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

CP/24/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 Madarkhat Tea Co. 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/24/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. **Madarkhat Tea Co Private Limited,** an existing company within the meaning of the Companies Act, 2013, having its registered office at Purnanda Road, Dibrugarh 786001, Email mkdibrugarhho@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 ("Applicant"), 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, under Section 213 read with Sections 167 (2) and 166 of the Companies Act,2013 against Madarkhat Tea Co 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"] for purportedly praying for various reliefs against the present respondents. The Applicant prays for 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 The Applicant submits that Respondent No. 1, Madarkhat Tea Co. Private Limited, was incorporated on 7 July 1954 under the Indian Companies Act, 1913 and has its registered office at P.N. Road, Dibrugarh, Assam.

2.2 It is alleged that Respondent Nos. 2 to 4, who were erstwhile directors of Respondent No. 1, incurred disqualification under Section 164(2) of the Companies Act, 2013 with effect from 1 November 2018.

2.3 That CP No 28/241[4]/242[4]/234[1][b]/ GB/ 2017 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 30 March 2019 and the Applicant became an independent director as directed in such Order on 03.05.2019. And the Respondent 1 executed an agreement on 17.09.2019 for appointment of the Applicant as independent director in Respondent 1. He further states that he resigned from the office of Independent Director on 4 March 2022 and duly filed Form DIR-11 with the Registrar of Companies.

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.

2.4 That the Applicant after assuming position of independent director did not know that Respondent 2 to 4 have become disqualified to be a director by order of Registrar of Companies in terms of section 164[2] of Companies Act, 2013. And even though they have knowledge of becoming disqualified they held position of directorship in Respondent 1 and thereby attracted provisions of Section 167[2] of the Companies Act, 2013 and they have also attended Board Meetings of respondent No .1 Company. List of the Board Meeting attended by the disqualified directors are listed below:

Date Of Board Meeting Of Respondent No.1	Attendees	Page Number From The Minutes Book
29 December 2018	Respondent No.2,3, 4	18
27 February 2019	Respondent No.2,3, 4	20
16 March 2019	Respondent No.2,3, 4	24
9 April 2019	Respondent No.2,3, 4	27
26 April 2019	Respondent No.2,3, 4	38
13 July 2019	Respondent 4	49
21 November 2020	Respondent 4	50

Copy of the minutes of the said Board Meeting are annexed and marked with the letter 'C' to the petition.

2.5 That the Respondent 1 is primarily engaged in the business of tea plantation and not in the business of money lending or borrowing.

2.6 That Respondent No. 2, despite being aware of the order passed by this Hon'ble Tribunal on 25 January 2019, executed an agreement on 31 January 2019, in his capacity as the then Managing Director of Respondent No. 1, with Mr. Dindayal

Varma (who is partner of Surya Tea Industries) for borrowing ₹72,59,500 against a back-to-back supply arrangement. Respondent 2 also had made similar agreement on 24 December 2018 when he was apprehending adverse order of 25 January 2019 since proceedings were completed by then, with one Surya Tea Industries for a loan of Rs.33,50,000 it is important to note that both the agreements were executed without any approval of the Board of Respondent 1 and without affixation of Common Seal of Respondent 1 and without any reference of the Articles of Association of Respondent 1.

2.7 The Applicant further alleges that Respondent No. 2 failed to discharge their fiduciary duties under Section 166 of the Companies Act, 2013

2.8 According to the Applicant, the statutory auditor appointed pursuant to the Order dated 25 January 2019 expressed serious qualifications and adverse remarks while auditing the financial statements for the year ended 31 March 2017, observing that the financial statements did not present a true and fair view due to non-availability of records, deviations from accounting principles and doubtful transactions.

2.9 The Applicant submits that during his tenure as Independent Director, he repeatedly raised concerns before the Board and through email communications regarding governance issues, irregular financial practices and the need to rectify the Company's financial statements and records.

2.10 That Respondent Nos. 2 to 4 failed to exercise proper control over the books of account, operations, assets, and records of Respondent No. 1. The books of account were neither properly maintained nor made available to the present statutory auditor, constituting prima facie evidence of gross mismanagement.

2.11 The Applicant further states that owing to the continued non-availability of books of account and statutory records, the financial statements of Respondent No. 1 cannot reflect the true and fair financial position of the Company. It is therefore alleged that the financial statements require recasting after a detailed investigation into the affairs of the Company.

2.12 The Applicant also submits that after his resignation from the Board of Respondent 1 vide his letter dated 4 March 2022, and the Applicant filed Form DIR 11 after such resignation, he requested payment of his outstanding remuneration amounting to Rs. 6,40,000/- which was payable by Respondent 1.but the same has remained unpaid.

