NATIONAL COMPANY LAW TRIBUNAL
GUWAHATI BENCH
GUWAHATI
ORDER SHEET OF THE HEARING ON 21st AUGUST 2026

CP/23/GB/2022

Present: 1. Hon'ble Member (Judicial), Shri Rammurti Kushawaha
2. Hon'ble Member (Technical), Shri Yogendra Kumar Singh

In the Matter of	Ranjan Mukharjee Vs Bochapathar Tea Estate Pvt. Ltd. & Three Others.
Under Section	U/s 213 & r/w Section 167 (2) & 166 of Companies Act, 2013

Appearances (via video conferencing/physically)

For Petitioner (s) : Mr. R. Sekhar, Adv.

For Respondent (s) : Mr. Anirban Das. Adv.

ORDER

Order pronounced in open court *vide* separate sheets.

Sd/-
Yogendra Kumar Singh
Member (Technical)

Sd/-
Rammurti Kushawaha
Member (Judicial)

Shubham Tiwari (PS)

NATIONAL COMPANY LAW TRIBUNAL
GUWAHATI BENCH
GUWAHATI

CP/23/GB/2022

An Application under Section 213 read with sections 167 (2) and 166 of the Companies Act 2013.

In the matter of:

Ranjan Mukherjee, son of Late Joy Krishna Mukherjee, an erstwhile independent director of Madarkhat Tea Co Private Limited, residing at 7A1, Garden Towers, 256 Picnic Garden Road, Kolkata 700039. Email: ranjanmukherjee56@gmail.com

..... Applicant

-Versus -

1. **Bochapathar Tea Estate Private Limited,** an existing company within the meaning of the Companies Act, 2013, having its registered office at PN Road, Dibrugarh 786001.Email: bochapathartea@gmail.com.

2. **Chitta Ranjan Chakravarty,** having office at P N Road, Dibrugarh 786001.Email chakravartycr@gmail.com.

3. **Sanjeeb Chakravarty,** residing at Parasar Kunja, Purnanada Road, Dibrugarh 786001. Email sanjeebparasar@yahoo.com.

4. **Tridib Chakravarty,** having office at PN Road, Dibrugarh 786001. Email tridibchakravarty@gmail.com.

...... Respondents

Coram:

Shri Rammurti Kushawaha	:	Member (Judicial)
Shri Yogendra Kumar Singh	:	Member (Technical)

Appearances (through physical appearances)

For Petitioner (s) : Mr. B. Choudhury, Adv.

: Mr. Raj Sekhar, Adv.

For Respondent (s) : Mr. Anirban Das. Adv

Order pronounced on: 21.08.2026

As Per Bench

1. This Application has been filed by Ranjan Mukherjee, son of Late Joy Krishna Mukherjee, residing at 7A1, Garden Towers, 256 Picnic Garden Road, Kolkata 700039, under Section 213 read with sections 167 (2) and 166 of the Companies Act 2013 against Bochapathar Tea Estate Private Limited, ("Respondent No. 1") , Chitta Ranjan Chakravarty **("**Respondent No.2"), Sanjeeb Chakravarty **("**Respondent No.3") and Tridib Chakravarty **("**Respondent No.4") [altogether mentioned hereinafter as "Respondents"] seeking the following reliefs:
   a) *To pass an order for payment of earned remuneration in full by the Respondent 1 to the Applicant.*
   b) *To pass an order against the Respondents under section 213 of the Companies Act, 2013;*
   c) *To order the Regional Director, MCA for carrying out an investigation into the affairs of the Respondent 1 forthwith and against other Respondents;*
   d) *To pass such further order and or directions as this Hon'ble Bench may deem fit and proper.*
2. Submissions made on behalf of the applicant are as follows:

   2.1 That Respondent 1, Bochapathar Tea Estate Private Limited having CIN U01132AS1947PTC000756 was incorporated under the Indian Companies Act, 1913 on 20 January 1947 having its Registered Office at PN Road, Dibrugarh, Assam , 786001.

   2.2 That CP No 01/241[4]/242[4]/234[1][b]/ GB/ 2016 was filed by Mr. Shanta Prasad Chakravarty against Respondent 1 primarily to seek relief against oppression and mis-management and an Order was passed in that regard by this Hon'ble Bench on 25 January 2019 and thereafter Mr. Shanta Prasad Chakravarty became a director of Respondent 1 on 29 March 2019 and the Applicant became an independent director as directed in such Order. And the Respondent 3 on behalf of Respondent 1 executed an agreement on 17.09.2019 for appointment of the Applicant as independent director in Respondent 1.

A copy of the said order dated 25.01.2019 and a copy of the said agreement dated 17.09.2019 is attached marked as 'A' and 'B' respectively to the petition.

2.3 That the Applicant after assuming position of independent director found that Respondent 2 to 4 are holding directorship in Respondent 1 though they knew that they are disqualified by Registrar of Companies in terms of section 164[2] of Companies Act 2013 and by suppressing such fact all of them also attended Board Meetings hence such Respondents are liable under section 167[2] of the Companies Act 2013.

Copy of the minutes written by hand by Respondent 3 of the Board Meeting held on 12 July 2019 shall substantiate the truth in this regard and the said copy is attached and marked with the letter 'C' to the petition.

2.4 That the Respondent 1 is primarily engaged in the business of tea plantation and the lawful owner and/or recorded pattadar of tea garden lands / facilities which are as follows:

i. More or less 285.04 Hectares [area under tea being around 153.23 Hectares] of the Nandanban Tea Estate, including Old Bocha Division being also known locally as Section no 1.

ii. More or less 86.76 Hectares [area under tea being 81.34 Hectares] of Kailashpur tea estate, in the district of Dibrugarh

iii. A closed tea factory in the plot of Nandanban Tea Estate.

2.5 On 27.09.2017, Respondent No. 3, as Managing Director of Respondent No. 1, executed a Memorandum of Understanding and a Power of Attorney in favour of Mr. Sunil Kumar Agarwalla, effectively transferring the operations, assets, rights and title of Respondent No. 1 and assigning all management responsibilities to him, leaving Respondent No. 3 with no effective control despite being entrusted with substantial powers under Section 2(54) of the Companies Act, 2013.

Copies of the said Memorandum of Understanding and Power of Attorney both dated 27.09.2017 are annexed and collectively marked with the letter 'D' to the petition.

2.6 On 24.11.2017, Respondent No. 3 handed over the original title deed (Deed No. 2923 dated 12.12.1960) of Kailashpur Tea Estate to Mr. Sunil Kumar Agarwalla as security against the investment allegedly made by him in Respondent No. 1.

A copy of the letter dated 24.11.2017 is annexed and marked annexed as Annexure 'E' to the petition.

2.7 It is not known whether Respondent No. 3 obtained approval for the above transactions from the Board of Respondent 1 but Respondents No. 2 to 4 were aware that CP No. 1/241(4)/242(4)/234(1)(b)/GB/2016 was pending before this Hon'ble Bench and presumed that an adverse order might result in loss of their control over Respondent No. 1, leading to the execution of the MoU, Power of Attorney and handing over of the original title deed.

