NATIONAL COMPANY LAW APPELLATE TRIBUNAL
PRINCIPAL BENCH, NEW DELHI

Company Appeal (AT) No. 182 of 2026

[Arising out of Order dated 17.03.2026 passed by the National Company Law Tribunal, Mumbai Bench – I, in CA No.234/2025 in CA 396/2021 in Company Petition No.3638 of 2018]

IN THE MATTER OF:

BSR & Associates LLP
14th Floor, Central B Wing and North C Wing.
Nesco IT Park 4, Nesco Centre, Western Express Highway, Goregaon (East),
Mumbai, India-400063. **...Appellant**

Versus

1. Serious Fraud Investigation Office
6th Floor, Fountain Telecom Building-I,
MG Road, Mumbai, India 400001. **...Respondent No. 1**

2. IL&FS Securities Services Limited
IL&FS House,
Raheja Vihar Chandivili,
Andheri (E), Mumbai-400072. **...Respondent No. 2**

3. S. Rengarajan
16th Floor, Ekta Oculus,
Moti Baug, Chembur,
Mumbai-400071. **...Respondent No. 3**

4. Arun K Saha
House No. 601/602, Green Acres,
61B, Pali Hill, Nargis Dutt Road,
Behind Dilip Kumars Bungalow,
Bandra (W), Mumbai – 400050. **...Respondent No. 4**

5. Ramesh B Bawa
W-78, Ground Floor, Greater Kailash,
New Delhi-110048. **...Respondent No. 5**

6. Vibhav Kapoor
26^{th} Floor, Kanchan Ganga Building,
Kemps Corner, Peddar Road,
Mumbai-400026. **...Respondent No. 6**

7. Rakesh Karande
D/1, 1st Floor, Ashokraj,
SV Road, Goregaon (W),
Mumbai-400062. **...Respondent No. 7**

8. SK Mukhopadhyay
Kshitij, A-304, GE Links,
Ram Mandir Road, Goregaon West,
Mumbai-400104. **...Respondent No. 8**

9. Sujoy Das
Flat 701, Little Star CHS,
15th Road, Santacruz (W),
Mumbai-400054. **...Respondent No. 9**

10. Ravi Parthasarthy
1201/1202, Vinayak Angan,
Old Prabhadevi Road, Prabhadevi,
Mumbai-400025. **...Respondent No. 10**

11. Hari Shankaran
Everglades 21 Road, Bandra (W),
Mumbai-400050. **...Respondent No. 11**

12. Shikha Bagai
D 403, Raheja Vistas, Raheja Vihar,
Chandivalli, Andheri (East),
Mumbai-400072. **...Respondent No. 12**

13. Deloitte Haskins & Sells LLP
One International Centre Tower 3,
27th-32nd Floor Senapati Bapat Marg,
Elphinstone Road (West),
Mumbai-400013. **...Respondent No. 13**

14. Sanjiv Pilgaonkar,
3A Himgiri Apartments,
Eknath Hatiskar Marg, Prabhadevi,
Mumbai - 400052 **...Respondent No. 14**

15. Kalpesh Mehta
603 Ronit Arcade, SV Road,
Opp. MTNL, Kandivali (West),
Mumbai-400067. **...Respondent No. 15**

16. Pallavi Gorashakar,

Shree Pant Bhavan, 1ª Floor,
Block No. 5A, MV Bridge, Chowpatty,
Mumbai-400007. **...Respondent No. 16**

17. N Ganesh Sampath
C-2305, Oberoi Splendor,
Jegeshwari Vikhroli Link Road,
Jogeshwari (East), Mumbai-400060. **...Respondent No. 17**

18. Union of India,
Ministry of Corporate Affairs,
Through its Secretary, Everest 5th Floor, 100, Marine Drive, Mumbai-400002. **...Respondent No. 18**

Present:

For Appellant	**:**	**Mr. Sajan Poovayya, Sr. Advocate along with Mr. Vijayendra Pratap Singh, Mr. Asif Ahmed, Ms. Bhagya K. Yadav and Ms. Raksha Agrawal, Advocates.**
For Respondents	**:**	**Mr. Ranjeev Khatana, SPC for R-1 along with Mr. Rohit Kapoor, Mr. Arjan Sethi, Mr. Tijil Pandey, Mr. Kamaldeep and Mr. Rohan Khatana, Advocates for R-1.** **Mr. Kuber Dewan, Ms. Neeharika Aggarwal and Mr. Kaustubh Srivastava, Advocates for R-2.** **Mr. Aditya Sikka, Ms. Onshi Jakhar and Ms. Yuganshi Singh, Advocates for R-18.**

WITH

Company Appeal (AT) No. 183 of 2026

[Arising out of Order dated 17.03.2026 passed by the National Company Law Tribunal, Mumbai Bench – I, in CA No.234/2025 in CA 396/2021 in Company Petition No.3638 of 2018]

IN THE MATTER OF:

N. Sampath Ganesh
C-2304, Oberoi Splendor,
Jegeshwari Vikhroli Link Road,
Jogeshwari (East), Mumbai, India-400060. **...Appellant**

Versus

1. Serious Fraud Investigation Office
6th Floor, Fountain Telecom Building-I,
MG Road, Mumbai, India 400001. **...Respondent No. 1**

2. IL&FS Securities Services Limited
IL&FS House,
Raheja Vihar Chandivili,
Andheri (E), Mumbai-400072. **...Respondent No. 2**

3. S. Rengarajan
16th Floor, Ekta Oculus,
Moti Baug, Chembur,
Mumbai-400071. **...Respondent No. 3**

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Behind Dilip Kumars Bungalow,
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6. Vibhav Kapoor
26th Floor, Kanchan Ganga Building,
Kemps Corner, Peddar Road,
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7. Rakesh Karande
D/1, 1st Floor, Ashokraj,
SV Road, Goregaon (W),
Mumbai-400062. **...Respondent No. 7**

8. SK Mukhopadhyay
Kshitij, A-304, GE Links,
Ram Mandir Road, Goregaon West,
Mumbai-400104. **...Respondent No. 8**

9. Sujoy Das
Flat 701, Little Star CHS,
15th Road, Santacruz (W),
Mumbai-400054. **...Respondent No. 9**

10. Ravi Parthasarthy

1201/1202, Vinayak Angan,
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Mumbai-400025. **...Respondent No. 10**

11. Hari Shankaran
Everglades 21 Road, Bandra (W),
Mumbai-400050. **...Respondent No. 11**

12. Shikha Bagai
D 403, Raheja Vistas, Raheja Vihar,
Chandivalli, Andheri (East),
Mumbai-400072. **...Respondent No. 12**

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3A Himgiri Apartments,
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Mumbai - 400052 **...Respondent No. 14**

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603 Ronit Arcade, SV Road,
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Block No. 5A, MV Bridge, Chowpatty,
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17. BSR & Associates LLP
IT Building No. 2, Hall No. 4,
Nesco IT Park, Goregaon, Mumbai-400063 **...Respondent No. 17**

18. Union of India,
Ministry of Corporate Affairs,
Through its Secretary, Everest 5th Floor, 100,
Marine Drive, Mumbai-400002. **...Respondent No. 18**

Present:

For Appellant : Mr. Vijayendra Pratap Singh, Mr. Asif Ahmed and Ms. Bhagya K. Yadav, Advocates.

For Respondents	**:**	**Mr. Ranjeev Khatana, SPC for R-1 along with Mr. Rohit Kapoor, Mr. Arjan Sethi, Mr. Kamaldeep and Mr. Rohan Khatana, Advocates for R-1.** **Mr. Kuber Dewan, Ms. Neeharika Aggarwal and Mr. Kaustubh Srivastava, Advocates for R-2.** **Mr. Aditya Sikka, Ms. Onshi Jakhar and Ms. Yuganshi Singh, Advocates for R-18.**

J U D G M E N T

JUSTICE YOGESH KHANNA, MEMBER (JUDICIAL)

This appeal is filed by the appellant against an impugned order dated *17.03.2026* passed by the Ld. NCLT, Mumbai Bench, Court – I in CA *234/2025* in CA *396/2021* in Company Petition No. *3638/2018.*

2. It is submitted by the learned Sr. counsel for the appellant vide the impugned order the Ld. NCLT has erroneously rejected the maintainability challenge raised by the appellant is the Serious Fraud Investigation Office (**"SFIO"**) has no power or locus to file any application before the Ld. NCLT seeking attachment/disgorgement of assets under Section *212(14A)* of the Companies Act, 2013 (for short the **"Companies Act"**).