A copy of such resignation letter dated 04.03.2022 and copy of form filed with RoC are attached and marked collectively with the letter D'. And Copy of such follow up letter dated 24th March, 2022 for recovery of earned remuneration is enclosed and marked with the letter E'.

2.13 The Applicant alleges that Respondent Nos. 2 to 4 are "officers in default" within the meaning of Section 2(60)(v) of the Companies Act, 2013 and that their conduct warrants investigation to know the nexus amongst themselves, and their frequent calls with various third parties which has caused adverse financial impact to Respondent 1. It is further alleged that they acted as related parties, in terms of section 2(76)[vii] of the Companies Act, 2013 and they continued to manage the affairs of the Company despite their alleged disqualification, and derived undue benefits at the expense of Respondent No. 1.

2.14 On the aforesaid allegations, the Applicant contends that there exist sufficient circumstances warranting an investigation into the affairs of Respondent No. 1 and the conduct of Respondent Nos. 2 to 4 under Section 213(b) of the Companies Act, 2013 read with Rule 11 of the National Company Law Tribunal Rules, 2016.

2.15 The Applicant submits that unless the reliefs prayed for are granted, he shall suffer irreparable loss and prejudice and that the present application has been filed 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. 2 states that he is well acquainted with the facts of the case, and has been duly authorised by Respondents No. 3 and 4 to file the present reply on their behalf and stated that he has received and perused a copy of C.P. No. 24/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 07/07/1954 under the erstwhile Companies Act, 1913 with Late Nandeswar Chakravarty, his wife, Late Tarini Devi, and his sons, Late Uma Prasad Chakravarty, Late Bishnu Prasad Chakravarty and Late Tara Prasad Chakravarty as its shareholders and Directors. Since its incorporation, the Company has remained a family-owned company with shareholding confined to the descendants of Late Nandeswar Chakravarty. As on date the share holding pattern of the family members of the above 3 sons of Late Nandeswar Chakravarty are follows:

a) Family members of Late Uma Prasad Chakravarty (UPC Group)–42.5%
b) Family members of Late Bishnu Prasad Chakravarty (BPC Group)–28.8%
c) Family members of Late Taraprasad Chakravarty (TPC Group) – 28.7%

ii. That the family members of U.P.C. Group and B.P.C. Group, who holds around 72 % of shares of the R-1 Company was managing the affairs of the R-1 Company from the year 1976 and the family members of T.P.C. Group who holds around 28% shares of the R-1 Company was not in the management of the Company.

iii. That as the affairs of the Respondent No. 1 Company was being managed by the family 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.28/241(4)/242(4)/234(1)(b)/GB/2017 inter-alia, alleging oppression and mismanagement by the UPC Group and BPC Group.

iv. 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 members of the T.P.C. Group were inducted in the Board of Directors of the R-1 Company on 30.03.2019 and one of the member of T.P.C. Group was appointed as the Managing Director of the R-1 Company in the Board Meeting dated 26/04/2019 and the resolution was confirmed in the Extra Ordinary General Meeting dated 03/05/2019 and the Petitioner was appointed as an Independent Director of the R-1 Company. Further the members of the U.P.C. Group and B.P.C Group had tendered their resignation from the Board of Directors of the R-1 Company on 07/05/2019.

v. It is pertinent to state that the members of the UPC and BPC Groups, namely Shri Chittaranjan Chakravarty, Shri Sanjeeb Kumar Chakravarty, Smt. Jyoti

Chakravarty, Smt. Manju Chakravarty, Smt. Mitali Chakravarty, Smt. Ruprekha Chakravarty, and Smt. Rajita Chakravarty, resigned from the Board of Directors of R-1 Company on 07.05.2019 pursuant to a condition imposed by Mr. Shanta Prasad Chakravarty, the present Managing Director, during a meeting with the Assam Chah Mazdoor Sangha (ACMS), Dibrugarh, held on 18.04.2019. He had stated that he would finance the Company only if the existing Board resigned and a new Board was constituted as per his proposal. The proceedings of the said meeting are in the vernacular language, and the answering Respondents crave leave of this Hon'ble Tribunal to rely upon the same at the time of hearing.

vi. It is further submitted that Smt. Madhusandhya Barkataki expired in the year 2021; however, the Applicant has not filed the requisite form in that regard being a member of the Board. The previous and present composition of the Board of Directors is as follows :