2.8 It is not known whether Respondent No. 1 actually received the investment acknowledged by Respondent No. 3 as on the date of issue of such communication i.e., on 24.11.2017.

2.9 On 03.07.2019, the Applicant requested Respondent No. 3 to convene a Board Meeting for discussion of specific matters. The said communication is annexed as Annexure 'F' to the petition.

2.10 Pursuant to the order dated 25.01.2019, this Hon'ble Bench appointed M/s U.C. Majumdar & Co., Chartered Accountants, represented by Mr. S. Bhowmick (Membership No. 058866), as a new Statutory Auditor of Respondent No. 1.

2.11 The Balance Sheet as on 31.03.2017, which had not been finalized earlier, was finalized on 01.11.2019 and was signed by Respondents No. 3 and 4. The Statutory Auditor recorded several qualifications, reservations and adverse remarks in his report regarding gross deviations from accounting principles and doubtful transactions.

2.12 On 16.09.2019, the Applicant addressed a communication to Respondent No. 3 raising various observations about various matters. A copy of the same is annexed as Annexure 'G' to the petition.

2.13 By letter dated 11.09.2019, the Statutory Auditor communicated his observations on the Balance Sheet as on 31.03.2017 to Respondent No. 3. The same was also forwarded by Mr. Shanta Prasad Chakravarty, Director of Respondent No. 1 to Respondent No. 3 for his information vide his letter dated 17.09.2019.

Copy of such communication of the statutory auditor dated 11.09.2019 and the forwarding letter of Mr. Shanta Prasad Chakravarty dated 17.09.2019 are collectively annexed and marked as Annexure 'H' to the petition.

2.14 By letter dated 15.11.2019, Respondent No. 3 replied to the Statutory Auditor's observations dated 11.09.2019. The letter contains admissions regarding several unlawful activities and states that the relevant records were available at the Gardens, yet Respondent No. 3 failed to provide the Statutory Auditor access to such records, which were in the custody of Mr. S.K. Agarwalla.

A copy of the said letter dated 15.11.2019 is enclosed and marked as Annexure ' I ' to the petition.

2.15 By letter dated 31.12.2019, Respondent No. 3 replied to the Applicant's queries dated 16.09.2019 and admitted that the management and control of Respondent No. 1 was not with him.

A copy of the letter dated 31.12.2019 is annexed and marked as Annexure ' J ' to the petition.

2.16 There are unresolved claims of the Employees' Provident Fund Office and Tax Authorities arising from gross violations of applicable laws, for which all the Respondents are liable.

2.17 That since Respondent No. 3 did not exercise control over the books of account, operations and assets of Respondent No. 1 and books of accounts were not made available to the present statutory auditor even after receiving specific request and hence there is gross evidence of mismanagement that could be found if an investigation into the affairs of Respondent 1 is carried out beside the suspicious wealth accumulation of all the Respondents over the years.

2.18 Owing to the non-availability of books of account, the Statutory Auditor could not verify the accounts of Respondent No. 1. Respondent No. 3, despite being Managing Director, failed to exercise his management powers, resulting in adverse remarks and qualifications in the audit report for the year ended 31.03.2017.And unless appropriate orders are passed, the financial statements of Respondent No. 1 cannot be drawn.

2.19 The Applicant could not implead Mr. S.K. Agarwalla due to lack of evidence. However, an investigation under Section 213(b) of the Companies Act, 2013 would reveal the mismanagement adversely affecting the stakeholders.

2.20 The financial statements of Respondent No. 1 for the year ended 31.03.2017 do not present a true and fair view of its affairs and lack reliability. Consequently, the financial statements of the relevant years may require recasting after completion of an investigation so that the true and fair view of the affairs of Respondent 1 emerges in its Balance Sheet.

2.21 The Applicant resigned from the Board of Respondent No. 1 by letter dated 04.03.2022 and filed Form DIR-11 under Section 168(1) of the Companies Act, 2013 read with Rule 16 of the Companies (Appointment and Qualification of Directors) Rules, 2014 and obtained receipt of Ministry of Corporate Affairs in GAR 7 Form dated 7 March 2022.

Copies of the resignation letter and MCA acknowledgement are annexed collectively as Annexure 'K' to the petition.

2.22 That the Applicant has submitted that by letter dated 24.03.2022, applicant sought release of his outstanding remuneration of ₹8,50,000 payable by Respondent No. 1. A copy of such follow up letter for recovery of earned remuneration dated 24.03.2020 is annexed and marked as Annexure 'L ' to the petition.

2.23 That it appears that the Respondent 2 to 4 have handed over control to Mr S K Agarwalla keeping the de-jure share control in Respondent 1 therefore it is surprising that how a non-promoter i.e., Mr S.K. Agarwalla is running the affairs of Respondent 1 in the form of a managing agency which is prohibited in law.

2.24 The source of green leaf procurement, funding, transportation, weighing methodology and acquisition of the office of Receiver of EPFO by Mr. S.K. Agarwalla require investigation. It appears that Respondents acted as fronts for Mr. Agarwalla on the Board of Respondent No. 1.

2.25 The Applicant is aware that the Statutory Auditor did not get access to the statutory registers and books of account of Respondent 1 during the audit for the financial year ended 31.03.2017.

2.26 That Respondents No. 2 to 4 jointly and willfully concealed material facts from the Applicant and the Statutory Auditor. They failed to disclose the reasons for executing an open-ended MoU and Power of Attorney in favour of an outsider, Mr. S.K. Agarwalla, and for assigning their offices, which is prohibited by law. They also concealed the transfer of the entire undertaking of Respondent No. 1 to Mr. Agarwalla, the value of which exceeded ₹10 lakh or 1% of the turnover, whichever is lower. Such acts attract Section 447 of the Companies Act, 2013 and warrant an investigation under Section 213(b) of the Companies Act, 2013.

2.27 Applicant further stated that Respondents No. 2 to 4 are "officers in default" within the meaning of Section 2(60)(v) of the Companies Act, 2013.The mobile numbers, email IDs and IP addresses of Respondents No. 2 to 4 may be examined to ascertain their nexus and communications among themselves and with Mr. S.K. Agarwalla.

2.28 Respondents No. 2 to 4 were disqualified under Section 164(2) of the Companies Act, 2013 from 01.11.2018 to 31.10.2023. Despite being aware of such disqualification, they continued to act as directors, thereby attracting Section 167(2) of the Act. Applicant further stated that it is necessary to investigate whether all the Respondents are related parties within the meaning of Section 2(76)(vii) of the Companies Act, 2013.

2.29 That the Applicant states that there are various mismanagement which were continuous in nature for a long time to pass on undue benefit to Respondent 2 to 4 at the cost of Respondent 1.

2.30 That there are valid grounds for directing an investigation into the affairs of Respondent No. 1 and Respondents No. 2 to 4 under Section 213(b) of the Companies Act, 2013 read with Rule 11 of the National Company Law Tribunal Rules, 2016. Unless the reliefs prayed for are granted, the Applicant shall suffer irreparable loss, injury and prejudice. This application is made bona fide and in the interest of justice.