3. It was argued the impugned order is liable to be set aside as the same is rendered in violation of the principles of natural justice and otherwise is not sustainable in law being contrary to the express provisions of the Companies Act. It is argued if one perused Section *212(14A)* read with Section *458* and Section *2(58)* of the Companies Act, it would show such an application has to be filed by a person authorised by the Central Government and such authorisation must be notified vide notification. These sections are as follows:

> ***"212. Investigation into affairs of Company by Serious Fraud Investigation Office.–***
>
> *(14A) Where the report under sub-section (11) or sub-section (12) states that fraud has taken place in a company and due to such fraud any director, key managerial personnel, other officer of the company or any other person or entity, has taken undue advantage or benefit, whether in the form of any asset, property or cash or in any other manner, the Central Government may file an application before the Tribunal for appropriate orders with regard to disgorgement of such asset, property or cash and also for holding such director, key managerial personnel, other officer or any other person liable personally without any limitation of liability."*
>
> ***"458. Delegation by Central Government of its powers and functions.—***
>
> *(1) The Central Government may, by notification, and subject to such conditions, limitations and restrictions as may be specified therein, delegate any of its powers or functions under this Act other than the power to make rules to such authority or officer as may be specified in the notification:*
>
> > *(1)* *****
> >
> > *(2) A copy of every notification issued under sub-section (1) shall, as soon as may be after it is issued, be laid before each House of Parliament."*
>
> ***"2. Definitions.—****In this Act, unless the context otherwise requires,—*
>
> *(58) "notification" means a notification published in the Official Gazette and the expression "notify" shall be construed accordingly;"*

4. The learned Sr. counsel for the appellant then referred to a letter dated 26.09.2023 to say by the said letter the Deputy Director of the Ministry of Corporate Affairs has *authorised* the Director of the SFIO to initiate action against the persons/entities for the relevant period including that of the appellant who was an auditor of IL&FS Securities Services Limited (**"ISSL"**). Such letter is duly signed by the Deputy Director on behalf of the Ministry of Corporate Affairs and paragraph *3* of the said letter notes in view of the completion of an investigation into the affairs of ISSL and submission of report thereof, the SFIO is directed to place the Investigation Report before the Ld. NCLT Mumbai and to start the attachment/disgorgement proceedings under Section *447* of the Companies Act.

5. It is argued MCA and SFIO are represented by different counsels before this Tribunal which underscores the appellant's contention that MCA and SFIO are distinct from each other. SFIO in its Reply before Ld. NCLT at Para 6 and Para 12 has sought to justify its power to file CA No. 234/2025 on the ground such power emanates from Section *212(14)* of Companies Act. It is argued Section *212(14)* nowhere permits initiation of proceedings before the Ld. NCLT for attachment and disgorgement of assets, which are civil in nature and the power to apply before the Tribunal for attachment/disgorgement is exclusively vested in the "Central Government" under Section 212(14A) of the Companies Act. It is settled law that naming of a delegate to do an act involving a discretion indicates that the delegate was selected because of his peculiar skill and the confidence reposed in him, and there is a presumption he is required to do the act himself and cannot re-delegate his authority. In the present case, discretionary power under Section *212(14A)* has been vested on the Central Government and such a power can only be exercised by Central

Government alone. The same cannot be exercised by SFIO under the garb of power of authorization under AoB Rules and ToB Rules.