Previous Board of Directors	Present Board of Directors
UPC Group Members : Chittaranjan Chakravarty (Director) Resigned on 07/05/2019 Manju Chakravarty (Director) Resigned on 07/05/2019 Mitali Chakravarty (Director) Resigned on 07/05/2019 Jyoti Chakravarty (Director) Resigned on 07/05/2019	Shanta Prasad Chakravarty - Managing Director 30/03/2019 (TPC Group) Madhu Sandhya Barkataki- Director 30/03/2019 (TPC Group) Madhu Krishna Baruah- Director 30/03/2019 (TPC Group) Ranjan Mukherjee- Independent Director (03/05/2019 to 04/03/2022)

BPC Group Members : Sanjeeb Kumar Chakravarty, Managing Director (Resigned on 07/05/2019) Ruprekha Chakravarty (Director) Resigned on 07/05/2019 Rajita Chakravarty (Director) Resigned on 07/05/2019 Tridib Kumar Chakravarty (Director) Resigned on 18/08/2022.	

Copies of the Company Master Data showing the composition of the present Board of Directors of the Respondent No.l Company and the Resignation letter dated 18/08/2022 of Sri Tridib Kumar Chakravarty as well as Form No.DIR-11 are annexed as ANNEXURE-I, II respectively 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. As the Applicant is neither a shareholder under Section 213(a) 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, in view of non-disclosure of any cause of action the said petition is liable to be dismissed.

iii. The Applicant has no locus standi to maintain the present petition as he is neither a shareholder, contributory nor otherwise interested in R-1. The Applicant has no real stake in the R-1 Company but is concerned only with his 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. Further stated that the petition has not been filed bona fide but with an oblique motive to recover the Applicant's alleged remuneration from the R-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. And in reality, no investigation can be ordered even if a shareholder merely opines that he is aggrieved about the manner in which the business of the Company is being carried on. 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. The Applicant admittedly is not a member of Respondent No.1 Company. In the absence of membership, the Applicant lacks the requisite locus standi to allege oppression, mismanagement or seek an investigation into the affairs of the Company. The remedies under the Companies Act, 2013 concerning the internal management of a company are available only to persons entitled under the statute.

viii. The Applicant has an alternative and efficacious remedy for recovery of his alleged remuneration or other personal claims. Instead of pursuing the appropriate remedy, the Applicant has invoked the jurisdiction of this Hon'ble Tribunal under Section 213(b), which amounts to forum shopping and is liable to be discouraged.

ix. The allegations raised by the Applicant pertain to matters of internal management and business decisions of the Company. In view of the well-settled principles laid down in Foss v. Harbottle, the Tribunal ought not to interfere with the internal administration or commercial decisions of the Company when such actions are within the powers conferred upon the Board under the Articles of Association.

x. Mere disagreement with the business decisions or commercial prudence of the management does not constitute a ground for directing an investigation under Section 213(b). Such jurisdiction cannot be invoked to scrutinize bona fide business decisions in the absence of any prima facie material establishing fraud or misconduct.

xi. The present Application is also liable to be dismissed for non-joinder of necessary parties, as none of the present Directors of Respondent No.1 Company, who are currently in management and control of the affairs of the Company, have been impleaded as party respondents.

3.4 With regard to Paras IV(1) to IV(11), Save and except matters borne out from the records, the allegations are denied. It is specifically denied that Respondent No.4 falsely projected himself as a Director. Respondent No.4 had resigned on 18.08.2022. The Respondents were never informed by any statutory authority regarding their alleged disqualification under Section 164(2) and had no knowledge thereof. Consequently, any participation in Board Meetings was bona fide and without knowledge of any alleged disqualification and such representation in the board was bonafide owing to lack of knowledge of the same.

3.5 With regard to Paras IV(12) to IV(15), The allegations regarding unauthorized borrowings, breach of fiduciary duties and mismanagement are denied. Owing to severe financial distress and absence of bank finance, the Company was compelled to arrange private finance to meet statutory liabilities, workers' wages and operational expenses. The necessity for raising such funds had been placed before the Board in its meetings dated 10.04.2018 and 27.02.2019. Further, Article 91 of the Articles of Association expressly empowers the Board to borrow monies for the purposes of the Company. In fact R-2 and the Members of the UPC Group had to sell their personal ancestral properties in order to give loan to the R-1 company and the UPC group has themselves provided unsecured loans to the Company in the following ways to protect its business and workers.

Chittaranjan Chakravarty	₹ 1,22,10,970.50
Manju Chakravarty	₹ 49,92,000.00
Angshu Ranjan Chakravarty	₹ 11,16,800.00
Jyoti Chakravarty	₹ 5,00,000.00
Mitali Chakravarty	₹ 2,00,000.00
Gargi Chakravarty	₹ 5,00,000.00
TOTAL	₹ 1,95,19,770.50

The impugned transactions were therefore undertaken bona fide, in the interest of the Company and with due authority. Copies of proceedings of Board Meeting dated 10/04/2018 and 27/02/2019 are annexed as ANNEXURE-III and IV respectively to the reply.