3. *Vide* reply to the above petition, the Respondents No.2, 3 and 4 submitted follows:

3.1 Respondent No. 3 states that he has been arrayed as Respondent No. 3 in the present proceedings, is well acquainted with the facts of the case, and has been duly authorised by Respondents No. 2 and 4 to file the present reply on their behalf and stated that he has received and perused a copy of C.P. No. 23/GB/2022 and have understood its contents. Save and except the averments specifically admitted herein, all other statements contained in the petition are denied.

3.2 **BRIEF HISTORY OF RESPONDENT NO.1 COMPANY**

i. Respondent No. 1 Company was incorporated on 03.01.1947 by Late Nandeswar Chakravarty and his sons, Late Uma Prasad Chakravarty and Late Bishnu Prasad Chakravarty. The youngest son of Late Nandeswar Chakravarty i.e. Late Tara Prasad Chakravarty subsequently joined the management after completing his studies.

ii. Since its incorporation, the Company has remained a family-owned company with shareholding confined to the descendants of Late Nandeswar Chakravarty. The present shareholding pattern is as follows:
Farmily members of Late Uma Prasad Chakravarty (UPC Group)–37.73%
Family members of Late Bishnu Prasad Chakravarty(BPC Group)–39.20%
Family members of Late Taraprasad Chakravarty (TPC Group) – 21.56%
Sadasiva Tea Company Pvt. Ltd. – 1.51%

iii. Respondent No.1 Company was incorporated for acquiring Bochapather Tea Estate and Kailashpur Tea Estate belonging to Late Nandeswar Chakravarty. In 1988, a tea factory was established under the name "Bochapather Tea Factory" and Bochapather Tea Estate was renamed as Nandanban Tea Estate. Therefore presently, Respondent No.1 as on date is the lawful owners of the following Tea Estates/ units: a) Nandanban Tea Estate, b) Kailashpur Tea Estate and c) Bochapather Tea Factory .

iv. That as the affairs of the Respondent No. 1 Company was being managed by the farmily members of UPC and BPC Groups, members of the TPC Group had approached the National Company Law Tribunal (NCLT), Guwahati Bench *vide* C.P. No. 01/241(4)/242(4)/234(1)(b)/GB/2016 inter-alia,alleging oppression and mismanagement by the UPC Group and BPC Group.

v. By order dated 25.01.2019, this Hon'ble Tribunal directed proportionate representation of the TPC Group on the Board and appointment of an Independent Director. Pursuant thereto, the composition of the Board of Directors of the Respondent No.1 Company was follows:

a. Sanjeeb Kumar Chakravarty – Managing Director
b. Chittaranjan Chakravarty – Director
c. Tridib Kumar Chakravarty – Director
d. Shanta Prasad Chakravarty – Director
e. Ranjan Mukharjee– Independent Director(Appointed on 03/05/2019)

vi. Respondents No.2 to 4 ceased to be Directors with effect from 31.05.2021 on account of disqualification under Section 164(2) of the Companies Act, 2013 subsequently FORM 12 intimating the same to ROC was filled by Shri Shanta Prasad Chakravarty and the Independent Director i.e., Ranjan Mukharjee resigned on 04.03.2022 and presently Shri Shanta Prasad Chakravarty is the only Director of Respondent No.1.

Copies of Form DIR-12 relating to cessation of Respondents No.2 to 4 and the Master Data of Respondent No.1 are annexed as Annexures I and II to the reply.

3.3 **PRELIMINARY OBJECTIONS RAISED BY THE RESPONDENT AS REGARDS TO THE MAINTAINABILITY OF THE SAID PETITION:**

i. The present petition is not maintainable under Section 213 of the Companies Act, 2013. The Applicant is neither a shareholder nor has he pleaded fulfilment of the conditions prescribed under Section 213(b). Accordingly, the petition is liable to be dismissed.

ii. The petition contains no allegation that the affairs of Respondent No.1 are being conducted with intent to defraud creditors, members or any other person, or for any fraudulent or unlawful purpose. Hence, no cause of action is disclosed.

iii. The Applicant has no locus standi to maintain the present petition as he is neither a shareholder, contributory nor otherwise interested in Respondent No.1. His grievance is confined to alleged unpaid remuneration.

iv. Section 213 contemplates investigation in public interest also but Respondent No.1 is a closely-held family company and no issue of public interest arises. The petition has not been filed bona fide but with an oblique motive to recover the Applicant's alleged remuneration from the Respondent No.1 Company.

v. The Applicant was appointed as an Independent Director on 03.05.2019 and remained fully aware of the affairs of the Company. Having filed the petition on 08.07.2022 i.e., only after resigning on 04.03.2022, the petition suffers from delay and laches.

vi. The power under Section 213(b) is discretionary and must be exercised judiciously upon satisfaction that investigation is warranted and also submitted that an investigation cannot be ordered on mere allegations, suspicions or presumptions. An investigation into the affairs of a Company may be ordered when 'Public interest’ is involved or when detriment to the "members' interest" have been caused in a clandestine manner and not by way of fishing expeditions.

vii. Due to compelling circumstances, the Board appointed Shri Sunil Kumar Agarwalla as Attorney on 27.09.2017 of the Respondent No.1 Company for running its garden. Subsequently, on 29/01/2018 the said Sri Sunil Kumar Agarwalla was also appointed as a Receiver by the Recovery Officer, Assam Tea Employees Provident Fund Organization in respect of all three gardens of the Respondent No.1 Company i.e. Nandanban Tea Estate, Kailashpur Tea Estate and Bochapather Tea (Factory) . Since then, the gardens have been managed by the Receiver. The Applicant herein, inspite of being aware of the same has failed to implead either the Receiver or the PF Authorities, as party Respondents in this instant case and therefore, the said petition is liable to be dismissed on this count only.

viii. The appointment of the Receiver was challenged by the family members of TPC Group and one of whom, namely, Sri Shanta Prasad Chakravarty is at present the only Director of the Respondent No. 1 Company, before the Hon'ble Gauhati High Court in WP(C) No.1716/2018, wherein status quo was directed by order dated 23.03.2018, and the said order still remains in force.

ix. The Applicants' of C.P.No.01/241(4)/242(4)/234(1)(b)/GB/2016 (One of such Applicant i.e. Sri Shanta Prasad Chakravarty is the only present Director of the Respondent No.1 Company) already challenged the MoU and Power of Attorney dated 27.09.2017 before this Hon'ble Tribunal vide I.A. No.03/2018, which was dismissed by order dated 25.01.2019 and the same having attained finality, thus the contention of the Applicant raised in the said Petition is barred by constructive Res-judicata.

x. The Applicant was aware, even during the IBC proceedings in CP(IB) No.05/GB/2021, that the affairs of Respondent No.1 were under the control of Shri Sunil Kumar Agarwalla. The present allegations upon respondent No. 3 is made by suppressing these material facts and are misleading in nature.

xi. Respondents No.2 to 4 ceased to be Directors on 31.05.2021 due to disqualification under Section 164(2) of the Companies Act, 2013 and after the resignation of the Applicant on 04/03/2022 from the post of Independent Director only Shri Shanta Prasad Chakravarty remained as Director of respondent No. 1 company and the affairs of the Company were being run by the Receiver. Since the Receiver and the existing Director have not been impleaded, the petition suffers from non-joinder of necessary parties.

xii. It has been reiterated that the Applicant is not a member of Respondent No.1 and, therefore, lacks locus to seek investigation or allege oppression and mismanagement under the Companies Act, 2013.

xiii. The Applicant has an alternative remedy for recovery of his alleged remuneration but however, the said Applicant for reasons best known to him have resorted to Forum hunting and the same ought not be allowed by this Hon'ble Tribunal.

xiv. The petition is barred by the doctrine of indoor management. Internal business decisions of the Company are not ordinarily amenable to judicial interference.

xv. The execution of the MoU and Power of Attorney pursuant to the Board resolution dated 26.09.2017 constituted bona fide business decisions taken in the interest of the Company and are binding on all the shareholders.

xvi. A shareholder or any other person cannot seek investigation merely to question the business prudence or business decision of a company.

