namely Sh. Shantanu Prakash and Sh. Jagdish Prakash, as well as other Key Managerial Personnel, and had facilitated the promoters in carrying out the alleged fraudulent activities.

29. On 01.05.2025, the Respondent No. 2 filed Criminal M.C. No. 3047 of2025, *SFIO v. State of NCT of Delhi*, seeking quashing of FIR No. 222 of 2019, the charge-sheet dated 21.03.2022, the cognizance order dated 23.05.2022, the supplementary charge-sheet dated 12.08.2024 against its first investigating officer, the cognizance order dated 09.09.2024 and the order dated 23.10.2024 directing further investigation into the role of its second investigating officer. The first investigating officer of SFIO, thereafter, also filed Criminal M.C. No. 3343 of 2025, *Ashish Harita v. State Government of NCT ofDelhi*,on 08.05.2025, in his personal capacity, seeking quashing of the supplementary charge-sheet and the cognizance order dated 09.09.2024. Both petitions are pending adjudication before this court. By order dated 02.06.2025 passed in the petition filed by the SFIO, this Court restrained the EOW from summoning officers of the SFIO until the next date.

30. **Mr. Jethmalani, learned Senior Counsel for the Petitioners submitted** that the impugned order is liable to be set aside at the threshold as it does not disclose any reason, circumstance or material demonstrating why investigation by the SFIO was necessary in public interest. He submitted that the statutory power under Section 212(1)(c) is not unbridled and the opinion of the Central Government must be founded upon relevant and sufficient material available to it when the order is passed.

31. Reliance is placed upon the judgment passed by the Bombay High Court in ***Parmeshwar Das Aggarwal v. Union of India*, 2016**

**SCC OnLine Bom 9276**, affirmed by the Hon'ble Supreme Court, to submit that the existence of circumstances forming the basis of the statutory opinion must itself be demonstrable. Mere assertion that an opinion has been formed cannot substitute the existence of relevant material. It is further submitted that the Bombay High Court specifically held that an investigation procured at the instance of a corporate rival is vitiated at the threshold.

32. Reliance is also placed upon the judgment passed by a Coordinate Bench of this Court in ***Nita Puri v. Union of India*, W.P.(C) 261/2025, dated 28.08.2025**, and the judgment passed by the Hon'ble Supreme Court in ***Karanartham Viramah Foundation v. Union of India & Anr.*, SLP (C) Diary No. 4494/2026, *vide* order dated 27.01.2026,** to submit that the material forming the basis of an order under Section 212(1)(c) must satisfy the twin requirements of relevancy and sufficiency and must *prima facie* disclose circumstances warranting criminal investigation by the SFIO.

33. He submitted that, having regard to the serious consequences of an investigation under Section 212 upon the promoters, directors and managerial personnel, including consequences affecting their rights under Article 21 of the Constitution of India, the Central Government was required to undertake a conscious and objective assessment of the material and record the reasons, necessity and justification for assigning the investigation to the SFIO.

34. He submitted that the impugned order cannot be supplemented by reasons subsequently disclosed in the Oversight Committee

minutes, SFIO pleadings or the investigation report. Reliance is placed upon ***Mohinder Singh Gill v. Chief Election Commissioner*, (1978) 1 SCC 405,** and the aforesaid decision of the Hon'ble Supreme Court in ***Karanartham Viramah Foundation***(supra)**,** to submit that the validity of the impugned order must be tested on the reasons contained in the order itself and not on fresh reasons or subsequent developments.

35. He submitted that the invocation of Section 212(1)(c) was contrary to the statutory scheme of Chapter XIV of the Companies Act. The reports prepared under Sections 206 and 208 had not disclosed fraud, siphoning or diversion of funds and did not recommend an SFIO investigation. In these circumstances, the Central Government could not mechanically bypass the statutory scheme and invoke Section 212(1)(c) without first applying its mind to why an investigation was nevertheless necessary and why it was required to be assigned specifically to the SFIO.

36. He submitted that the very material subsequently relied upon by the SFIO demonstrates the absence of a sufficient foundation for the impugned order. The inspection report dated 31.03.2017 noticed only compoundable secretarial irregularities; the supplementary report dated 31.07.2017 found no relevant violation; the YES Bank complaint was closed by EOW, Delhi; and the IFC complaint had already been examined in the supplementary inspection. The PMO reference and the letter of the Member of Parliament contained no independent verification of the allegations, while the *Wire* article was itself an unverified media report.







37. Consequently, once such exculpatory statutory reports were before the Committee, the jurisdictional foundation for invoking Section 212(1)(c) ceased to exist. To buttress the arguments, Mr. Jethmalani, has produced a chart before this court demonstrating the irrelevancy of the said material. The same is extracted hereinbelow:

| S.No. | Documents relied upon in Minutes dated 28.06.2018 | Why the said document cannot constitute sufficient material for ordering a criminal investigation under Section 212(1)(c) of the Companies Act. |
|---|---|---|
| *i)* | *Inspection Report dated 31.03.2017 of Regional Director under Section 206(5) of the Companies Act.* | *The inspection report dated 31.03.2017 found violations which do not remotely suggest any financial fraud, defalcation of funds or siphoning of funds to any third entity* ***(Ref: Document No. 4 @Pg. 281 of CC dated 02.06.2026).*** *The violations were only secretarial irregularities in the functioning of the company, which were compoundable under the Act. None of the provisions which attract criminal consequences were invoked. The violations were thereafter compounded by the company on orders passed by the Ld. ACMM. (****Ref: Document No. 9@Pg. 466 of CC dated 02.06.2026)****. Reliance on this Inspection Report to order investigation by SFIO clearly shows complete on-application of mind. Non-compliance/violation of compoundable provisions (subsequently compounded) cannot be a circumstance grave enough to justify a criminal investigation into the affairs of the company in public interest.* |
| *ii)* | *Supplementary Inspection Report dated 31.07.2017 of Regional Director under Section 206(5)* | *This supplementary inspection report was based on the complaint made by International Finance Corporation and Proparco. No violation of any nature was reported in the said supplementary inspection report (Ref: Document No. 4 @Pg. 375 of CC dated 02.06.2026). Despite this, the U01 in a mechanical manner relied on it to order a criminal investigation having grave Article 21 consequences. This clearly shows the Impugned Order was passed without any application of mind - albeit for extraneous reasons.* |
| *iii)* | *Internal Fraud Monitoring Report of YES Bank* | *This was an internal report of YES Bank. Based on the said FMR, a complaint dated 07.03.2018 was filed by YES Bank with the EOW of Delhi Police, as per RBI Guidelines. The EOW, after detailed investigation, found that no financial offence had been committed by ESL and the complaint was closed (RTI dated 27.05.2019)* |

| | | |
|---|---|---|
| | | *.(Ref: Document No. 18 @Pg. 934-please see para 3@Pg. 9360fCC dated 02.06.2026). Though the FMR itself records that a complaint was filed with EOW-Delhi Police, the Central Government did not take into consideration the closure of the complaint by the Delhi Police. This shows complete lack of application of mind.* |
| *iv)* | *Complaint by International Finance Corporation (IFC) dated 01.02.2017* | *The complaint by IFC was based on draft E&Y report dated 14. 12.2015. The supplementary inspection report dated 31.07.2017 (above) was itself based on the same draft E&Y report dated 14.12. 2015 forming part of complaint by PROPARCO, wherein no irregularities were found. Reference of the said IFC complaint as an independent "relevant material" to justify a Section 212 of the Companies Act investigation clearly shows the order was passed on the ipse dixit of the officers of the Central Government. The Central Government officers failed to perform their solemn duty to undertake complete and conscious scrutiny of the whole record.* |
| *v)* | *Forwarded complaint from PMO* | *From the records it now appears based on the material unearthed from FSL report during the EOW investigation that Raffles itself had complained to PMO. It appears that the complaint was merely forwarded from the PMO without any application of mind on he merits of the complaint.* |
| *vi)* | *Letter from Member of Parliament (Sh. P.P. Chauhan, MP)* | *This letter had no independent reasons; it merely forwarded the allegations contained in "THE WIRE" article, published at the behest of Raffles. This confidential letter also written at the behest of Raffles as the complaint dated 16.008.2018 by Raffles to PMO contains a copy of this confidential letter. (Ref: Document No. 13 @Pg 584 of CC dated 02.06.2026)* |
| *vii)* | *Article from "THE WIRE"* | *"THE WIRE" article was a planted article by corporate rivals, i.e. the Raffles Group, as confirmed by the EOW Chargesheet. In any event, a news report cannot be the basis for directing any criminal investigation as it lacks evidentiary value. Vide order dated 23.10.2024 Ld. ACJM has directed further investigation into the role of persons connected with WIRE media which is currently pending. (Ref: Document No. 42 see para 20 @Pg 1905 of CC dated 02.06.2026)* |

38. He submitted that the material relied upon by the Respondents substantially originated from Raffles Group, the corporate rival of

ESL. The subsequent EOW investigation allegedly revealed that *theWire* article, which became one of the foundational materials for the regulatory action, had been planted at the instance of Raffles. The recovered communications also allegedly demonstrate that persons associated with Raffles were in communication with the SFIO and were supplying material and information during the investigation.

39. He submitted that the subsequent EOW material assumes significance not for supplying a new basis to the impugned order, but for demonstrating the circumstances in which the proceedings were initiated and the manner in which the subsequent investigation was conducted. Reliance is placed upon the charge-sheet against SFIO officer *Sh. Ashish Harita* under Sections 465, 469, 471 and 120-B IPC and the order dated 23.10.2024 directing investigation into the role of the subsequent SFIO Investigating Officer, to contend that the SFIO investigation itself stands seriously compromised.