6. It was further argued MCA's Order dated 26.09.2023 is an executive order which cannot override statutory provisions *per* ***'Sant Ram Sharma' Vs. 'State of Rajasthan & Ors.', [1967 SCC Online SC 16], 'Union of India & Anr.' Vs. 'Ashok Kumar Aggarwal', [(2013) 16 SCC 147]*** and ***'Dr. J.S. Raghuvanshi & Ors.' Vs. 'State of MP & Ors.', [2014 SCC Online MP 6744]).*** Even the contention MCA has the executive power under the Allocation of Business Rules (**"AoB Rules"**) and Transaction of Business Rules (**"ToB Rules"**) to authorise Director SFIO to file an application on its behalf before the Ld. NCLT is also in teeth of the law laid down by the Hon'ble Supreme Court in ***'State of Haryana' Vs. 'PC Wadhwa, IPS, Inspector General of Police & Anr.', [(1987) 2 SCC 602],*** wherein it has been held that "Rules of Business that have been framed under Article 166 cannot override the provisions of the Act or any statutory rules."

7. It was argued if SFIO's "simple authorization" argument is accepted, it would lead to the constitutionally impermissible consequence of the Central Government being entitled, through mere administrative orders, to expand the powers of any statutory authority beyond those conferred by Parliament. It is argued when legal proceedings are initiated by a government body/officer without having any power or authority, courts have refused to entertain such proceedings for lack of authority.

8. The Ld. NCLT has decided the issue as under:

"9. Indubitably, the CP 3638 of 2018 is filed by Union of India in terms of Section 241(2) of the Companies Act, 2013 which vests powers in the Central Government (Union of Inda) to do so if it is of the opinion that the affairs of the company are being conducted in a manner prejudicial to public interest. Further, Section 212(14A) of the Companies Act, 2013 provides that "Where the report under sub-section (11) or sub-section (12) states that fraud has taken place in a company and due to such fraud any director, key managerial personnel, other officer of the company or any other person or entity, has taken undue advantage or benefit, whether in the form of any asset, property or cash or in any other manner, the Central Government may file an application before the Tribunal for appropriate orders with regard to disgorgement of such asset, property or cash and also for holding such director, key managerial personnel, other officer or any other person liable personally without any limitation of liability.". It is clear from the bare reading of aforesaid provision that the power to file an application in terms of section 212(14A) is vested in the Central Government.

10. Rule 2 of Government of India (Allocation of Business) Rules, 1961 provides that "The business of the Government of India shall be transacted in the Ministries, Departments, Secretariats and Offices specified in the First Schedule to these rules (all of which are hereinafter referred to as "departments")." Entry 8A of the First Schedule lists 'Ministry of Corporate Affairs' as one of ministries.

11. Further, Rule 3(1) thereof provides that "The distribution of subjects among the departments shall be as specified in the Second Schedule to these Rules and shall include all attached and subordinate offices or other organisations including Public Sector Undertakings concerned with their subjects and Sub-rules (2), (3) and (4) of this Rule". The Second Schedule names 'Ministry Of Corporate Affairs' for 'Administration of the Companies Act, 1956' and puts 'Serious Frauds Investigation Office' under the Ministry of Corporate Affairs.

12. The Rule 3(3) further provides that Where sanction for the prosecution of any person for any offence is required to be accorded in any other case, by the

Department which administers the Act under which the alleged offence is committed."-

13. From the perusal of Allocation of Business Rules, it is abundantly clear that the power vested in Central Government under Companies Act, 2013 are to be exercised by the Ministry of Corporate Affairs.

14. Further, Rule 3 of The Government Of India (Transaction of Business) Rules 1961 providing for the manner in which the business is to be transacted by concerned department/ministry provides that "Subject to the provisions of these Rules in regard to consultation with other departments and submission of cases to the Prime Minister, the Cabinet and its Committees and the President, all business allotted to a department under the Government of India (Allocation of Business) Rules, 1961, shall be disposed of by, or under the general or special directions of, the Minister-in-charge." Further, the Rule 11 of said Rules provides that "In each department, the Secretary (which term includes the Special Secretary or Additional Secretary or Joint Secretary in independent charge) shall be the administrative head thereof, and shall be responsible for the proper transaction of business and the careful observance of these rules in that department."

15. From the perusal of Transaction of Business Rules, it is abundantly clear that the power of administration vested in MCA under Companies Act, 2013 are to be exercised by Hon'ble Minister of Corporate Affairs under general or special order, and the Secretary (which term includes the Special Secretary or Additional Secretary or Joint Secretary in independent charge) shall be the administrative head thereof, Ministry of Corporate Affairs.