3.4 With regard to paragraphs IV(1), IV(2), IV(3) , IV(5), IV(7) ,IV(11), IV(14), and IV(23), of the petition, the answering respondents do not wish to offer any comments as the statements are matters of record and does not admit anything which are contrary to and/or not borne by record.

3.5 Regarding paragraph IV(4) of the said petition, the allegations are vague as the Applicant has failed to disclose when he became aware of the alleged disqualification of the answering respondents. It is specifically denied that the respondents continued as Directors despite knowledge of any disqualification. No authority ever informed them of any such disqualification.

3.6 The allegations in paragraph IV(6) of the said petition are denied. Due to the poor financial condition of Respondent No.1, it entered into an agreement with Damayanti Tea Industries in early 2017 for advance payments against the supply of green leaf, which were utilized for labour payments. As production remained insufficient and dues accumulated, labourers began selling green leaf independently. To prevent law and order issues, the District Administration intervened on 07.09.2017. Simultaneously, PF recovery proceedings were imminent. Consequently, the Board, in its Emergent Meeting dated 26.09.2017, appointed Shri Sunil Kumar Agarwalla as Agent for smooth management of the gardens and business, pursuant to which the MoU and Power of Attorney dated 27.09.2017 were executed. Hence, the allegations are without merit.

Copy of the proceedings of Emergent Board Meeting dated 26/09/2017 is annexed as ***Annexure*-III** to the reply.

3.7 The allegations in paragraph IV(8) of the said petition are denied. The Board proceedings dated 26.09.2017 clearly explain the circumstances leading to the execution of the MoU and Power of Attorney, both dated 27.09.2017. Further, the bona fides of the Board are evident from the appointment of Shri Sunil Kumar Agarwalla as Receiver by the Recovery Officer, Assam Tea Employees Provident Fund Organization, on 29.01.2018. The said appointment was challenged before this Hon'ble Tribunal in I.A. No.03/2018, which was dismissed on 25.01.2019. The order has attained finality and the present contention is barred by constructive res judicata.

Copies of the Appointment letters dated 29/01/2018 of the Receiver in respect of two Tea Estates & Factory of the Respondent No.1 Company are annexed as ***Annexure-IV, V& VI*** respectively to the reply.

Copy of the order dated 25/01/2019 passed in I.A.No.03/2018 by NCLT, Guwahati Bench is annexed as ***Annexure-VII*** to the reply.

3.8 Regarding paragraph IV(9) of the said petition, since 27.09.2017 Shri Sunil Kumar Agarwalla has been managing the gardens, factory, and accounts of Respondent No.1. As he is also the receiver therefore, he is the appropriate person to respond to the allegations raised therein.

3.9 The allegation in paragraph IV(10) is denied. The communication dated 03.07.2019 was never served upon Respondent No.3. It was instead handed over to Shri Shanta Prasad Chakravarty, who forwarded it to Respondent No.3 and requested for inclusion of the contents of the letter dated 03.07.2019 of the applicant in the Board Meeting agenda. Accordingly, all issues raised were included as Agenda Item No.12 in the Board Meeting held on 12.07.2019 and were explained to the Applicant.

Copy of the Notice dated 04/07/2019 of proposed Board Meeting dated 12/07/2019 is annexed as *Annexure-VIII and* Board Resolution dated 12/07/2019 is annexed as *Annexure* -IX to the reply.

3.10 Regarding paragraph IV(12), after Shri Sunil Kumar Agarwalla was appointed Receiver on 29.01.2018, he did not share financial information with the Directors, making it impossible to prepare and audit financial statements within the prescribed period. Even assuming, without admitting, that there were accounting deviations, such allegations are barred by limitation. Further, the Applicant lacks locus standi, not being a shareholder of Respondent No.1, and failed to raise these issues during his tenure as Independent Director, thereby failing to discharge his statutory duties as an Independent Director for which the Applicant is liable for punishment/ prosecuted as per law.

3.11 Regarding paragraph IV(13), the Applicant's letter dated 16.09.2019 was duly replied to by Respondent No.3 through communication dated 31.12.2019.

Copies of the Applicants' letter dated 16/09/2019 and its reply dated 31/12/2019 by the Respondent No.3 are annexed as ***Annexure-X & XI*** respectively.

3.12 The allegations in paragraph IV (15) are denied. The Applicant has deliberately suppressed the material fact that Shri Sunil Kumar Agarwalla was appointed Receiver by the PF Authorities on 29.01.2018. The petition is therefore liable to be dismissed for suppression of material facts.

3.13 Regarding paragraph IV (16), the respondents do not wish to comment on matters of record. However, it is denied that Respondent No.3 admitted loss of control over management. Following the Receiver's appointment on 29.01.2018, the gardens were managed under the authority of the PF Authorities.

3.14 The allegations in paragraph IV (17) are denied. The Applicant was a Director for three years and stood on the same footing as the answering respondents. The allegations equally apply to him and Shri Shanta Prasad Chakravarty who is present director in the Respondent No.1. The answering respondents ceased to be Directors on 31.05.2021 due to disqualification under Section 164(2). Thereafter, the Applicant and Shri Chakravarty remained Directors, yet no steps were taken by them to rectify the alleged wrongs.

3.15 The allegations in paragraphs IV (18), IV(19), and IV(20) are denied. After the appointment of Shri Sunil Kumar Agarwalla as Receiver on 29.01.2018, he managed the gardens and factory. Respondent No.3 made all reasonable efforts to obtain records from him and provided available documents to the auditors. The allegations are baseless and frivolous. Further, the Applicant, not being a shareholder, lacks locus standi under Sections 241 and 244 of the Companies Act, 2013.

3.16 The allegations in paragraph IV(21) of the petitions are hereby denied. During his tenure, the Applicant failed to initiate any action against Shri Sunil Kumar Agarwalla despite alleging wrongdoing. His failure to implead the Receiver suggests collusion with the Receiver and Shri Shanta Prasad Chakravarty. The Applicant and the present Director are liable under Section 166(7) of the Act. Further, the Companies Act provides an alternative remedy under Chapter VI for oppression and mismanagement, rendering this application not maintainable.

3.17 The allegations in paragraph IV(22) are denied. The respondents reiterate that the issue of recasting the Balance Sheet has not been raised by any shareholder, and the Applicant, being a stranger to the Company, lacks locus to seek such relief.