40. He submitted that the prosecution complaint cannot retrospectively validate the impugned order. Each of the eight sets of allegations relates to transactions preceding 17.08.2018 and had already been examined by independent institutions. In particular, allegations concerning promoter contribution, capital advances, land transactions, letters of credit and alleged diversion of funds were examined in the CDR process, Grant Thornton forensic audit, statutory inspection, EOW proceedings and/or SEBI investigation, without any finding of fraud or diversion.

41. He submitted thatas regards the allegations concerning promoter contribution and alleged paper entities, the SBI certificate dated 13.01.2014 recorded no diversion of funds, the Grant Thornton report examined the promoter contribution, the statutory inspection reports found no fraud, the RP's affidavit found no avoidance transactions under the IBC, and SEBI subsequently found no adverse inference. The alleged paper entities themselves have not been arraigned as accused.

42. He submitted that as regards diversion of funds for acquisition of Educomp Child Care/Little Millennium and The Millennium School, the Grant Thornton audit, RP's examination and the EOW proceedings did not disclose any such diversion and, in any event, the shares of ESL in Little Millennium continued to remain with ESL.

43. He submitted that as regards alleged divestment of shares in Vidya Mandir Classes Ltd., the allegation substantially reproduces the allegations contained in the *Wire* article and was examined by EOW, Delhi, without any cognizable offence being found. The relevant shares were sold by ICICI Bank, which received the consideration, and the bank itself has not been implicated.

44. He submitted that the alleged fraud concerning Mussoorie International School, the charge was subsequently based upon a complaint of Raffles and that, according to the statement of the former SFIO officer before EOW, the documents concerning the transaction were not independently collected by SFIO but were furnished by Raffles. The recovered communications allegedly demonstrate that the

investigation into the transaction was pursued at the instance of Raffles.

45. He submitted that as regards the allegations concerning bogus capital advances and land acquisitions, the allegations relate to periods substantially preceding the impugned order and were already examined during the CDR process, forensic audit, statutory inspection, RP's transaction audit and SEBI proceedings. The SEBI report specifically found no adverse inference regarding the capital advances. The documents subsequently relied upon for these charges were supplied by Raffles and were not independently verified by SFIO.

46. He submitted that the prosecution complaint is therefore founded upon material which either stood exonerated by contemporaneous investigations or was subsequently procured from a corporate rival. The SFIO cannot convert such material into a valid jurisdictional foundation for an order under Section 212(1)(c), particularly when the impugned order itself contains no reasons demonstrating the formation of the requisite opinion.

47. He lastly submitted that the subsequent conduct of the SFIO aggravates, rather than cures, the original jurisdictional defect. The investigation was allegedly conducted in collusion with persons associated with Raffles, confidential investigation material was shared with them, documents supplied by them were incorporated without independent verification and the investigating officer himself has been charge-sheeted in connection with the alleged conspiracy.

48. To buttress the arguments advanced, reliance is placed upon ***A.M. Mohan v. State,* (2024) 12 SCC 181**, and ***Anand Kumar Mohatta v. State (NCT of Delhi),* (2019) 11 SCC 706,** to submit that proceedings instituted with *mala fide* intent or for wreaking vengeance may be quashed even after filing of a charge-sheet.

49. Hence, it has been urged that the impugned order dated 17.08.2018, having been passed without demonstrable and sufficient material, without recording the requisite reasons for assigning investigation to the SFIO, in disregard of the exculpatory statutory reports and in circumstances indicating initiation at the instance of a corporate rival, is unsustainable in law. Consequently, all proceedings consequential thereto, including the SFIO Investigation Report and prosecution complaint, are liable to be quashed.

50. ***Per Contra,* Mr. Tiwari, learned Central Government Standing Counsel submitted that** the impugned order dated 17.08.2018 ought not to be read in isolation and must be read in conjunction with the minutes of the Oversight Committee dated 28.06.2018, which reflect detailed deliberation upon the material available with the Central Government, on the basis whereof the opinion was formed that an investigation by the SFIO was necessitated in public interest. He submitted that although the deliberations of the Committee find no specific mention in the impugned order, they are implicit therein andform the very basis of formation of opinion under section 212(1)(c) of the Companies Act.

51. He submitted that the order was based on independent material which comprised of the inspection ordered on 18.05.2016 under Section 206(5), the Regional Director's report dated 31.03.2017 and supplementary report dated 31.07.2017. On 28.06.2018 the Oversight Committee considered those reports with Shri P.P. Chauhan's complaint, *"the Wire"* article, PMO references, Yes Bank's Fraud Monitoring Return and inputs from IFC-World Bank Group, and recommended an SFIO inquiry in public interest.

52. He emphasised that the opinion under Section 212 was thus supported by relevant, independent and contemporaneous material. He submitted that the circumstances, application of mind, reasons, justification and necessity for an SFIO investigation were borne out by the Oversight Committee minutes and that, read with the impugned order, they satisfied the test laid down in ***Nita Puri*** (*supra*).

53. Hefurther submitted that a completed statutory investigation and prosecution complaint could not be annulled on that ground alone. The first investigating officer was repatriated on 31.12.2020, before completion and filing of the prosecution complaint. He submitted that the said officer neither prepared nor submitted the final report dated 30.11.2022. The prosecution complaint was filed by the second officer against whom he said no allegation had been made.

54. He further submitted that a filed prosecution complaint cannot be quashed merely because the initiating order was defective or the investigation was allegedly tainted. He submitted that those matters are matters related to defences to be urged during the trial before the

Special Court. He relied on ***State of Bihar v. P.P. Sharma,*** **AIR 1991 SC 1260;** ***Ahmed Noormohmed Bhatti v. State of Gujarat,*** **(2005) 3 SCC 647;** ***State of Maharashtra v. Iswar Piraji Kalpatri*** **(1996) 1 SCC 542;** ***Sheonandan Paswan v. State of Bihar,*** **(l987) 1 SCC 288; and** ***State of Karnataka v. M. Devendrappa,*** **(2002) 3 SCC 89** to buttress his submission that (i) where a report under Section 173 Cr.P.C. stands forwarded to the Magistrate and the matter is under judicial scrutiny this court ought not to quash the proceedings in exercise of its inherent jurisdiction; (ii) that where the investigating authorities are performing their statutory duties and the proceedings are pending before the competent jurisdictional court trying the offence it ought not be quashed under Article 226 of the Constitution or under Section 482 Cr.PC.; (iii) and that an oblique motive in launching the prosecution, the *mala fides* of the complainant, of the first informant or of the investigating agency, and personal animosity, are of no consequence where the material collected discloses the commission of an offence and its ingredients are otherwise made out.

55. He further submitted that the expert, forensic and financial reports cited by the petitioners were evaluative in nature and had to be tested at trial through cross-examination, corroboration and judicial assessment. He submitted that in writ jurisdiction this court could not decide the probative value of competing expert conclusions at the pre-cognizance or cognizance stage. Lastly, referring to each of the charges set out in the prosecution complaint, he submitted that a case of fraud is made out therein, and that notwithstanding any lacuna or

fallacy in the impugned order dated 17.08.2018, the prosecution complaint is not liable to be quashed after its filing.

56. **In rejoinder, Mr. Jethmalani, learned Senior Counsel for the Petitioners submitted** that contemporaneous audits and investigations by independent agencies, statutory bodies and financial institutions examined the same transactions but found no fraud, defalcation, siphoning or diversion by the petitioners. In this regard Mr. Jethmalani relied upon the CDR proceedings of 2013; the State Bank of Patiala's certification dated 13.01.2014; the Grant Thornton forensic audit report dated 07.11.2016; the Yes Bank complaint dated 07.03.2018 and its closure; the Resolution Professional's affidavit dated 08.10.2018, based on the BDO India LLP report; the closure report concerning the complaint made by Axis Bank; the SEBI investigation report dated 02.11.2020; and the NCLT's approval of the resolution plan on 14.12.2020. He submitted that these independent examinations covered the very same financial affairs of ESL and the very transactions forming the basis of the prosecution complaint, but disclosed no fraud, diversion, siphoning or misapplication of funds, financial impropriety, cognizable offence, or preferential, undervalued, extortionate or fraudulent transaction against ESL, its promoters or its management.

57. By placing reliance on the said material, Mr. Jethmalani, learned Senior Counsel submitted that the prosecution complaint contradicted every contemporaneous independent audit, forensic examination and statutory inquiry concerning the same transactions,

including the examinations under Sections 206(5) and 208. He relied on a comparative chart juxtaposing each SFIO charge with the exculpatory finding on that transaction. He contended that the SFIO by one stroke reversed the consistent finding given by several domain experts without any cogent basis with a predisposition to implicate the petitioners. According to him a challenge which impeaches the very jurisdictional foundation of the prosecution cannot be treated as a mere defence requiring the Petitioners to undergo a full-fledged trial for its determination through examination and cross-examination of witnesses.

58. **Submissions heard and the material placed on record perused.**

59. At the outset, this Court deems it apposite to deal with the preliminary objection regarding the maintainability of the petitions raised by the respondents.

60. It was vehemently contended on behalf of the respondent that the petition needs to be dismissed *in limine* on the ground that the present proceedings are, in effect, an attempt to re-agitate issues which had already been considered by a Coordinate Bench of this Court while dismissing a similar petition, being, *W.P.(C) 14487/2022*, which was filed by one of the accused, being, OSN Infrastructure and Projects Ltd.