16. Indubitably, these rules are notified, and Director SFIO is equivalent to Joint Secretary and above. In view of above rules, the powers exercisable by the Central Government can be exercised by Hon'ble Minister by general or special order, and Secretary, including the Special Secretary or Additional Secretary or Joint Secretary in independent charge is administrative head of the Ministry of Corporate Affairs. Further, it is noted that SFIO Director holds independent charge, hence, he assumes the role of *administrative head of SFIO, however, SFIO falls within Ministry of Corporate Affairs.*

17. It is noted that Letter dated 26.09.2023 was issued by Ministry of Corporate Affairs with approval of the competent authority, which is Hon'ble Minister of Corporate Affairs, who is authorised to issue special directions for all business allotted to Ministry of Corporate Affairs, and the powers vested in Central Government under Companies Act, 2013/1956 is one of business allotted to it. It is further noted that administration of SFIO as well as Companies Act, 2013 falls within its domain and it is vested with authority to issue directions to any of the officer under the department to discharge necessary functions representing Central Government. In view of this, we do not find that the Central Government could not have authorised Director, SFIO to file the present application in terms of Section 212(14A) of the Companies Act, 2013 merely because SFIO, as independent department under the said ministry, is vested with powers under section 212(14) of the Companies Act, 2013 or any other provision of the Companies Act, 2013 to institute certain proceedings on its own. In our considered view, section 212(14) and 212(14A) are distinct provisions and power vested in SFIO to institute proceedings u/s 212(14) does not bar authorisation of any administrative head of the department (which is SFIO in present case) by the Ministry to act on behalf of Central Government under Section 212(14A) of the Companies Act, 2013, and both of these provisions, namely 212(14) and 212(14A) vests distinct power, one which can be exercised by SFIO in its own name, and power under 212(14A) which is exercisable by department head under the ministry on behalf of central government in terms of specific administrative order(s) or general delegation in terms of Transaction of Business Rules.

18. In the present case, the application has been filed by legal officer in department of SFIO, who has been authorised to do so by Hon'ble Minister under a specific order issued to Director SFIO, who holds a post equivalent to Joint Secretary as head of an independent department under the Ministry and said direction is in consonance with Rule 3 of Transaction of Business Rules. Further, the direction vide said letter clearly requires the Director SFIO to place the *investigation report before the Hon'ble NCL T, Mumbai and attachment and disgorgement proceedings be sought against the person/ entities charged under Section 447 of the Companies Act, 2013.*

19. It is also contended that, even if the delegation of power to SFIO is permissible, such delegation of power by Central Government can only be done by issuance of a notification and such notification is required to be laid before each House of Parliament as provided under section 458 of the Companies Act, 2013.

20. As noted above, the Allocation of Business Rules and Transaction of Business Rules provide for the manner in which the powers vested in Central Government are to be exercised by the constituents of the Government. There is no dispute that these Rules are either not notified, or if notified were not laid before each house of parliament after notification. It is further noted that the Hon'ble Minister Corporate Affairs, vested with power to administer provisions of Companies Act, has directed Director SFIO to institute proceedings on behalf of Central Government in accordance with Allocation of Business Rules and Transaction of Business Rules, and such directions are merely administrative in nature. The delegation, as referred in Section 458 of the Companies Act, 2013, does not apply to administrative order(s) requiring the departmental head to do some act on behalf of central government, as the delegation of powers vested in Central Government occurred when the powers of Central Government are allocated in terms of Allocation of Business Rules and Transaction of Business Rules, and no delegation can said to have taken place from Hon'ble Minister to one of department head as such direction is merely an administrative in nature.

21. It is pertinent to note that the present application has been filed on behalf of Union of India by SFIO, and not by SFIO in its independent capacity, indicating clearly that the said application is filed by Union of India through one of its authorised person in the concerned ministry.