3.18 Regarding paragraph IV(24), the records establish that the Applicant's appointment as Independent Director was proposed by Shri Shanta Prasad Chakravarty. The latter also undertook responsibility for the Applicant's remuneration, which was within the Applicant's knowledge. After the respondents ceased as Directors on 31.05.2021, only the Applicant and Shri Chakravarty remained Directors. Following the Applicant's resignation on 04.03.2022, Shri Shanta Prasad Chakravarty became the sole Director. Despite this, the Applicant did not impleaded Shri Chakravarty and has also addressed his letter dated 24.03.2022 to the Board of Directors of the Respondent No.1 which was nonexistent on the same date , demonstrating lack of bona fides. Further stated that the applicant should approach Shri Chakravarty for realizing his unpaid remuneration.

Copies of proceedings of EOGM dated 03.05.2019 and Board Meeting dated 26.04.2019 proposing the Applicant's appointment as an Independent Director are annexed as *Annexure –XII and XIII* respectively to the reply.

3.19 That, while denying the statements made in paragraphs IV(25) to IV(36) of the petition and reiterating the statements made hereinbefore, it is stated that Sri Sunil Kumar Agarwalla was duly appointed as Agent of Respondent No.1 Company pursuant to the Board Resolution dated 26/09/2017 and was subsequently appointed as Receiver by the P.F. Authorities with effect from 29/01/2018. The Applicant, despite being an independent Director, never questioned the alleged acts and, not being a shareholder, has no locus to maintain the present petition and is barred by waiver and estoppel. The answering Respondents cannot be treated as "Officers in Default" under Section 2(60)(v) of the Companies Act, 2013, as their suspension was beyond their control. The Applicant has failed to make out a prima facie case under Section 213(b) of the Companies Act, 2013, and the petition is liable to be dismissed in limine with compensatory costs.

4. *Vide* Written Arguments on behalf of the Applicant the following submissions were made:

4.1 The present application has been filed by the Applicant under Section 213 read with Sections 167(2) and 166(2) of the Companies Act, 2013, seeking an order directing the Regional Director, MCA, to conduct an investigation into the affairs of Respondent No. 1 Company and its directors, who are the other respondents in CP No. 23/GB/2022. The Applicant has also sought release of his legitimate remuneration as an Independent Director, which remains unpaid despite his appointment pursuant to the order dated 25.01.2019 passed by this Hon'ble Tribunal in CP No. 01/241(4)/242(4)/234(1)(b)/GB/2016.

4.2 The Applicant was appointed as an Independent Director of Respondent No. 1 Company in terms of the aforesaid order, and thereafter an agreement dated

17.09.2019 was executed by Respondent No. 3, wherein the terms of appointment were recorded retrospectively with effect from 03.05.2019 for a period of three years with a monthly remuneration of Rs. 25,000/-. However, despite rendering his services as an Independent Director, the Applicant was not paid his remuneration till the date of his resignation on 04.03.2022.

4.3 During his tenure, the Applicant noticed several serious irregularities in the management, governance, statutory compliance, and financial affairs of Respondent No. 1 Company. The Applicant repeatedly raised concerns before the Board and also communicated his observations through letters dated 16.09.2019 and subsequent communications addressed to Respondent No. 3, highlighting various acts of mismanagement and financial irregularities.

4.4 The Applicant further submits that there existed prima facie circumstances indicating fraudulent conduct and mismanagement of the affairs of the Company with an intention to prejudice creditors and other stakeholders. The Balance Sheet of Respondent No. 1 as on 31.03.2017 failed to present a true and fair view of the affairs of the Company. Further it is also stated that respondent no 2 to 4 have jointly and severally concealed knowingly the affairs of the company, to the applicant and also to the statutory auditor and failed to disclose the necessity of signing an open ended MoU and Power of Attorney to an outsider, Mr S K Agarwalla and such unlawful actions of the respondents thus attracts punishment liabilities under section 447 of the Act, and therefore the very basis of the instant application attracts the interference of this Hon'ble Tribunal to initiate investigation under section 213 (b) of the Act.

4.5 It was further discovered by the Applicant that Respondents No. 2 to 4 continued to act as directors of Respondent No. 1 Company despite their DINs being suspended under Section 164(2) of the Act, for the period from 01.11.2018 to 31.10.2023. Nevertheless, they continued participating in Board Meetings during the period of disqualification, thereby attracting the consequences under **Section 167(2)** of the Act and the same is clearly evident from minutes of some of the Board Meeting attended by the defaulting directors.

4.6 The Respondents have challenged the maintainability of the present application on the ground that the Applicant does not fall within the ambit of Section 213 of the Companies Act, 2013 and lacks locus standi. However, this Hon'ble Tribunal, vide order dated 10.08.2023, has already clarified that the Applicant, being an erstwhile Independent Director of Respondent No. 1 Company, is entitled to be considered as "any other person" under Section 213(b) of the Companies Act, 2013. Therefore, the objection regarding maintainability is devoid of merit.

4.7 The Respondents have sought to justify the appointment of an external attorney under the Board Resolution dated 26.09.2017 by stating that it was done due to compelling circumstances and they themselves admitted that the Company was under severe financial stress; an Attorney was appointed on 27.09.2017; subsequently a Receiver took over the management. However, neither the Board Resolution dated **26.09.2017** nor the minutes explain the causes of the financial collapse or the steps taken by the Board to prevent it and the Respondents have also did not took any corrective measures before handing over the management and financial operations of the Company to such attorney. The said conduct itself reflects failure on the part of the Respondents to discharge their fiduciary duties and prevent deterioration of the financial condition of the Company.

4.8 The materials placed on record (*ANNEXURE F,G and H*) clearly demonstrate circumstances suggesting that the affairs of Respondent No. 1 Company were not conducted in a manner beneficial to the Company, its creditors, or stakeholders. The Applicant submits that for exercising powers under Section 213(b) of the Companies Act, 2013, this Hon'ble Tribunal is only required to form a prima facie opinion based on the circumstances available on record, and a detailed investigation is thereafter required to be conducted by the competent authority.

4.9 Reliance is placed upon the judgment of the Hon'ble NCLAT in **RS Wind Energy Pvt. Ltd. Vs. PTC India Financial Services Limited**, *Company. Appeal (AT) No. 15 of 2016* wherein it has been observed that detailed investigation and collection of evidence is the function of the inspector during investigation, and at the stage of ordering investigation, the Tribunal is required to examine whether circumstances exist warranting such investigation. Further, the principles laid down in **Barium Chemicals Ltd. & Anr. Vs. Company Law Board & Ors**., *AIR 1967 SC 295* also support the proposition that investigation under the Companies Act is exploratory in nature and may be ordered where circumstances indicate possible misconduct or mismanagement.

4.10 In view of the aforesaid facts and circumstances, the Applicant submits that sufficient material exists to establish prima facie grounds for interference under Section 213(b) of the Companies Act, 2013. The conduct of the Respondents indicates serious financial mismanagement, failure to comply with statutory obligations, and circumstances suggesting that the affairs of Respondent No. 1 Company require investigation.