61. It was contended that, on an earlier occasion, the Coordinate Bench, by order dated 13.10.2022, had dismissed the petition filed by co-accused, wherein similar prayers were sought. It was contended

that the grounds and contentions which are raised in the present petition were also taken on an earlier occasion, however, the Coordinate Bench dismissed the said petition giving opportunity to the accused to agitate all grounds at an appropriate time.

62. In the opinion of this Court, the aforesaid objections raised by the respondents are unmerited. As rightly contended by Mr. Jethmalani, learned Senior Counsel, the present petition was filed prior to dismissal of the said petition and the petitioners were also protected by way of an interim order passed by this Court. Further, *W.P.(C) 14487/2022* was dismissed by the Coordinate Bench noting that the issues raised were pre-mature and the liberty was granted to the petitioners therein to approach the Court at an appropriate stage. Thus, the dismissal of the said petition filed by the co-accused did not constitute an adjudication on merits so as to attract the bar of *res judicata* in the present proceedings.

63. Moreover, it remains undisputed that pursuant to filing of the present petition, the investigation proceeded. The Hon'ble Apex Court, in numerous cases, has categorically held that a party who approaches the Court, cannot be disentitled from hearing only because certain circumstances have changed during the pendency of the petition. The legality of the impugned action must be examined in the context of the grounds urged against it and the applicable statutory framework. The subsequent progress of the proceedings cannot, merely by reason of the passage of time, foreclose judicial scrutiny of the original action.

64. It would be apposite, in this regard, to refer to the order dated 13.10.2022 passed by the Coordinate Bench in W.P.(C) 14487/2022, wherein it wasnoted that the final decision by the Central Government is yet to be taken on the investigation report and therefore, the challenge was premature. It was held as under: -

> *"7. Having heard learned counsels for parties, the Court at the outset notes that in terms of the provisions enshrined in Section 212 of the Act, on conclusion of investigation, the Investigation Report is liable to be transmitted to the Union Government for its consideration. In terms of sub section (14) thereof, the Union Government may after due examination of the said report and upon legal advice that may be obtained, proceed to direct the SFIO to initiate prosecution. Admittedly, that stage is yet to be reached in the present case. In fact, learned counsel appearing for the SFIO apprised the Court that the Union Government is yet to receive the Investigation Report. It is thus manifest that the Union Government is yet to apply to its mind on the report and form an opinion whether prosecution is liable to be initiated.*
>
> *8. In that view of the matter, this Court is of the opinion that the challenge as laid is clearly premature since as and when the Union Government does get the opportunity to apply its mind and thereafter direct further proceedings to be taken by the SFIO, the petitioner shall have all remedies as are available in law to assail any prosecution that may be lodged as well as to challenge any adverse findings that may stand recorded or contained in the Investigation Report."*

65. A perusal of the aforesaid observations makes it evident that the Coordinate Bench declined to entertain the challenge at that stage because the statutory process had not yet culminated in a decision by the Central Government regarding prosecution. The Court did not

adjudicate upon the legality of the orderentrusting the investigation to the SFIO. It is apparent that the Court observed that the prosecution is initiated ultimately on perusal of the report and the petitioner can seek recourse by initiating appropriate remedy.

66. Hence, in view of the above, the issue in regard to maintainability of the present Petitions is decided in favor of the petitioners.

67. I had the benefit of not only hearing the extensive arguments advanced by learned counsels representing the parties but also perusing the written submissions filed on their behalf.

68. The foremost issue, forming the fulcrum of arguments advanced by the parties, is whether the power exercised by the Department under Section 212 (1) (c) of the Companies Act, 2013, fulfils the statutory prerequisitegoverning the exercise of such power, as mandated under the Act and as interpreted by the Courts from time to time.

69. The issuetherefore, to be consideredat the outset, is whether the impugned order dated 17.08.2018 passed by the Respondent No. 1, in exercise of the power conferred under Section 212 (1)(c) of the Act, thereby entrusting the investigation into the affairs of ESL to the SFIO, is legally sustainable.

70. For the purpose of convenience, the Sections 206, 208, 210 and 212 of the Act, are set out below: -

*"CHAPTER XIV*
*INSPECTION, INQUIRY AND INVESTIGATION*

***206. Power to call for information, inspect books and conduct inquiries.—*** *(1) Where on a scrutiny of any document filed by a company or on any information received by him, the Registrar is of the opinion that any further information or explanation or any further documents relating to the company is necessary, he may by a written notice require the company—*

*(a) to furnish in writing such information or explanation; or*

*(b) to produce such documents, within such reasonable time, as may be specified in the notice.*

*(2) On the receipt of a notice under sub-section (1), it shall be the duty of the company and of its officers concerned to furnish such information or explanation to the best of their knowledge and power and to produce the documents to the Registrar within the time specified or extended by the Registrar:*

*Provided that where such information or explanation relates to any past period, the officers who had been in the employment of the company for such period, if so called upon by the Registrar through a notice served on them in writing, shall also furnish such information or explanation to the best of their knowledge.*

*(3) If no information or explanation is furnished to the Registrar within the time specified under subsection (1) or if the Registrar on an examination of the documents furnished is of the opinion that the information or explanation furnished is inadequate or if the Registrar is satisfied on a scrutiny of the documents furnished that an unsatisfactory state of affairs exists in the company and does not disclose a full and fair statement of the information required, he may, by another written notice, call on the company to produce for his inspection such further books of account, books, papers and explanations as he may require at such place and at such time as he may specify in the notice:*

*Provided that before any notice is served under this sub-section, the Registrar shall record his reasons in writing for issuing such notice.*

*(4) If the Registrar is satisfied on the basis of information available with or furnished to him or on a representation made to him by any person that the business of a company is being carried on for a fraudulent or unlawful purpose or not in compliance with the provisions*

*of this Act or if the grievances of investors are not being addressed, the Registrar may, after informing the company of the allegations made against it by a written order, call on the company to furnish in writing any information or explanation on matters specified in the order within such time as he may specify therein and carry out such inquiry as he deems fit after providing the company a reasonable opportunity of being heard:*

*Provided that the Central Government may, if it is satisfied that the circumstances so warrant, direct the Registrar or an inspector appointed by it for the purpose to carry out the inquiry under this subsection:*

*Provided further that where business of a company has been or is being carried on for a fraudulent or unlawful purpose, every officer of the company who is in default shall be punishable for fraud in the manner as provided in section 447.*

*(5) Without prejudice to the foregoing provisions of this section, the Central Government may, if it is satisfied that the circumstances so warrant, direct inspection of books and papers of a company by an inspector appointed by it for the purpose.*

*(6) The Central Government may, having regard to the circumstances by general or special order, authorise any statutory authority to carry out the inspection of books of account of a company or class of companies.*

*(7) If a company fails to furnish any information or explanation or produce any document required under this section, the company and every officer of the company, who is in default shall be punishable with a fine which may extend to one lakh rupees and in the case of a continuing failure, with an additional fine which may extend to five hundred rupees for every day after the first during which the failure continues.*

*** ***

***208. Report on inspection made.—*** *The Registrar or inspector shall, after the inspection of the books of account or an inquiry under section 206 and other books and papers of the company under section 207, submit a report in writing to the Central Government along with such documents, if any, and such report may, if necessary, include a recommendation that further investigation into the affairs of the company is necessary giving his reasons in support.*

*** ***

***210. Investigation into affairs of company.—*** *(1) Where the Central Government is of the opinion, that it is necessary to investigate into the affairs of a company,—*

*(a) on the receipt of a report of the Registrar or inspector under section 208;*

*(b) on intimation of a special resolution passed by a company that the affairs of the company ought to be investigated; or*

*(c) in public interest,*

*it may order an investigation into the affairs of the company.*

*(2) Where an order is passed by a court or the Tribunal in any proceedings before it that the affairs of a company ought to be investigated, the Central Government shall order an investigation into the affairs of that company.*

*(3) For the purposes of this section, the Central Government may appoint one or more persons as inspectors to investigate into the affairs of the company and to report thereon in such manner as the Central Government may direct.*

*** ***

***212. Investigation into affairs of Company by Serious Fraud Investigation Office.—*** *(1) Without prejudice to the provisions of section 210, where the Central Government is of the opinion, that it is necessary to investigate into the affairs of a company by the Serious Fraud Investigation Office—*

*(a) on receipt of a report of the Registrar or inspector under section 208;*

*(b) on intimation of a special resolution passed by a company that its affairs are required to be investigated;*

*(c) in the public interest; or*

*(d) on request from any Department of the Central Government or a State Government,*

*the Central Government may, by order, assign the investigation into the affairs of the said company to the Serious Fraud Investigation Office and its Director, may designate such number of inspectors, as he may consider necessary for the purpose of such investigation.*

*(2) Where any case has been assigned by the Central Government to the Serious Fraud Investigation Office for investigation under this Act, no other investigating agency*

*of Central Government or any State Government shall proceed with investigation in such case in respect of any offence under this Act and in case any such investigation has already been initiated, it shall not be proceeded further with and the concerned agency shall transfer the relevant documents and records in respect of such offences under this Act to Serious Fraud Investigation Office.*

*(3) Where the investigation into the affairs of a company has been assigned by the Central Government to Serious Fraud Investigation Office, it shall conduct the investigation in the manner and follow the procedure provided in this Chapter; and submit its report to the Central Government within such period as may be specified in the order.*