3.6 With regard to paragraph IV(15),it is stated that the contents of the petition are vague and do not merit consideration. Without admitting the allegations, it is submitted that the Applicant, despite being appointed as an Independent Director on 03.05.2019, failed to raise any concerns regarding the alleged mismanagement before the appropriate authority until mid-2022, which casts doubt on the bona fides of the petition. Respondents No. 2 and 3 had resigned from the Board on 26.04.2019, and Respondent No. 4 resigned on 18.08.2022. Despite attending subsequent Board meetings, the Applicant never raised the issues now alleged. Furthermore, it is reiterated that as the Applicant is not a shareholder of Respondent No. 1 Company, he lacks the locus standi to raise allegations of mismanagement.

3.7 With regard to Paras IV (16) to IV(17), save as matters of record, the allegations are denied. Respondent Nos.2 and 3 had resigned from the Board on 26.04.2019 and thereafter had no control over the affairs, books of account or statutory records of the Company. When the newly appointed statutory auditor i.e., M/s. U C Majumdar & Co., sought information in 2019, Respondent No.2 expressly informed the then Managing Director that he had no access to the Company's records and requested that the relevant employees and documents be made available. No such assistance was provided. Consequently, any inability of the auditors to verify the accounts cannot be attributed to these Respondents.

Copies of resignation letter dated 09/04 /2019 of M/s Rajendra C. Sharma (i.e, the previous auditor) and the resignation letter dated 24/10/2016 of M/s. Kanoi Associates (i.e., the previous to previous auditor) and the letter dated 15/10/2019 which was issued to addressed the reply to the letter of Sri Santa Prasad Chakravarty asking account details are annexed as ANNEXURE-VI, V and VII respectively to the reply.

3.8 With regard to paragraph IV(18) the contents of the same para are denied. Respondents No. 2 and 3 have no personal knowledge of the Board Meeting dated 13.07.2019, having resigned as Directors on 26.04.2019. Respondent No. 4 was the sole representative of the minority BPC Group, while the Board also comprised members of the majority TPC Group. However, for reasons best known to the Applicant, those majority members have not been impleaded as party respondents.

3.9 With regard to Paras IV(19) to IV(22) of the petition, it is submitted that pursuant to the judgment dated 25.01.2019 passed by the Hon'ble National Company Law Tribunal (NCLT) in C.P. No. 28/241(1)/242(4)/243(1)(B)/GB/2017, the management of Respondent No. 1 Company vested with the TPC Group, as 3 out of the 5 Directors belonged to the TPC Group, 1 Director represented the BPC Group, and the remaining Director was the Applicant. Consequently, the answering Respondents had no control over the books of account of Respondent No. 1 Company. It is further submitted that the issue of recasting the balance sheet has not been raised by any shareholder of Respondent No. 1 Company, and the Applicant, being a stranger to the Company, has no locus standi to raise such an issue.

3.10 With regard to Paras IV(23) to IV(24), The Applicant's claim regarding unpaid remuneration, if any, is a separate contractual claim against the Company and cannot form the basis of an investigation under Section 213. The Applicant has deliberately not impleaded the existing Directors of TPC Group, who alone were in control of the Company after the Respondents ceased to hold office and the same smacks foul play on the part of the Applicant, inasmuch as, it cannot be ruled out that the Applicant in hand in glove with the present Directors of the Respondent No.1 Company and the same clearly suggests that the Applicant has not approach this Hon'ble Tribunal with clean hands. The allegations are therefore misconceived and mala fide.

3.11 With regard to Paras IV (25) to IV(33), the allegations that the Respondents are "officers in default", related parties acting in concert or liable for investigation are specifically denied. The Applicant himself served as Independent Director from 03.05.2019 till 04.03.2022 and, despite participating in the management of the Company, did not initiate any proceedings or report any alleged irregularities during his tenure. Having failed to act while in office, the Applicant is estopped from raising such allegations after his resignation. Further, the alleged financial irregularities pertain to a period which is barred by limitation. The Applicant has failed to establish any circumstances warranting an investigation under Section 213(b) of the Companies Act, 2013.