4.11 Accordingly, the Applicant humbly prays that this Hon'ble Tribunal may be pleased to direct the Regional Director, MCA, to conduct an investigation into the affairs of Respondent No. 1 Company and its directors under Section 213 of the Act, and further direct payment of the outstanding remuneration due to the Applicant along with such other orders and directions as this Hon'ble Tribunal may deem fit and proper in the interest of justice.

5. The Written Submissions filed by Respondents Nos. 2, 3, and 4, seeking to justify the non-compliance with Section 213 of the Companies Act, 2013, are reproduced and summarized hereunder. In the said Written Submissions, the following contentions have been raised:

5.1 The present Company Petition is not maintainable. Although the Applicant seeks to invoke Section 213(b) of the Companies Act, 2013, he has neither pleaded nor established the existence of the statutory circumstances contemplated therein for directing an investigation. Accordingly, the petition is liable to be dismissed as not maintainable.

5.2 The petition fails to disclose any material facts showing that the affairs of Respondent No.1 Company are being conducted fraudulently, unlawfully, or with intent to defraud creditors, members, or any person so as to attract Section 213(b).

5.3 The Applicant has no real stake in the affairs of Respondent No.1 Company and is primarily seeking recovery of his alleged unpaid remuneration. The present petition has therefore been filed with a personal interest rather than in the interest of the Company.

5.4 An investigation under Section 213 cannot be ordered merely on allegations, suspicion, conjecture, or dissatisfaction with the Company's management. Even if a shareholder merely opines that he is aggrieved by the manner in which the business of the Company is being carried, no investigation can be ordered. Such power can be exercised only where there exists prima facie material demonstrating fraud or where investigation is necessary in public interest. Since, Respondent No.1 is a closely held family company, hence no issue of public interest arises in the present case.

5.5 The Applicant was appointed as an Independent Director on 03.05.2019 and resigned on 04.03.2022, whereas the present petition was filed only on 08.07.2022. The unexplained delay attracts the doctrine of laches and disentitles the Applicant to equitable relief.

5.6 Owing to severe financial distress during the early part of 2017, Respondent No.1 Company entered into an arrangement with M/s Damayanti Tea Industries for sale of green leaves from its Nandanban and Kailashpur Tea Estates. The advance received thereunder was utilized towards payment of labour wages. However, due to inadequate production, the liabilities continued to mount, leading to labour unrest and intervention by the District Administration on 07.09.2017. Simultaneously, the Company was unable to clear its Provident Fund dues, and recovery proceedings by the Provident Fund Authorities had become imminent.

5.7 In these compelling circumstances, the Board of Directors, by Resolution dated 26.09.2017, bona fide appointed Shri Sunil Kumar Agarwalla as Attorney for the smooth running of the Company's affairs, pursuant to which the MoU and Power of Attorney dated 27.09.2017 were executed. Thereafter, Shri Sunil Kumar Agarwalla was appointed as Receiver by the Assam Tea Employees Provident Fund Organisation on 29.01.2018, following which the management and operation of the tea estates and factory remained under his control. Despite being fully aware of these facts, the Applicant has failed to implead either the Receiver or the Provident Fund Authorities as necessary parties

5.8 The petition is liable to be dismissed for non-joinder of necessary parties, as Shri Shanta Prasad Chakravarty, the present sole Director of Respondent No.1 Company, as well as the Receiver and the Assam Tea Employees Provident Fund Organisation, have not been impleaded, though they are necessary and proper parties for effective adjudication of the present dispute.

5.9 The issues raised by the Applicant regarding Power of Attorney and MOU have already been adjudicated in earlier proceedings filed by Shri Sunil Kumar Agarwalla before this Hon'ble Tribunal *vide* order dated 25.01.2019 passed in I.A, No.03/2018 whereby the said IA was dismissed and have attained finality. Accordingly, the present challenge to the MoU and Power of Attorney is barred by the principles of constructive res judicata.

5.10 The Applicant was fully aware of the proceedings in CP(IB) No.05/GB/2021 under the Insolvency and Bankruptcy Code, wherein it was specifically pleaded that Shri Sunil Kumar Agarwalla had exclusive control over the management and accounts of the Company since 27.09.2017. Despite such knowledge, the Applicant has alleged mismanagement against the answering respondents by suppressing these material facts, thereby misleading this Hon'ble Tribunal.

5.11 The Applicant was fully aware of the severe financial condition of Respondent No.1 Company during his tenure as Independent Director and had participated in the affairs of the Company. Having remained silent throughout his tenure and having failed to initiate any proceedings against either the Receiver or the Provident Fund Authorities, the Applicant cannot now selectively attribute liability to the answering respondents after his resignation.

5.12 The Applicant, not being a member of the Company, cannot seek to agitate issues relating to the internal management of the Company in the manner sought in the present proceedings. The burden lies upon the Applicant to establish his legal entitlement to maintain the present petition, which he has failed to discharge.

5.13 The execution of the MoU and Power of Attorney was a bona fide commercial decision taken under compelling financial circumstances to safeguard the business and interests of the Company. Such internal management decisions are protected under the doctrine of indoor management and the rule in Foss v. Harbottle. Business prudence or policy decisions of the Company cannot be made the basis for directing an investigation under Section 213.

5.14 The answering respondents have recently learnt that the Tea Estates and Tea Factory of Respondent No.1 Company have been sold through public auction by the PF Authorities for recovery of provident fund dues. By letter dated 01.07.2023, the answering respondents have sought confirmation regarding the said auction proceedings.

5.15 In view of the foregoing submissions, the Applicant has failed to establish any ground warranting investigation under Section 213 of the Companies Act, 2013. The present petition is not maintainable, suffers from lack of locus standi, non-joinder of necessary parties, suppression of material facts, delay and laches, and is therefore liable to be dismissed with costs.

6. **FINDINGS AND ANALYSIS**

6.1 We have heard the Learned Counsel appearing for the Applicant and the Learned Counsel appearing for the Respondents at considerable length. We have also carefully perused the pleadings, reply affidavit, written submissions filed by both the parties, the documents placed on record, the statutory provisions relied upon by the parties, as well as the judicial precedents cited in support of their respective contentions. It is also pertinent to note that Respondent No. 1 was proceeded *ex parte vide* Order dated 09.11.2023.

6.2 At the outset, it is necessary to bear in mind the nature and scope of the jurisdiction under Section 213 of the Companies Act, 2013. The power to direct investigation into the affairs of a company is a serious and discretionary power. The Tribunal must be satisfied from the material placed before it that there exist circumstances which prima facie suggest the existence of the statutory grounds contemplated under Section 213 which go beyond mere allegations, suspicion, conjecture or disagreement with the manner in which the business of the company has been conducted. The existence of some irregularity or deficiency, by itself, cannot automatically lead to the conclusion that the affairs of the company have been conducted fraudulently or that the persons concerned have been guilty of fraud, misfeasance or misconduct.

6.3 As regards the claim for unpaid remuneration, the Respondents have contended that any claim towards unpaid remuneration is a separate contractual claim against Respondent No. 1 Company and cannot form the basis for an investigation under Section 213 of the Companies Act, 2013.We find that the said claim arises out of the terms and conditions governing the Applicant's appointment and would require determination of the contractual rights and obligations of the parties, including the liability and quantum of remuneration payable. Since the present proceedings are confined to examining whether the circumstances warrant an investigation into the affairs of the Company under Section 213, we do not consider it appropriate to adjudicate upon the Applicant's independent claim for remuneration in these proceedings.