*(4) The Director, Serious Fraud Investigation Office shall cause the affairs of the company to be investigated by an Investigating Officer who shall have the power of the inspector under section 217.*

*(5) The company and its officers and employees, who are or have been in employment of the company shall be responsible to provide all information, explanation, documents and assistance to the Investigating Officer as he may require for conduct of the investigation.*

*(6) Notwithstanding anything contained in the Code of Criminal Procedure, 1973 (2 of 1974), 1 [offence covered under section 447] of this Act shall be cognizable and no person accused of any offence under those sections shall be released on bail or on his own bond unless—*

*(i) the Public Prosecutor has been given an opportunity to oppose the application for such release; and*

*(ii) where the Public Prosecutor opposes the application, the court is satisfied that there are reasonable grounds for believing that he is not guilty of such offence and that he is not likely to commit any offence while on bail:*

*Provided that a person, who, is under the age of sixteen years or is a woman or is sick or infirm, may be released on bail, if the Special Court so directs:*

*Provided further that the Special Court shall not take cognizance of any offence referred to this subsection except upon a complaint in writing made by—*

*(i) the Director, Serious Fraud Investigation Office; or*

*(ii) any officer of the Central Government authorised, by a general or special order in writing in this behalf by that Government.*

*(7) The limitation on granting of bail specified in sub-section (6) is in addition to the limitations under the Code of Criminal Procedure, 1973 (2 of 1974) or any other law for the time being in force on granting of bail.*

*(8) If the Director, Additional Director or Assistant Director of Serious Fraud Investigation Office authorised in this behalf by the Central Government by general or special order, has on the basis of material in his possession reason to believe (the reason for such belief to be recorded in writing) that any person has been guilty of any offence punishable under sections referred to in sub-section (6), he may arrest such person and shall, as soon as may be, inform him of the grounds for such arrest.*

*(9) The Director, Additional Director or Assistant Director of Serious Fraud Investigation Office shall, immediately after arrest of such person under sub-section*

*(8), forward a copy of the order, along with the material in his possession, referred to in that sub-section, to the Serious Fraud Investigation Office in a sealed envelope, in such manner as may be prescribed and the Serious Fraud Investigation Office shall keep such order and material for such period as may be prescribed.*

*(10) Every person arrested under sub-section (8) shall within twenty-four hours, be taken to a Judical Magistrate or a Metropolitan Magistrate, as the case may be, having jurisdiction: Provided that the period of twenty-four hours shall exclude the time necessary for the journey from the place of arrest to the Magistrate's court.*

*(11) The Central Government if so directs, the Serious Fraud Investigation Office shall submit an interim report to the Central Government.*

*(12) On completion of the investigation, the Serious Fraud Investigation Office shall submit the investigation report to the Central Government.*

*(13) Notwithstanding anything contained in this Act or in any other law for the time being in force, a copy of the investigation report may be obtained by any person concerned by making an application in this regard to the court.*

*(14) On receipt of the investigation report, the Central Government may, after examination of the report (and after*

*taking such legal advice, as it may think fit), direct the Serious Fraud Investigation Office to initiate prosecution against the company and its officers or employees, who are or have been in employment of the company or any other person directly or indirectly connected with the affairs of the company.*

*(15) Notwithstanding anything contained in this Act or in any other law for the time being in force, the investigation report filed with the Special Court for framing of charges shall be deemed to be a report filed by a police officer under section 173 of the Code of Criminal Procedure, 1973 (2 of 1974).*

*(16) Notwithstanding anything contained in this Act, any investigation or other action taken or initiated by Serious Fraud Investigation Office under the provisions of the Companies Act, 1956 (1 of 1956) shall continue to be proceeded with under that Act as if this Act had not been passed.*

*(17) (a) In case Serious Fraud Investigation Office has been investigating any offence under this Act, any other investigating agency, State Government, police authority, income-tax authorities having any information or documents in respect of such offence shall provide all such information or documents available with it to the Serious Fraud Investigation Office;*

*(b) The Serious Fraud Investigation Office shall share any information or documents available with it, with any investigating agency, State Government, police authority or income-tax authorities, which may be relevant or useful for such investigating agency, State Government, police authority or income-tax authorities in respect of any offence or matter being investigated or examined by it under any other law."*

71. A Coordinate Bench of this Court in ***Nita Puri*** (supra), while examining a challenge to an order passed under Section 212(1)(c) of the Act, considered the statutory scheme and the applicable legal principles in considerable detail. The relevant observations are reproduced hereinbelow:-

*"**Reasoning and findings**:*

***19.*** *Having considered the rival contentions of the parties, this court finds that there is merit in the petitioner's contention that the impugned order cannot withstand the scrutiny of law. The reasons are enumerated as under:*

*(A) The impugned order is in contravention of the dicta laid down in the judgment of the Bombay High Court in Parmeshwar Das Agarwal v. Additional Director (Investigation) [(2016) 199 Comp Cas 353 (Bom); 2016 SCC OnLine Bom 9276.]*

***20.*** *In the aforesaid case, the Bombay High Court had occasion to examine the statutory scheme of Chapter XIV of the Companies Act, 2013. After taking note of the corresponding provisions in sections 234 and 237 of the Companies Act, 1956 (hereinafter the "Act, 1956") and considering the judgment of the Supreme Court in Barium Chemicals Ltd. v. Company Law Board [[1966] 36 Comp Cas 639 (SC); 1966 SCC OnLine SC 53; AIR 1967 SC 295.] , and Rohtas Industries Ltd. v. S.D. Agarwal [(1969) 39 Comp Cas 781 (SC); (1969) 1 SCC 325; 1968 SCC OnLine SC 372.] it was held as under (page 380 of 199 Comp Cas):*

> *"Thus, the principle is that there has, to be an opinion formed. That opinion may be subjective,* ***but the existence of circumstances relevant to the inference as to the sine qua non for action must be demonstrable. It is not reasonable to hold that the clause permits the Government to say that it has formed an opinion on circumstances which it thinks exist. Since existence of circumstances is a condition fundamental to the making of the opinion, when questioned the existence of these circumstances have to be proved at least prima facie.***
>
> ***
>
> *Therefore, a perusal of this section would indicate that the Central Government must form an opinion, that opinion must be that it is necessary to investigate into the affairs of a company. The Central Government can act on the receipt of a report of the Registrar or inspector under section 208 or on intimation of a special resolution passed by a company that its affairs are to be investigated or in public interest. Thus, there is a discretion to*

*order an investigation into the affairs of the company…*

*Section 210 falling in the same Chapter XIV titled inspection, inquiry and investigation contains these two sections. Section 210 confers a discretion in the Central Government to order an investigation into the affairs of the company and that power has to be exercised if there is an order passed by a court or a Tribunal in any proceedings before it to the effect that the affairs of a company ought to be investigated.* ***Thus sub-section (1) of section 210 confers a discretion while sub-section (2) is mandatory in terms. By sub-section (3) and when the Central Government orders an investigation into the affairs of the company, it may appoint one or more persons as inspectors so as to carry out this task and to report thereon in such manner as the Central Government may direct.*** *By section 212 the seventeen sub-sections thereof enable investigation into the affairs of a company by the Serious Fraud Investigation Office. This power is without prejudice to the provisions of section 210.* ***This power is to be exercised if the Central Government is of the opinion that it is necessary to investigate into the affairs of a company by the Serious Fraud Investigation Office.*** *Therefore, the power to investigate into the affairs of company is common to both provisions. In the former there are three clauses (a) to (c) in sub-section (1) of section 210 and the investigation is to be carried out by the Central Government by appointing inspectors and there is a discretion in that behalf. This power is stated to be akin to section 235 of the 1956 Act. The latter enables investigations into the affairs of a company by the Serious Fraud Investigation Office and there is one more clause (d) in sub-section (1) of section 212 where the Central Government can act on a request from any department of the Central Government or a State Government. Therefore, in a given case there could be an action initiated on the request of the Central Vigilance Commission or based on its recommendations.* ***However, by its very***

***title, the investigation under section 212 by the Serious Fraud Investigation Office ought to be on the basis of the opinion of the Central Government that it is necessary to investigate into the affairs of the company by the Serious Fraud Investigation Office. That opinion has to be based on the report of the Registrar or inspector under section 208; on intimation of a special resolution passed by a company that its affairs are required to be investigated; in the public interest or on the request from any department of the Central Government or the State Government. By section 211, the Serious Fraud Investigation Office is established to investigate frauds relating to a company. It is a very special office and headed by a director and consists of such number of experts from the fields enumerated in sub-section (2) of section 211 to be appointed by the Central Government from amongst persons of ability, integrity and experience.*** *The wide powers that this office enjoys, as is set out in various sub-sections of section 212, would denote as to how its involvement comes after the investigations are assigned to it by the Central Government.* ***By their very nature the investigations into frauds relating to a company have to be assigned. They have to be of such magnitude and seriousness demanding involvement of experts in the fields enumerated in sub-section (2) of section 211. Therefore, while exercising the powers under sub-section (1) of section 212, the Central Government ought to be not only forming an opinion about the necessity to investigate into the affairs of the company, but further that such investigations have to be assigned to the Serious Fraud Investigation Office.***

*We do not think that there were materials in the present case and which can be termed as enough to warrant the exercise of power by the Central Government by resorting to section 212(1) of the Act of 2013. The Central Government,* ***in the order under challenge, did not spell out any circumstances, except outlining its power under the above sections to order investigation into the affairs of a company in public interest. None***