22. It is also contended that section 212(14A) cannot be applied retrospectively to alleged acts of commission and omission by chartered accountants for the period prior to 2019, however, we consider it

> *appropriate to deal with at later stage as the arguments were restricted to the maintainability of this application on the ground that it has been filed by SFIO and not Union of India."*

9. The learned counsel for the respondent on the other hand in this argument mostly relied upon a letter dated 26.09.2023, issued by the Deputy Director of the Ministry of Corporate Affairs to the Director of SFIO after taking approval of the Competent Authority and directing him to initiate action for disgorgement against the persons/entities mentioned in the said letter. It was argued the said letter was issued on completion of the investigation into affairs of ISSL and submission of the Report thereof and hence cannot be faulted with regarding the procedure adopted.

10. Heard.

11. There are four crucial dates and facts which are quintessential to this *lis viz.*; **(a)** on September 30, 2018, the Central Government ordered an Investigation into the affairs of IL&FS & its subsidiaries by the Serious Fraud Investigation Office. ISSL is one subsidiary of IL&FS; **(b)** on July 14, 2023, on completion of investigation into the affairs of ISSL, the SFIO submitted an Investigation Report dated July 14, 2023 under Section 212(12) of the Act in respect of ISSL to the Central Government; **(c)** the Central Government, on considering the ISSL Report, issued a letter dated September 26, 2023 *inter alia* authorizing/directing the SFIO to file a proceeding before the Ld. NCLT on the basis of the ISSL Report. The letter is as under:

"F. No. 35/18/2023-Legal
Government of India
Ministry of Corporate Affairs

5th Floor, Shastri Bhawan,

Dr. Rajender Prasad Road
New Delhi-110001
Dated: 26.09.2023

To,

The Director
Serious Fraud Investigation Office,
2nd Floor, Antyodaya Bhawan,
B-3 Wing, CGO Complex, Lodhi Road,
New Delhi-110003

Subject: Investigation into the affairs of IL&FS Group Limited (u/s 212 (1) (a) & (c) of the Companies Act, 2013 - regarding IL&FS Securities Services

Sir,

I am directed to refer the subject cited above and convey approval of the competent authority for initiating action against the persons/ entities for the relevant period as identified in the report and to take further action as hereinunder:

Charge No.	***Nature of charges***	***Method Adopted***	***Names of persons liable***	***Relevant Section (Ref.)***
1 to 3		*x x x x x*		
4	*The act of failure of statutory auditors during FY 2013-14 to FY 2017-18 to observe and report the aforesaid issues in Auditors Report for respective years.*	*The auditors were aware of the fact that ISSL was using its surplus funds created out of TMDRs for placement of ICDs and that ISSL was providing interest to TMs for placing TMDRs with ISSL. They were aware about placement of ICDs in distressed group companies of IL&FS and inspite of that, they f ailed to assess the impairment on such investments.*	*Ravi Partharsarthy (since deceased)*	*Section 447 of Companies Act, 2013*
			Hari Sankaran	
			Ramesh Bawa	
			Arun Saha	
			Vibhav Kapoor	

		They failed to check compliance of F&O Regulations, SCRR and other applicable regulations arising out of providing interest on TMDRs, usage of TMDRs and placement of ICDs.	*S Rengarajan* *Shikha Bagai* *Rakesh Karande*	
5 to 12	*x x x x x*			

2. As per recommendations SFIO is authorized to share the report with NFRA, ICAI, CEIB and SEBI giving specific reference for necessary action for reasons mentioned in the report. SFIO is also directed to share the report with o/o DGCOA.

3. In view of the completion of the investigation into affairs of ISSL and submission of report thereof, SFIO is directed to place the investigation report before the Hon'ble NCLT, Mumbai and attachment and disgorgement proceedings be sought against the person/ entities charged under Section 447 of the Companies Act, 2013.

Further, SFIO is directed to appraise the tribunal that the investigation relating to the issue of dealings between ISSL and Allied Financial Services Private Limited is ongoing. Thus, in the application liberty be sought to bring the findings on record of the tribunal after completion of the investigation into the said companies and modify the application accordingly.

4. Lastly, SFIO is directed to ensure that the investigation on issues relating to the dealings between ISSL and Allied Financial Services Private Limited are examined thoroughly during the course of investigation of Allied Financial Services Private Limited. Dalmia Cement (Bharat) Ltd, Novjoy Emporium Private Limited and Dalmia Bharat Limited and the same is completed on priority so that the report can be furnished at the earliest as the findings of the investigation may have bearing on the disgorgement proceedings filed.