6.4 Upon consideration of the material on record and the submissions advanced by the parties, this Tribunal finds that the prayer seeking investigation under Section 213 of the Companies Act, 2013 requires consideration of certain issues. Accordingly, instead of examining the rival contentions separately, the prayer for investigation is considered issue-wise by formulating the following issues for determination:

i. Whether the present Company Petition is maintainable under Section 213 of the Companies Act, 2013 and whether the Applicant has the necessary *locus standi* to maintain the present proceedings?

ii. Whether the facts and circumstances pleaded by the Applicant disclose sufficient grounds for directing an investigation under Section 213 of the Companies Act, 2013?

iii. Whether the execution of the Memorandum of Understanding and the Power of Attorney dated 27.09.2017 in favour of Shri Sunil Kumar Agarwalla constitutes a circumstance warranting investigation under Section 213 of the Act?

iv. Whether Respondents No. 2 to 4 continued to function as Directors despite the alleged disqualification under Section 164(2) of the Companies Act, 2013, thereby attracting the consequences contemplated under Section 167(2) of the Act?

v. Whether the adverse observations recorded by the Statutory Auditor and the alleged non-production of books of account establish a *prima facie* case for directing an investigation into the affairs of the Company?

vi. Whether the petition suffers from non-joinder of necessary parties?

6.5 We shall now proceed to examine each of the aforesaid issues independently on the basis of the pleadings, documentary evidence available on record, the submissions advanced by the learned counsel for the respective parties, and the applicable provisions of the Companies Act, 2013. Each issue shall be dealt with separately, and our findings thereon are recorded as under:

I. Whether the present Company Petition is maintainable under Section 213 of the Companies Act, 2013 and whether the Applicant has the necessary *locus standi* to maintain the present proceedings?

i. The first objection raised by the Respondents pertains to the maintainability of the present petition. According to the Respondents, the Applicant is neither a shareholder nor a contributory of Respondent No.1 Company and, therefore, lacks the locus standi to invoke Section 213 of the Companies Act, 2013. It has further been contended that the petition is primarily intended to recover the alleged unpaid remuneration of the Applicant and, therefore, constitutes an abuse of the process of law.

ii. The Tribunal notes that the Applicant was admittedly appointed as an Independent Director pursuant to the order dated 25.01.2019 passed by this Tribunal in the earlier company petition and continued to discharge his duties till his resignation on 04.03.2022. The Applicant has pleaded that while functioning as an Independent Director, he became aware of several irregularities in the affairs of the Company, which compelled him to seek investigation under Section 213.

iii. More importantly, the Applicant has specifically relied upon the order dated 10.08.2023 passed by this Tribunal wherein it was observed that the Applicant, being an erstwhile Independent Director, falls within the expression "any other person" occurring in Section 213(b) of the Companies Act. The said finding has not been shown to have been set aside by any superior forum.

iv. Section 213(b) consciously employs the expression "any other person", thereby conferring a wider locus than that available under Sections 241 and 244 of the Act. The legislative intent is to enable the Tribunal to order an investigation wherever circumstances suggest fraudulent or unlawful conduct, irrespective of the status of the informant, provided sufficient circumstances exist.

v. Accordingly, this Tribunal is of the considered opinion that the preliminary objection regarding maintainability is devoid of merit and deserves to be rejected.

II. Whether the facts and circumstances pleaded by the Applicant disclose sufficient grounds for directing an investigation under Section 213 of the Companies Act, 2013?

i. Section 213 of the Companies Act, 2013 does not require the Tribunal to record a conclusive finding of fraud before directing an investigation. The jurisdiction under the said provision is preventive and investigative in nature, and the Tribunal is only required to ascertain whether circumstances exist suggesting that the affairs of the Company are being conducted fraudulently, unlawfully, in a manner oppressive to any member or prejudicial to public interest.

ii. In support of the present petition, the Applicant has relied upon the execution of an open-ended Memorandum of Understanding and Power of Attorney in favour of Shri Sunil Kumar Agarwalla, handing over of the management and title deeds of the Company, adverse observations of the Statutory Auditor, non-production of books of account, alleged concealment of financial records, admissions allegedly made by Respondent No.3 regarding loss of management control, continuation of Respondents No.2 to 4 as Directors despite their alleged disqualification under Section 164(2), non-compliance with Schedule III to the Companies Act, violation of Accounting Standards, absence of statutory registers, non-disclosure of related party transactions, defective valuation of assets, non-preparation of the Cash Flow Statement and defaults in statutory dues, including provident fund contributions.

iii. The Respondents have specifically pleaded that Respondent No.1 Company was already facing acute financial distress during the early part of 2017 owing to mounting liabilities, labour unrest, inability to discharge provident fund dues and intervention by the District Administration. It is further pleaded that, in such circumstances, the Board resolved to appoint Shri Sunil Kumar Agarwalla as Attorney pursuant to the Resolution dated 26.09.2017.

iv. Upon consideration of the rival submissions, this Tribunal observes that the appointment of an Attorney or Receiver, by itself, cannot constitute evidence of fraud. The Statutory Auditor, vide letter dated 11.09.2019, recorded various observations regarding accounting deficiencies, however, the said observations were made on the draft Accounts furnished for review and not on the final accounts of the Company. Similarly, the allegations relating to non-compliance with Schedule III, Accounting Standards, maintenance of statutory registers, related party disclosures, valuation of assets and preparation of financial statements primarily disclose alleged statutory irregularities, which by themselves do not warrant an investigation under Section 213 unless they prima facie suggest fraudulent or unlawful conduct.

v. The Tribunal further finds that the Applicant's allegations are largely founded upon inferences drawn from the available records. No contemporaneous documentary evidence has been produced to prima facie establish diversion or siphoning of funds, dishonest misappropriation of assets or any fraudulent transaction attributable to Respondents No.2 to 4. On the contrary, the material placed on record indicates that the Company was under severe financial distress and that its affairs were subsequently subjected to statutory recovery proceedings. The Respondents have also placed on record documents indicating that the Tea Estate and Tea Factory had come under the control of the Receiver appointed by the EPF Authorities and also submitted that they were ultimately sold through public auction for recovery of public dues. However, to confirm the sale through public auction the respondent have written a communication letter to the secretary of the PF Authorities. Once the assets of the Company became subject to statutory control and recovery proceedings, the allegations of clandestine diversion or alienation of assets by the Respondents lose considerable force.

vi. In view of the foregoing, although the material on record may disclose certain accounting deficiencies and statutory irregularities warranting examination by the appropriate authorities, but it falls short of establishing the existence of circumstances contemplated under Section 213 of the Companies Act, 2013. The extraordinary jurisdiction under the said provision cannot be invoked merely on the basis of disputed allegations or statutory non-compliances in the absence of cogent *prima facie* material indicating that the affairs of the Company were being conducted fraudulently, unlawfully or in a manner prejudicial to public interest.

vii. Consequently, this Tribunal is not satisfied that a case has been made out for directing an investigation under Section 213 of the Companies Act, 2013. Accordingly, this issue is answered against the Applicant.