***disputes that power or its existence.*** *In paragraph 2 of the impugned order, however, a reference is made to the report of the Registrar of Companies, West Bengal, dated January 13, 2016.* ***We have already held that the findings in this report are not enough for the Central Government to exercise the drastic power. Something more was required and to be established as circumstances or material enough for exercise of the power. That is clearly lacking in this case.***

*This is the only basis, namely, the report of the Registrar of Companies, West Bengal, or its contents which has enabled the Central Government to exercise its powers under section 212(1)(c). It is, therefore, apparent that it has not necessarily acted in terms of its power conferred by section 212 to direct investigation into the affairs of the company in public interest. The foundation for reaching the opinion or satisfaction is the report of the Registrar.* ***We have referred to the details in that report and we are of the firm opinion that based on that the Central Government could not have recorded a satisfaction or an opinion that investigation into the affairs of the company are necessary. There is no element of public interest which is projected, save and except some vague and general references to certain allegations in matters of bank finance and allotment of coal mines and alleged diversion of raw materials. There has been absolutely no details furnished nor referred in the report.*** *Rather, the report proceeds on the basis that as far as these issues are concerned nothing can be done by the Ministry of Corporate Affairs or the Registrar of Companies. We fail to understand, therefore, how in the present facts and circumstances and based on allegations and counter allegations between two groups of shareholders can it be even held that it is necessary in public interest to direct an investigation into the affairs of the company. Once we reach the conclusion that there is lack of requisite material to arrive at the requisite opinion or record the necessary satisfaction, then, in exercise of our powers of judicial review, we can safely quash and set aside the impugned order. We find that the*

> *opinion recorded or the satisfaction reached is vitiated by total non-application of mind. None of the factors which are germane and relevant for forming the opinion have been referred. The opinion or satisfaction is based only on the complaint of the Member of Parliament to the CVC and with regard to which report was called for from the Registrar. Even the contents of that report have been, as held above, misread and totally misinterpreted. Based on that no opinion could have been recorded that it is necessary to investigate the affairs of the company in public interest."*
>
> (Emphasis Supplied)

72. The Coordinate Bench, while rendering the aforesaid judgment, had also extensively relied upon the judgment passed by the Bombay High Court in the case of ***Parmeshwar Das Aggarwal*** (supra). The fact that the said judgment had been upheld by the Hon'ble Supreme Court was also taken note of by the Coordinate Bench.It was thus, opined as under: -

> ***"****21. Thus, it has been unequivocally laid down in the aforesaid judgment that:*
>
> ***(i) the existence of circumstances relevant for formation of opinion for the purpose of section 212(1)(c) of the Act, 2013, "must be demonstrable";***
>
> *(ii) the exercise of the power under section 212 must be in consonance with the scheme of Chapter XIV of the Act, 2013. In terms thereof, in the first instance, power is conferred under section 206 to conduct inspection/inquiry (section 206(4) of the Companies Act, 2013). Section 208 specifically contemplates that the Registrar or inspector shall, after inspection of books of account or inquiry under section 206, submit a report in writing to the Central Government, along with such documents, if any, and the report may also include or recommend further investigation into the affairs of the company, if necessary.*
>
> *(iii) Section 210 contemplates investigation into the affairs of a company:*

*(a) on the receipt of a report of the Registrar or inspector under section 208;*

*(b) on intimation of a special resolution passed by a company that the affairs of the company ought to be investigated; or*

*(c) in public interest.*

***(iv) Where a report under section 208 does not find any occasion to conduct a further investigation, the same has a bearing on the exercise of the power under section 212(1)(c) of the Act, 2013 (as in the facts of the case before the Bombay High Court).***

***(v) Where recourse is sought to be taken to section 212(1)(c) of the Act, 2013, the same ought to be "based on the report of the Registrar or inspector under section 208; on intimation of a special resolution passed by a company that its affairs are required to be investigated; in the public interest or on the request from any Department of the Central Government or the State Government"***

***(vi) It is necessary for the Central Government not only to form an opinion regarding necessity to investigate into the affairs of the company, but also to justify the assignment of such investigation/s to the Serious Fraud Investigation Office.***

***(vii) An order under section 212 must disclose the relevant circumstance/s which warrant (i) conduct of investigation and (ii) conduct of investigation by the Serious Fraud Investigation Office.***

***

***22. In the present case, the impugned order (apart from other infirmities referred to hereinbelow), fails to articulate the "necessity of investigation by the Serious Fraud Investigation Office", thereby contravening the mandatory requirement articulated in paragraph 47 of the aforesaid judgment of the Bombay High Court.***

***

***24. The impugned order, inasmuch as it does not satisfy the ingredients enunciated by the Bombay High Court for the purpose of an order under section 212(1)(c) of the Act, 2013, suffers from an apparent and incurable legal lacuna."***

(Emphasis Supplied)

73. It was further emphasised that, the *formation of opinion* by the central government though is *subjective,* but the circumstances forming the basis of such opinionmust be *demonstrable* from the order. The relevant observations are as follows:

> *"42.* ***The law is well-settled that although the formation of opinion by the Central Government is subjective, but the existence of circumstance/s forming the basis of such opinion must be "demonstrable".*** *The legal position in this regard has been expounded by the Supreme Court in the landmark cases of Barium Chemicals Ltd. v. Company Law Board [(1966) 36 Comp Cas 639 (SC); 1966 SCC OnLine SC 53; AIR 1967 SC 295.] , Rohtas Industries Ltd. v. S.D. Agarwal [(1969) 39 Comp Cas 781 (SC); (1969) 1 SCC 325; 1968 SCC OnLine SC 372.] and Rampur Distillery and Chemical Co. Ltd. v. Company Law Board [(1970) 40 Comp Cas 916 (SC); (1969) 2 SCC 774; 1969 SCC OnLine SC 319.] . The same has also been reiterated by the Division Bench of the Bombay High Court in Parmeshwar Das Agarwal v. Additional Director (Investigation) [(2016) 199 Comp Cas 353 (Bom); 2016 SCC OnLine Bom 9276.] . As held therein, the legal position expounded by the Supreme Court in ( Barium Chemicals Ltd. v. Company Law Board, , Rohtas Industries Ltd. v. S.D. Agarwal, and Rampur Distillery and Chemical Co. Ltd. v. Company Law Board, ) for the purpose of judicial review of the "opinion" under sections 237 and 326 of the 1956 Act, is also applicable, and relevant for the purpose of testing the* ***"formation of opinion" under section 212 of the Act, 2013****."*
>
> (Emphasis Supplied)

74. In paragraphs 70 and 71 of the ***Nita Puri*** *(supra)*, this Court concluded the issue, by holding that an order under Section 212(1)(c) of the Act, must mandatorily be issued only after due "*application of mind*" and upon "*examination of all relevant circumstances, which is a sine qua non for the formation of opinion under Section 212(1)(c) of the Companies Act, 2013*" and existence of such relevant

circumstances must be "*demonstrable*" before the Court and must be discernible from the language of the order itself. Relevant extractreadsas under: -

> *"70.* ***An order under section 212(1)(c) of the Act, 2013 directing investigation by the Serious Fraud Investigation Office is not a routine administrative measure. It is in the nature of an extremely serious statutory action having grave consequences and repercussions for the subject entities and individuals. It is therefore, imperative that such an order must be issued only after due application of mind, after examining all relevant circumstances.***
> *71.* ***The existence of "relevant circumstances" is sine qua non as for the purpose of formation of opinion under section 212(1)(c) of the Act, 2013.*** *As held by the Supreme Court in Barium Chemicals Ltd. v. Company Law Board [[1966] 36 Comp Cas 639 (SC); 1966 SCC OnLine SC 53; AIR 1967 SC 295.] , Rohtas Industries Ltd. v. S.D. Agarwal [(1969) 39 Comp Cas 781 (SC); (1969) 1 SCC 325; 1968 SCC OnLine SC 372.] and Rampur Distillery and Chemical Co. Ltd. v. Company Law Board [(1970) 40 Comp Cas 916 (SC); (1969) 2 SCC 774; 1969 SCC OnLine SC 319.] , and reiterated by the Bombay High Court in Parmeshwar Das Agarwal v. Additional Director (Investigation) [[2016] 199 Comp Cas 353 (Bom); 2016 SCC OnLine Bom 9276.] ,* ***the existence of the relevant circumstances has to be "demonstrable". Exercise of power under section 212(1)(c) in a casual or perfunctory manner, seriously undermines the statutory provision itself and the safeguards implicit thereunder. The use of boilerplate language and/or extrapolations from third party documents, without consideration of all the "relevant circumstances", reflects a disregard for procedural propriety. It can hardly be emphasised enough that the power under section 212(1)(c) must be exercised with circumspection and deliberation. In the present case, the impugned order under section 212(1)(c) appears to have been issued in a rather casual manner, unmindful of the statutory pre-requisites therefor****."*
>
> (Emphasis Supplied)

75. Notably, the aforesaid judgment of this Court passed in ***Nita Puri*** (supra) was assailed by way of an SLP before the Hon'ble Supreme Court. The Hon'ble Apex Court, by a detailed order dated 27.01.2026 passed in ***SLP (C) Diary No(s). 4494/2026***, affirmed the findings and reasoning given by the Coordinate Bench of this Hon'ble Court in ***Nita Puri*** *(supra)*. The order dated 27.01.2026 of the Supreme Court is extracted hereinbelow:

> *"SLP (CIVIL) Diary No(s). 4494/2026*
>
> ….…..
>
> *3. The challenge in this Special Leave Petition is to the order passed by the High Court of Delhi allowing the Writ Petition preferred by the respondent no.2 assailing the order dated 05.09.2024 passed by the Ministry of Corporate Affairs, Government of (c) under Section 212(1)(c) of the Companies Act, 2013 (for short, 'the Act') directing the Serious Fraud Investigation Office (for short, 'SFIO') to conduct an investigation into the affairs of Moser Baer (c) Ltd. (MBIL) and its Subsidiaries including joint ventures and associate companies as on date.*
> ….…..
>
> *6. Thereafter, the Central Government has issued the order which has been set aside by the High Court of Delhi relying on the order of the Bombay High Court in the matter of* ***Parmeshwar Das Agarwal & Ors. Vs. The Additional Director (Investigation) Serious Fraud Investigation Office & Ors. 2016 SCC Online BOM 9276which in turn has already been affirmed by this Court in SLP (Civil) Diary No(s). 2680/2026.*** *According to the High Court, in the case of Parmeshwar Das Agarwal (supra), the High Court of Bombay referred to* ***Barium Chemicals Limited and Anr. Vs. Company Law Board and Ors., AIR 1967 SC 295 and Rohtas Industries vs. SD Aggarwal and Ors., 1969 1 SCC 325, to hold that all the relevant circumstances which is sine qua non for the purpose of formation of opinion under Section 212(1)(c) of the Act, has not been considered and***

> ***<u>therefore, exercise of power under Section 212(1)(c) of the Act in a casual and perfunctory manner, undermines the statutory provisions itself and the safeguard implicit thereunder.</u>***
>
> *7. The High Court quashed the order passed by the Central Government also* ***<u>on the ground that the additional reasons supplied in the affidavit could not be considered in view of the law laid down by this Court in the matter of Mohinder Singh Gill & Another v. The Chief Election Commissioner, New Delhi & Ors, Opto Circuit (c) Ltd. V. Axis Bank & Ors. And Ritesh Tiwari v. State of Uttar Pradesh.</u>*** *Thus, in the peculiar circumstances of the case,* ***<u>the High Court being bound by the law laid down in Barium Chemicals (supra) and Mohinder Singh Gill (supra), has rightly adjudged the validity of the order under Section 212(1)(c) of the Act on the basis of the contents of the Order itself, and not on the vice of fresh reasons or subsequent developments or by calling report of SFIO, and as such High Court has not committed any error.</u>***
>
> *8. Considering the submissions made by the Ld. Senior counsel for the petitioner, we are not inclined to entertain this Special Leave Petition and the same is, accordingly, dismissed."*
>
> (Emphasis Supplied)

76. I am in complete agreement with the view expressed by the Coordinate Bench that an order under Section 212 (1)(c) of the Act must *clearly demonstrate* the *due application of mind* and that the power has been exercised after examination of *all relevant circumstances and material*before forming the requisite opinion. The existence of the relevant circumstances / material as well as application of the mind must be demonstrable and discernible from the language of the order itself.

77. Reliancehas also been placed upon the judgment passed by the Hon'ble Apex Court in the ***Barium Chemicals Limited and Anr. v.***

***The Company Law Board and Others*** **: AIR 1967 SC 295**and***Rohtas Industries Limited v. S.D. Aggarwal*** **: (1969) 1 SCC 325.** The Hon'ble Apex Court in the said judgments had considered the provision of Section 237 of the Companies Act, 1956, which empowered the authorities to inquire into the affairs of the company and can be called the predecessor provision to Section 210 and 212 of the Companies Act, 2013. It is, therefore, well settled that although the formation of opinion by the authorities is *subjective* but *the existence of circumstances forming the basis of such opinion must be demonstrable from the order itself.*

78. In this backdrop, the validity of the impugned order dated 17.08.2018 has to be considered in light of the crystallized legal principles governing the prerequisites to exercise power under Section 212(1)(c) of the Act.

79. At this juncture, it would be beneficial to peruse the impugned order dated 17.08.2018, which reads as under:

> *"ORDER*
> *Whereas by virtue of powers conferred under section 212 (1) (c) of the Companies Act, 2013, in the public interest, Central Government is empowered to order investigation into the affairs of the company through Serious Fraud Investigation Office (SFIO).*
> *2. Now, therefore, in exercise of powers conferred under section 212 (1) (c) of the Companies Act, 2013, the Central Government hereby orders investigation into the affairs of Educomp Solution Limited through SFIO.*
> *3. By virtue of provio to section 212 (1) of the Companies Act, 2013, the inspector (s) appointed by the Director, Serious Fraud Investigation Office (SFIO) to carry out the investigation of Educomp Solution Limited shall exercise powers conferred upon them under the Companies Act, 2013. The Director, SFIO shall complete the investigation*

*and submit the report to the Ministry within four (4) months hereof.*
*4. This order is issued for and on behalf of the Central Government."*

80. Abare perusal of the impugned order, *ex facie*, reflects that the order entrusting the investigation to SFIO, is devoid of any reason whatsoever. Law, as noted above, mandates that the reason should be demonstrable from the order itself. It is not understandable or demonstrable that examination of which *material*, brought before the authorities, enabled it to form an opinion to entrust the investigation to SFIO. The order also fails to reflect any *discernible application of mind* by the competent authorities to the inculpatory circumstances /material, if any, placed before it and what weighed with the authorities for arriving at an independent opinion regarding the necessity of entrusting the investigation to the SFIO.

81. The impugned order, therefore, in the opinion of this Court, does not satisfy the test laid down for exercise of power under Section 212(1)(c) of the Act. The impugned order, as apparent, only reproduces the power conferred on the Central Government by the said section, and is bereft of any reason for exercising the same and directing the investigation by the SFIO.

82. Significantly, the mere reproduction of the statutory language cannot, by itself, demonstrate that the requisite opinion was formed after due consideration of relevant material.

83. It is also well settled that the powers as proclaimed under Section 212(1)(c) of the Act, cannot be equated with the registration of

an FIR, for which the statutory threshold is materially different asthe same only requires allegations about a cognizable offence. Powers such as under Section 212(1)(c) of the Act cannot be exercised in a routine administrative manner, particularly in view of the safeguards inherent in the statutory scheme and emphasised by the Courts from time to time.

84. At the same time, though the formation of opinion is founded on a subjective satisfaction of the authorities but the same has to be routed in objective consideration of cogent and relevant material available at the time of passing of the order. Mere presence of material is of no consequence unless the same is discernible from the order itself. Formation of opinion cannot also be whimsical or on unverified allegations or a third-party material unless the same is independently examined and authenticated through the scheme of the Act warranting investigation.

85. In this regard, this Court, therefore, agrees with the submissions made by Mr. Jethmalani, learned Senior Counsel, that material before the Central Government must *prima facie* indicate fraud, siphoning or diversion of funds, use of power with intent to deceive, undue will, an injury to company etc. so as to attract the consequences contemplated under the Companies Act. No order of such nature ought to be passed without assigning and supplying due reasons.

86. This also becomes important, as in the present case, the initial reports issued under the Companies Act itself, did not discover any

infraction of such nature as warranting passing of the impugned order under Section 212 of the Act.

87. The absence of any discernible reasoning in the impugned order assumes further significance when considered alongside the statutory inspection report dated 31.03.2017 and the supplementary inspection report dated 31.07.2017, both of which preceded the impugned order.

88. The statutory inspection report dated 31.03.2017 into the affairs of the company discovered some compoundable infractions, which as argued have already been compounded. It is also significant to note that the supplementary investigation report dated 31.07.2017, also found the allegations of fraud and diversion of funds as unfounded.

89. Unlike the orders passed under other provisions of chapter XIV, the orders passed under Section 212(1)(c) of the Companies Act are distinct, as the same confers wide discretion upon the competent authority to entrust the investigation into the affairs of a company to a specialised agency. Passing of an order under Section 212(1)(c) of the Act by the authorities entail serious civil as well as criminal consequences and, therefore, requires strict adherence to the tests laid down by the Courts.

90. As discussed in the preceding paragraphs and in ***Nita Puri*** (supra), the compliance of the prerequisite, that is, *demonstrable application of mind* on the available material is a *sine qua non* for sustaining on order under Section 212(1)(c) of the Act. The same should be clearly reflected in the order itself which is missing in the present case. The reflection of the exercise undertaken by the authority

for examining such material, and lastly the reasoning on the basis of which the authority reaches an opinion to exercise the statutory power.

91. These ingredients have to be necessarily reflected in the order itself so as to obviate any challenge on the ground of arbitrariness. In the absence of such opinion being reflected in the order, the same makes it vulnerable on the ground of arbitrariness and having been passed on irrelevant consideration and extraneous factors.

92. Having held that from a perusal of the Impugned Order no reasoning is discernable, this Court, now proceeds to examine the further submissions advanced on behalf of the respondents that the impugned order must be read in conjunction with the minutes of the Oversight Committee dated 28.06.2018.

93. This submission does not persuade the Court, because of two reasons. *Firstly,* that the impugned order has to stand on its own legs and no amount of additional reasons, supplied in other forms, either by way of an affidavit or otherwise can justify passing of an unreasoned order; and *Secondly,* on an independent examination of the Minutes of Oversight Committee dated 28.06.2018, the alleged material in the opinion of this Court also does not justify the formation of opinion for passing an order under Section 212(1)(c) of the Act for ordering the investigation by the SFIO.