5. SFIO is also requested to furnish the ATR within 30 days.

This issues with the approval of the competent authority.

Yours faithfully.

(Parvez Naikwadi)

Deputy Director

Guard File

Copy to: DGCoA, Kota House, Delhi"

The wording in the September 26 Letter is crucial. The letter opens with the words *"I am directed to refer the subject cited above and convey approval of the competent authority for initiating action against the person entities for the relevant period as identified in the report and to take further action as hereinunder";* Further, at paragraph 3, it records the authorization to the SFIO to file proceedings before the Ld. NCLT *"in view of the completion of the investigation into affairs of ISSL and submission of report thereof…".* It then ends with *"this issue with the approval of the competent authority";* and **(d)** Company Application No. 234 of 2025 was filed praying *inter alia* for permission to place on record the ISSL Report. Notably, the cause title and memo of parties both describe the applicant as the *"Union of India".*

12. Thus, from the above it is clear; **(i)** the SFIO submitted the Investigation Report to the Central Government. It did not itself take a decision to file proceedings; **(ii)** The decision to file CA 234/2025 (and even for that matter CA 396 of 2021) after considering the material before it, was of the Central Government and not the SFIO. SFIO was merely authorized to file proceedings before the Ld. NCLT; **(iii)** The Petition was filed with the Applicant as the "Union of India" and not the SFIO. Section 79 of the Code of Civil Procedure, 1908 would be relevant here as the principle it expounds is a proceeding by the Central Government, the authority which is to be named as plaintiff/applicant is the Union of India.

13. Therefore, the decision to file was of the Central Government and the proceeding too was filed with the Central Government as the applicant. The Director, SFIO/SFIO was merely authorized to present/execute the Petition that too in the name of Central Government in terms of the Allocation of Business Rules, 1961 and Transaction of Business Rules, 1961 under Article 77(3) of the Constitution of India. On a consideration of the matter, the Ld. NCLT in the Impugned Order has arrived at the same finding. Thus, the appellant's contention the proceeding has not been filed by the Central Government is incorrect.

14. The appellant's contention the filing of CA 234/2025 by SFIO constitutes delegation of powers without following the due procedure under Section 458 of the Companies Act, 2013 (Act) is also wrong. In ***'Sidhartha Sarawgi' Vs. 'Board of Trustees for the Port of Kolkata & Ors.', [(2014) 16 SCC 248],*** the Hon'ble Supreme Court considered whether an ejectment notice issued by the Land Manager in relation to a lease instead of the Chairman (who was the authority empowered by virtue of the provisions of the Major Port Trusts Act, 1963 read with the Board of the Kolkata Port Trust's resolution) was tenable in law. The Hon'ble Supreme Court while setting out the key features of the concept of delegation held that delegation involves conferment of power from the delegator to the delegate to exercise the same discretion and/or power which the delegator would have otherwise done itself has carved out a distinction between delegation and authorization to perform ministerial/clerical tasks. In this regard, the Hon'ble Supreme Court observed once power or discretion or the essential decision-making authority is exercised by the holder of power conferred by statute, it can leave/authorize the implementation of decision to authorized officers. Thus, the Hon'ble Supreme Court found in the facts of ***'Sidhartha Sarawgi'*** *(supra),* the decision to terminate the lease and issue the ejectment notice was taken by the Chairman whereas the notice was issued under signatures of the Land Manager which was permissible and did not amount to sub-delegation/delegation.

15. This judgment squarely applies even in the present case. As set out above, the SFIO did not itself take a decision to file CA 234 of 2025. It placed the ISSL Report before the Central Government. It is the Central Government that then considered the relevant material before it and formed an opinion/decided to file CA No. 234 of 2025. It is thus the decision-making authority. It then conveyed the decision to the SFIO/Director, SFIO for implementation. No discretion or the decision-making power was transferred or assigned to the SFIO. So also, the eventual Application too was filed with the Central Government as the applicant and not by the SFIO in its own name. This as set out above in the decision of ***'Sidhartha Sarawgi'*** *(supra)* does not constitute delegation of powers but instead is simply authorization to implement its decision. Under the circumstances, the appellant's contention is incorrect and untenable.