III. Whether the execution of the Memorandum of Understanding and the Power of Attorney dated 27.09.2017 in favour of Shri Sunil Kumar Agarwalla constitutes a circumstance warranting investigation under Section 213 of the Act?

i. The Applicant alleges that Respondent No.3 unlawfully transferred the entire management of the Company to Shri Sunil Kumar Agarwalla through an open-ended MoU and Power of Attorney without authority of law.

ii. The Respondents have produced the Board Resolution dated 26.09.2017 showing that the decision was taken in an emergent Board Meeting due to severe financial constraints and imminent EPF proceedings. They have further pointed out that Shri Agarwalla subsequently came to be appointed Receiver by the EPF Authorities.

iii. The Tribunal also notices that the legality of the MoU and Power of Attorney had already been questioned earlier in I.A. No.03/2018, which was dismissed by this Tribunal on 25.01.2019. The Respondent have therefore pleaded constructive res judicata.

iv. Although the Applicant was not the applicant in the earlier interlocutory application, the issues surrounding the execution of the MoU have already been subjected to judicial scrutiny. In absence of any fresh material demonstrating fraud beyond what was previously considered, this Tribunal finds no justification for reopening the same issue in the present proceedings. Therefore, the challenge to the MoU and Power of Attorney does not independently justify ordering investigation.

IV. Whether Respondents No. 2 to 4 continued to function as Directors despite the alleged disqualification under Section 164(2) of the Companies Act, 2013, thereby attracting the consequences contemplated under Section 167(2) of the Act?

i. The Applicant has contended that Respondents No. 2 to 4 continued to function as Directors despite incurring disqualification under Section 164(2) of the Companies Act, 2013, thereby attracting the consequences under Section 167(2). In support of the allegation, reliance has been placed upon the minutes of the Board Meeting dated 12.07.2019, screenshots obtained from the MCA portal and other documents placed on record.

ii. The Respondents, however, have denied the allegations and submitted that they ceased to be directors on 31.05.2021 and that necessary Form DIR-12 was filed with the Registrar of Companies. It has further been contended that they were never informed of any alleged disqualification by the competent authority.

iii. The Tribunal notices that although minutes of certain meetings dated 12 July 2019 which have been relied upon by the Applicant for alleging that the disqualified directors attended the board meeting however there is no detailed evidence establishing that whether respondent has attended meetings after the effective cessation of office.

iv. Upon consideration of the rival submissions, this Tribunal finds that the issue involves disputed questions relating to the effective date of disqualification, cessation of office and the acts allegedly performed thereafter. The documents relied upon by the Applicant do not conclusively establish that Respondents No. 2 to 4 continued to function as Directors after the alleged disqualification with any fraudulent intent. Even assuming there was any procedural irregularity, the same, by itself, is insufficient to warrant an investigation under Section 213 in the absence of material indicating that such conduct formed part of a fraudulent or unlawful scheme in the affairs of the Company. Accordingly, this issue is answered against the Applicant.

V. Whether the adverse observations recorded by the Statutory Auditor and the alleged non-production of books of account establish a *prima facie* case for directing an investigation into the affairs of the Company?

i. The statutory auditor admittedly recorded qualifications regarding availability of records and inability to verify certain transactions.

ii. The Tribunal is conscious that maintenance of books of account constitutes a statutory obligation under the Companies Act. However, the Respondents have consistently maintained that after appointment of the Receiver, the books and operational records were not available to them and remained under the control of the Receiver.

iii. Having known to the fact that the company was controlled by the Receiver or the EPF Authorities the Applicant has admittedly not impleaded either the Receiver or the EPF Authorities.

iv. Without examining the authority presently controlling the Company's records, this Tribunal would be unable to effectively determine responsibility for non-production of books.

v. Consequently, although the audit qualifications deserve serious consideration, they cannot, by themselves, justify an investigation under Section 213 in the facts of the present case. Therefore the material is insufficient to direct investigation.

VI. Whether the petition suffers from non-joinder of necessary parties?

i. The Respondents have consistently argued that Shri Sunil Kumar Agarwalla, the Receiver appointed by the EPF Authorities and the present sole Director Shri Shanta Prasad Chakravarty have not been impleaded. The pleadings themselves disclose that both parties had knowledge about the management of the Company had substantially shifted to the Receiver.

ii. It has been taken into consideration that no substantive relief has been sought against the Receiver. However, if the allegations relate to diversion of records, operational control and management after sifting of the control of the company to the receiver, the Receiver would certainly be a necessary party for complete adjudication.

iii. The failure to implead the Receiver deprives this Tribunal of an opportunity to ascertain the factual position from the person presently controlling the affairs of the Company. Therefore, the petition suffers from non-joinder of necessary parties.

6.6 It is equally significant that the Applicant himself functioned as an Independent Director of the Company for a considerable period. While it is his case that he raised certain concerns during his tenure, no contemporaneous material has been placed to show that he invoked any statutory remedy or initiated any proceedings immediately upon discovering the alleged fraud or misconduct. The present proceedings were instituted only after his resignation and are accompanied by a claim for recovery of unpaid remuneration. Though the existence of such claim by itself does not disentitle the Applicant from maintaining the petition, it nevertheless lends support to the Respondents' contention that the present proceedings are substantially founded upon grievances arising out of his contractual relationship with the Company rather than circumstances genuinely warranting an investigation under Section 213.

6.7 The aforesaid submission advanced by the Respondents, along with the document annexed to their written submissions, indicates that the tea estates and factory were stated to have been sold by the Provident Fund Authorities in recovery proceedings. However, the Respondents themselves had addressed a communication to the concerned PF Authority seeking confirmation of the said auction proceedings. This subsequent development, even if established, indicates the deteriorated financial condition of the Company but, by itself, does not establish the ingredients necessary for directing an investigation under Section 213.

6.8 The materials placed on record indicate that Respondent No.1 Company was facing severe financial distress, which ultimately resulted in statutory recovery proceedings and auction of the tea estates. However, financial collapse, commercial failure, or poor business decisions, by themselves, do not constitute circumstances suggesting fraud or unlawful conduct within the meaning of Section 213 of the Companies Act, 2013. Several allegations remain speculative; the Receiver and other necessary parties have not been impleaded; and many of the allegations are not supported by cogent evidence warranting an investigation under Section 213 of the Act. Therefore, the present petition is liable to be dismissed**.**

ORDER

1. In view of the foregoing analysis and findings the present Company Petition i.e. **CP/23/GB/2022** filed by the applicant is **dismissed**.
2. Accordingly, the Company Petition i.e. **CP/23/GB/2022** stands **disposed of**.
3. The Registry is directed to send e-mail copies of the order forthwith to all the concerned parties inclusive of the Counsel.
4. Urgent certified copy of this order, if applied for, be issued upon compliance with all requisite formalities.
5. File be consigned to record.

Sd/-
Yogendra Kumar Singh
Member (Technical)

Sd/-
Rammurti Kushawaha
Member (Judicial)

Signed this on 21st day of August, 2026

Niketa Choudhary (L.R.A.)