94. The said minutes reads as under:-

> ***"Minutes of the meeting of the Oversight Committee for deciding investigations held on 28.06.2018 at 3.30 P.M. in Conference Room of the MCA, Shastri Bhawan, New Delhi***

*Present Officers:*
*Ms Anjali Bhawara, Additional Secretary, MCA*
*Shri Narender Kumar Bhola, DGCOA*
*Shri Amardeep Singh Bhatia, Director, SFIO*
*Shri K.V.R. Murty, Joint Secretary, MCA*
*Shri S. B. Gautam, DII - Special Invitee*
*Shri D. Bandyopadhyay, RD(NR) - Special Invitee*
*Shri Kamal Harjani, ROC-Delhi - Special Invitee*

*The meeting was chaired by the Additional Secretary, Corporate Affairs.*

*The presentations were made before Oversight Committee on following 3 Cases by AD(CL-II) and RD(NR)*

*(1) Educomp Solutions Limited*
*(2) ******
*(3) *******

***(1) Educomp Solutions Limited***

*The inspection and supplementary inspection report of RD is taken on record. Further, on the basis of various serious complaints received from Sh P P Chauhan, Hon'ble M P Lok Sabha, PMO references, Report of Yes Bank/Fraud Monitoring Return (FMR 1)), International Finance Corporation (IFC) (World Bank Group), Issue reported by 'THE WIRE' regarding criminal breach of trust of creditors /investors, defrauding creditors/ investors by diversion of funds, dishonestly misappropriating funds received from creditors/ investor by diversion of funds, dishonestly misappropriating funds received from Creditors/investors, cheating is investor/creditors with or without the knowledge that wrongful loss may be caused to them and falsification of account by Educomp Solutions Limited, the Oversight Committee is of considered view that investigation should be carried out by SFIO in public interest as per section 212(1)(c) of the Companies Act, 2013……."*

95. The aforesaid minutes refer to certain independent documents/ material for recommending entrustment of investigation to SFIO. The relevant question, however, is not merely whether such material was

referred to in the minutes, but whether the material, when examined in its proper context, furnished a relevant and demonstrable basis for the requisite opinion under Section 212(1)(c) of the Act.

96. During the course of arguments, it was informed that the minutes were recorded on the basis of presentation made on that date by the officers of Respondent No. 1 before the Oversight Committee. The presentation was also placed before this Court by additional affidavit dated 13.01.2023. The material which constituted part of the said presentation and was allegedly the basis of the above impugned order was: -

i. Inspection and supplementary inspection report of RD.
ii. Complaint from Mr. P.P. Chauhan, Member of Parliament, Lok Sabha.
iii. PMO reference.
iv. Internal Fraud Monitoring Report of YES Bank;
v. Complaint by International Finance Corporation (IFC), World Bank Group dated 01.02.2018;
vi. Issue reported by "The Wire" regarding criminal breach of trust of creditors, investors, defrauding creditors / investors by diversion of funds, dishonestly misappropriating funds received from creditors / investors.

97. The scrutiny of above referred material, which, as argued by the respondents, furnished the statutory basis for the purpose of formation of opinion for ordering of investigation by the SFIO, again indicates

that the impugned order has been passed without *due application of mind* and without the existence of the relevant material which can demonstrate circumstances and reasons justifying the necessity of entrusting the investigation to the SFIO.

98. Though the impugned order is vitiated for want of *due application of mind* and *demonstrable circumstances* and *reasoning* in the order, this Court has been constrained to look into the material since the arguments have been advanced that the minutes of Oversight Committee shall be read in conjunction with the impugned order.

99. The first set of documents referred to by the Oversight Committee comprises the inspection and supplementary inspection reports of the Regional Director. A perusal of the same reflects that these are not of such nature as to disclose any issue of fraud and diversion of funds for the concerned period. The inspection report dated 31.03.2017 was submitted in respect of inspection conducted by the statutory authorities pursuant to directions dated 18.05.2016 issued by the Respondent No. 1 exercising power under Section 206(5) of the Act to inquire into the allegations made in the complaint filed by one Advocate, namely, Saurabh Luthra. The conclusion by the Inspector in the said report categorically records that no material indicating defalcation, siphoning, diversion or misappropriation of funds has been found. Certainly, non-compliances were though reflected in the report relating to procedure, statutory disclosures and accounting standards under the Companies Act, 1956 and 2013, the same were

compoundable in nature. The relevant extract is reproduced herein below: -

> *"10. BASIS OF INSPECTION AND FINDING THEREOF*
>
> *i. The inspection of the company U/s. 206(5) of the Companies Act, 2013 was ordered by the Ministry vide letter No. 7 /81 /2016/Cl.ll(NR) dated 18.05.2016. The Inspection was ordered on the basis a complaint has been received from Advocate Sourabh Luthra in the officer of ROC, Delhi alleging various allegations against the management of the company.*
>
> *ii. Further, the matter has been examined during course of Inspection* ***the Complainant has made vague allegations against the company in order to extortion and blackmail the Company.*** *The company in turn has lodged FIR against the Complainant and during its investigation advocate Sourabh luthra has admitted that it was done with a malicious intent. Thereafter, the Compliant was withdrawn by the advocate Sourabh Luthro. Even on the basis of Complaints, the Bankers who has lent loans has conducted forensic audit by appointing an independent firm M/s Grant Thorton, for Financial Year 2012-13 to 2015-16* ***and revealed that no serious findings corroborating were found as alleged by the Complainant.***
>
> ***During the course of Inspection, the issues were also be examined and found that there are no other complaints against the subject company and that the company is doing its best to recover all the dues including the bad debts, hence no action is proposed.***
>
> *iii. The Inspecting officer has highlighted the contraventions of sections Section 198, 269, 211 (1) r/w Schedule VI, 211 (3A) r/w AS-16, 20, 26, 224(8), 372(3), 211(1), 295, 274(1)(g), 227(3)(d) and 227(2) of the Companies Act, 1956 and Section 142, 129 r/w Schedule III, 129 r/w AS016, 20, 26, 134(5), 197 & 198, of the*

*companies Act, 2013 in Part-A and violations of Sections 217[2AA), 209(1)(c), 299, of the Companies Act, 1956 in Part-B and Violations of Section 125 and 193( l ) of Companies Act 1956 in Part-C of the inspection report."*

(Emphasis supplied)

100. The presentation to the Oversight Committee cited this report as an independent material, however, does not disclose that evidence of fraud was detected during the inspection or a recording that the violation, if any, were compoundable in nature for which a separate prosecution was recommended. It has also failed to note that the same records that *no action is proposed*. The report, therefore, could not have been the relevant material for ordering investigation by SFIO exercising power under Section 212(1)(c) of the Companies Act.

101. A further reference has been made, as noted above, to the supplementary report dated 31.07.2017 and a complaint made by IFC as independent material warranting investigation by SFIO. The scrutiny of the supplementary report reveals that the same was prepared by the Regional Director under Section 208 after examining the allegations of fraud, defalcation and siphoning contained in IFC complaint which was forwarded to Regional Director under Section 206(5) of the Companies Act, 2013. However, the same indicates that the Regional Director after examining the books of accounts, financial records and affairs of ESL found no violation as alleged in the complaint and did not recommend further action on those allegations.

102. The Oversight Committee, therefore, only took note of the report, however, failed to apply its mind to its actual findings and the nature of the violations recorded therein.

103. During the course of arguments, a chart was submitted by Mr. Jethmalani, learned Senior Counsel, pointing out the various compounding orders passed by the various Courts in regard to the violations referred in the inspection report dated 31.03.2017. The presentation placed before the Oversight Committee specifically referred to the alleged violations under section 211(3A)(3B) and (3C), 211 r/w Schedule VI, 227(3)(e), 198, 256, of the Companies Act, 1956 and 129, 197, 198, 142(1) of the Act. All the aforesaid violations are stated to be regulatory and compoundable in nature and did not involve any allegation or finding of fraud, diversion, siphoning, misappropriation, or defalcation of company funds, which was the prime contention of the Respondent No. 1. A separate prosecution for these offences was also recommended by the Respondent No. 1, wherein, all the offences referred to in the inspection report were subsequently compounded by the competent court of law. Mr. Jethmalani, learned Senior Counsel, in this regard has submitted a chart and has appraised this court about compounding orders passed by the competent court. From the said chart it is clear that:-

a) The violations found under Sections 198 and 269 of the Companies Act, 1956; Non-compliance of 211(3A), 211(3B), 211(3C) and Section 211 read with Schedule VI of the Companies Act, 1956, were compounded by order dated

26.07.2021 and a penalty of ₹4,000 per financial year was imposed on ESL.

b) The violations found under Section 129 of the Companies Act, 2013 and were compounded by order dated 16.07.2021 and a penalty of ₹50,000 per accounting standard was imposed on ESL.

c) The violation found under Section 142(1) of the Companies Act, 2013 was compounded by order dated 16.07.2021 and a penalty of ₹4,000 was imposed on ESL.

d) Violations of Section 209 and 299 of the Act were compounded by order dated 16.07.2021.

e) Violations under Section 125 of the Act were compounded by order dated 16.07.2021 and a penalty of ₹20,000 per year was imposed on ESL.

f) Violation of under Section 193 of the Act were compounded by order dated 16.07.2021 and a penalty of ₹500 was imposed.

g) No prosecution or action was taken in respect of the violations found under Sections 197 and 198 of the Companies Act, 2013 and Sections 224, 134 (5), 372(9), 227(3)(d), 295, 274 (1)(g) and 217 (2AA) of the Companies Act, 1956.