16. The appellants submit that SFIO could not have filed CA 234 of 2025 since it would lead to the SFIO being the prosecutor in criminal proceedings and Petitioner in the civil proceedings instituted on the basis of the ISSL Report. They further contend that it would cause them prejudice as the SFIO would be imposing civil and criminal liability on them. This argument is completely baseless since, as set out above, the Petitioner in the civil proceedings is the Central Government and not the SFIO. The institution of either CA 396/2021 and/or CA 234/2025 is not by the SFIO. Most pertinently, the argument that SFIO imposes civil and criminal liability thereby causing prejudice lacks foundation and is illusory as civil and criminal proceedings under the Act are filed before a Tribunal/Court established under the Act for its determination. Any civil or criminal liability would of course be subject to such determination and imposed by such Court or Tribunal after a consideration of the case. The contention therefore lacks any basis whatsoever and must be rejected *in limine*.

17. Further, the appellant has also sought to mis-label Section *212(14A)* of the Act to be the only power to seek disgorgement/imposition of liability for fraudulent conduct of business. This argument is incorrect and contrary to the position of law set out in ***'Shriraj Investment & Finance Ltd. & Ors.' Vs. 'Union of India, Through Secretary & Anr.', [WP (CRL) No. 1823 of 2020],*** which clearly holds the same power can be exercised under Section *241(2)* read with Section *246* and *339* of the Companies Act whether with an Investigation Report or without. The Court held as under:

"22. The reliefs for disgorgement can even be sought under section 241 and 242(1)(l)(m) de hors Section 212 (14A) amendment. The Central Government can authorize initiation of proceedings and the relief of freezing assets and disgorgement of property under Section 241, Section 242 r/w Sec.246, and Section 339/447 of the Companies Act inasmuch as disgorgement is a civil action in nature of an equitable relief and not a penal W.P.(Crl) No.1823/2020 & W.P.(CRL) 1414/2021 Page 13 of 14 action. In Karvy Stock Broking Ltd. v. Securities and Exchange Board of India, MANU/SB/0064/2008 it has been held that:

> ***"...Disgorgement is a monetary equitable remedy that is designed to prevent a wrongdoer from unjustly enriching himself as a result of his illegal conduct.*** *It is not a punishment nor is it concerned with the damages sustained by the victims of the unlawful conduct. Disgorgement of ill-gotten gains may be ordered against one who has violated the securities laws/regulations but it is not every violator who could be asked to disgorge. Only such wrongdoers who have made gains as a result of their illegal act(s) could be asked to do so.* ***Since the chief purpose of ordering disgorgement is to make sure that the wrongdoers do not profit from their wrongdoing, it would follow that the disgorgement amount should not exceed the total profits realized as the result of the unlawful activity..."***

24. Disgorgement occurring in Section 212 (14A) cannot be read in blissful isolation whereas, the length and breadth of the Act, chapter and verse bespeaks of such properties/ shares/ debentures, to be frozen/ liquidated/ disposal/ sold for utilization in furtherance of public interest by way of sale, recovery of undue gains to alleviate the wrong done to persons/ financial institutions.

25. Further, the impugned letter dated 29.06.2019 and corrigendum dated 18.11.2019 is not to be read as judicial order/ or a statute. It is an executive W.P. (Crl) No.1823/2020 & W.P.(CRL) 1414/2021 Page 14 of 14 order which flows from the statutory scheme as per Section 241, 242, 246 and 339 of the Companies Act."

18. Thus, the appellant's contentions in the present appeals Company Appeal (AT) No. 182 of 2026 and Company Appeal (AT) No. 183 of 2026 are untenable. The appeals are therefore dismissed. Pending applications are also disposed of.

[Justice Yogesh Khanna]
Officiating Chairperson

[Barun Mitra]
Member (Technical)

[Ajai Das Mehrotra]
Member (Technical)

NEW DELHI

25th August, 2026

himanshu