104. Thus, despite being specific reference of a *compoundable nature* of the violation, noted in the inspection report, the Oversight

Committee appears to have in a routine and mechanical manner considered this report as a relevant material to recommend the investigation by SFIO.

105. In these circumstances, once the statutory inquiry into the allegations were not substantiated, the complaint by IFC also could not form separate and independent material so as to justify an order under Section 212(1)(c) of the Companies Act.

106. The reliance placed by the Oversight Committee on the Internal Fraud Monitoring Report by Yes Bank is also misplaced. The report indicates that the Yes Bank was in the process of conducting a detail investigation in the matter and had also filed a complaint with EOW, New Delhi. Thus, once the investigation had already been undertaken on the alleged fraud committed by the ESL and Yes Bank by the Competent Authority being EOW, Delhi Police, the reliance on the same for the purpose of starting a parallel investigation by SFIO belies any logic, as the decision to entrust the investigation to the SFIO still required an independent and reasoned basis in accordance with the statutory framework.

107. In regard to the PMO references, this Court, upon examination of the record, finds that no such complaint was annexed by the Respondent No. 1 with the presentation made by them before the Oversight Committee. The minutes of meeting of the Oversight Committee though mentions representation forwarded by the PMO, however, they do not specify the date or identify the document in question. Thus, it is not clear as to which material came into the

possession of the Oversight Committee which was being termed as PMO references and why the same was mentioned in the minutes.

108. The respondents in the affidavit filed before this Court have also not referred or acknowledged or produced any complaint referred / forwarded by the PMO which formed the basis for passing the impugned order. One complaint was mentioned during the proceedings, but the same is of a subsequent date being 16.05.2019 and, therefore, obviously cannot be the part of the material examined by the Oversight Committee or the respondents, before passing the impugned order on 17.08.2018. The said complaint was sent by the Raffles Group to the PMO on a subsequent date and, therefore, could not have any bearing on the decision-making process when no contemporaneous PMO reference has been brought on record.

109. The other material, which as noted above, which was considered by the Oversight Committee, are letters addressed by the Member of Parliament and the article published in the "*the Wire*", which, in the opinion of this Court, were self-serving documents and could not be the basis for any consideration for the purpose of statutory exercise as serious as Section 212(1)(c) of the Act. The article as well as one complaint by Member of Parliament at best can form basis for some inquiry, however, could not be of any independent evidentiary or probative value so as to warrant exercise of power under Section 212(1)(c) of the Act.

110. It is clarified that this Court is refraining from commenting on the allegations that the documents were planted at the instance of the

corporate rival, that is, Raffles Group, though it is vehemently argued by Mr. Jethmalani, learned Senior Counsel that the material seized during the period of investigation, particularly the chats retrieved from the Account of Mr. Saurabh Sharma shows that the article published by "*the Wire*" had already been shared with him on 02.04.2018, that is, one day prior to the publication by "*the Wire*" and, therefore, the same was planted for the purpose of initiating the serious step under Section 212(1)(c) of the Act.

111. This Court does not find it apposite to adjudicate on the said allegation, since in the opinion of this Court, the article in itself cannot constitute sufficient basis for starting of investigation without there being any corroboration.

112. It was also pointed out that the letter written by the Member of Parliament was immediately on the next day after the article was published in "*the Wire*". However, once the said material is held to be of no significance for starting the investigation, this Court would refrain from commenting further on the allegations made by the petitioners**.**

113. The cavalier manner in which the material, as noted above, has been cited, for justifying the entrusting of the investigation to the SFIO, in the opinion of this Court, ought to be deprecated. The officers appointed under the scheme of the Act are experts in the matters of corporate governance and cannot be expected to rely upon unsubstantiated material and the reports so as to justify the serious action as contemplated under Section 212(1)(c) of the Act. Therefore,

once the material clearly belies any logic to justify the investigation, the respondents cannot be allowed to take the arguments that the *subjective satisfaction* is based on such material. While the Court ought not substitute its own opinion for that of the competent authority, it is entitled to examine whether the statutory prerequisites for the exercise of power have been satisfied and whether the decision is vitiated by non-application of mind or reliance upon irrelevant considerations.

114. At this stage, this Court also takes support of the judgment passed by the Bombay High Court in ***Parmeshwar Das Aggarwal*** (supra) where the Hon'ble Bombay High Court, noted that if the report under Section 208 of the Act does not find any occasion to conduct further investigation, the exercise of power under Section 212(1)(c) of the Act would be unjustified.

115. Once a statutory inspection and supplementary inspection report submitted under Section 208 of the Act does not lead to further serious subsequent actions under Section 212(1)(c) of the Act, no support of other material such as the newspaper report and the letter from the Member of Parliament can form basis to justify the same.

116. Mr. Jethmalani, learned Senior Counsel has also referred to various contemporaneous letters written by the Raffles Group to SFIO, the chats recovered by the EOW and the manner in which the article was published by "*the Wire*" and the same being made before the respondents can justify the apprehension of the petitioners that the investigation was vitiated at the behest of the corporate rivals.

However, once this Court has reached the conclusion that the material, even if taken on the face value, does not justify passing of the impugned order, no further adjudication is necessary in that regard at this stage.

117. Once a statutory report issued by the respondent authorities itself did not arrive at any finding or siphoning or defalcation of funds, the other documents being only allegations, loses significance and cannot be relevant for the purpose of exercise of power under Section 212(1)(c) of the Act.

118. As already noted in the preceding paragraphs by this Court, that the order passed for investigation of by the SFIO cannot be equated with the registration of FIR.

119. The expert bodies being tasked to perform the functions under the Companies Act are required to apply their "*expert mind*" to the material placed before them so as to reach a conclusion that a serious action such as envisaged under Section 212(1)(c) of the Act can be taken. The decisions, therefore, are to be tested on a touchstone of the standard expected of an expert and not of an ordinary person.

120. The Courts have repeatedly observed that such significant powers are deliberately vested upon the experts and, therefore, attract personal responsibility and duty to exercise their expertise, prudence and independent evaluation of the material. Such power cannot be used in a mechanical manner as sought to be done in the present case.

121. Even though a lot is sought to be justified by Mr. Tiwari, learned counsel for respondent by filing an affidavit, however, it is a

settled law that no amount of additional reasons supplied in the form of an affidavit or subsequent reports can justify the initial action **[Ref.: *Mohinder Singh*(supra)]**.

122. It is also settled law that once the foundation is found to be defective, the superstructure raised upon it also cannot be allowed to stand. If the initial order of investigation is found to be unjustified, all subsequent actions cannot validate the same. [***Ref : Ritesh Tewari v. State of U.P. :*(2010) 10 SCC 677**]

123. The minutes of Oversight Committee and the consequential impugned order is *ex facie* product of non-application of mind and it appears to be a mere formality for starting the investigation. Thus, when the decisions are taken either on a mistake or an inadvertent error ignoring the relevant material, the aggrieved party would be justified in alleging arbitrariness or that the decision has been taken for extraneous consideration at the instance of corporate rivals.

124. At this stage, it is necessary to deal with the further objection raised on behalf of the respondents that the arguments which have been raised, require adjudication of seriously disputed questions of facts concerning documents, electronic records and forensic material, which ought not to be adjudicated in the writ jurisdiction.

125. It was further contended that the learned Special Court is already seized of the complaint filed pursuant to the investigation and the petitioner would have a statutory remedy before the learned said Court, to seek discharge and this Court ought not to conduct a mini-

trial and assess the sufficiency or the probative value of the evidence collected during the investigation.

126. This Court concurs with the general proposition that the triable issues and the disputed questions of fact should not ordinarily be adjudicated while exercising jurisdiction under Section 482 of the CrPC or under Article 226 of the Constitution of India.It is well-settled that the High Court, while exercising inherent extraordinary jurisdiction, should be cautious and circumspect. The Court does not contemplate enquiry or mini trial to substitute its view and where the allegations and material disclose a *prima facie* case, the question in regard to the truth and evidentiary value of such allegation and the defence must ordinarily be left to the learned Trial Court to adjudicate after the evidence is led by the parties.

127. However, this Court has only considered the validity of the initiation of the investigation and therefore, has not adjudicated the allegations and the defence, which necessarily would require a trial. Once the Court reaches a conclusion that the very initiation of the investigation stoodvitiateddue to non-application of mind and the impugned order has been passed in a mechanical manner, all other aspects/ merits would not require adjudication. Once an initial order of investigation is found to have been passed *dehors* the powers conferred under Section 212(1)(c) of the Act, all proceedings emanating therefrom are liable to be brought to an end.

128. Additionally, once the petition is entertained by this Court by issuing notice, the same cannot be rejected, after more than three

years, on the ground that the disputes should be left to be decided by the learned Trial Court.

129. The proceedings which become susceptible to interference on their inception, do not acquire immunity merely because some water is flown before it is finally adjudicated. The progress or the evidence collected may have some evidentiary value in appropriate proceedings, but cannot cure the foundational illegality. **[*Ref : A.M. Mohan v. State* : (2024) 12 SCC 181].**

130. Thus, in view of the foregoing, this Court holds thatthe impugned order dated 17.08.2018, cannot be sustained in law and are herebyquashed, along with all consequential proceedings emanating therefrom.

131. The present petitions are allowed in the above terms. Pending application(s), if any, also stand disposed of.

132. A copy of this Judgment be placed in both the matters.

**AMIT MAHAJAN, J**

**OCTOBER, 16, 2026**
***"SK"/KDK***