3.12 It is further submitted that the Applicant resigned from the Board on 04.03.2022, immediately after attachment proceedings were initiated by the Provident Fund Authorities against the assets of the Company. The timing of the resignation and the subsequent filing of the present proceedings demonstrate that the Application has been filed with an oblique motive, the applicant's intentions are malafide and subject to realization of wealth. It may also be pertinent to mention that the assets (Factory) of the Respondent No.1 Company have been auctioned by the Provident Fund Authorities by way of e-auction Notice dated 28/11/2022.

Copies of the Attachment Notice dated 28/02/2022 and the Auction Sale Notice dated 28/11/2022 are annexed as ANNEXURE - VIII & IX respectively to the reply.

3.13 In view of the foregoing facts and circumstances, the Applicant has failed to make out any case under Section 213(b) of the Companies Act, 2013. The present Application is devoid of merit, not maintainable in law and deserves to be dismissed with exemplary 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. 24/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. 28/241(4)/242(4)/234(1)(b)/GB/2017.

   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/-. It is submitted that although the Applicant received part of his remuneration during his tenure, an amount of Rs. 6,40,000/- (Rupees Six Lakhs Forty Thousand Only) remained unpaid. Accordingly, the Applicant addressed a letter dated 24.03.2022 seeking release of the said amount, which has been annexed as Annexure "E" to the Company Petition.

   4.3 It is submitted that during the Applicant's tenure as an Independent Director of R-1 Company, the Respondents committed several violations of the provisions of the Companies Act, 2013 and appear to be liable as "officers who are in default" within the meaning of Section 2(60)(vi) of the Act. Although the Articles of Association authorized the Company to raise loans, the Respondents failed to ensure that such borrowings were from legitimate and legally compliant sources. They also failed to exercise due diligence in managing the Company's financial affairs, identifying financial risks, and ensuring statutory compliance and transparency. On the basis of the records available during his tenure, the Applicant found prima facie material indicating irregular and fraudulent financial transactions affecting the interests of the Company's creditors and stakeholders, which led to the filing of the present Company Petition.

4.4 During his tenure as an Independent Director, the Applicant noticed several serious irregularities in the management, governance, statutory compliance and financial affairs of Respondent No. 1. He repeatedly raised these concerns before the Board, as reflected in Annexure "C" to the Company Petition. The Board Minutes further reveal that Respondent No. 2, despite not being a licensed money lender under the Assam Money Lenders' Act, 1934, engaged in money-lending transactions with Respondent No. 1 while serving as its Managing Director.

4.5 The Applicant further submits that the material available on record disclosed several unlawful and fraudulent acts committed by the Respondents, which prompted him to file the present Company Petition, including the averments contained in Paragraph 28 thereof.

4.6 Though the Applicant is not a member of Respondent No. 1, he served as an Independent Director from 03.05.2019 to 04.03.2022 and falls within the expression "any other person" under Section 213(b) of the Companies Act, 2013. During his tenure, he witnessed serious instances of misgovernance, financial irregularities and fraudulent conduct prejudicial to the interests of the Company, its creditors, employees and the Government. The Respondents' intention to defraud creditors through dubious and illegal transactions is evident from the Order dated 25.01.2019 as well as the Applicant's observations during his tenure as an Independent Director

4.7 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.

4.8 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 on the ground that the applicant has not fulfilled the preconditions under section 213 (b) and 213 (a) of the Companies Act, 2013 is devoid of merit.

4.9 The Respondents' contention that the impugned borrowings were made due to severe financial stress is wholly untenable, as neither the Board Resolutions nor the minutes disclose the nature of the alleged financial crisis or any justification for such borrowings. The Applicant submits that, anticipating an adverse order in CP No. 01/241(4)/242(4)/234(1)(B)/GB/2017 on 25.01.2019, the Respondents hastily obtained a loan of ₹33,50,000/- from Surya Tea Industries without the requisite approvals or affixing the common seal of R-1 company. The transaction, facilitated through Shri Din Dayal Verma, a partner of Surya Tea Industries, raises serious doubts regarding its legality, bona fides and the Respondents' intent to financially mismanage the affairs of the Company to the prejudice of its creditors.

4.10 The respondents' contention that the impugned borrowings were authorized by the Board Resolutions dated 10.04.2018, 27.02.2019 and subsequent resolutions is wholly untenable. The resolutions merely permitted borrowing from private parties on the ground of financial stress without any business justification, comparative analysis of interest rates, evaluation of alternative lenders, or due diligence. The Board considered borrowing only from a single private party, demonstrating a lack of transparency and reflecting the mala fide intent of the Board of Directors.

4.11 The Board Resolutions further reveal that the respondents knowingly allowed the Company's financial crisis to escalate without taking timely corrective measures, thereby creating a self-induced debt trap. Their conduct clearly constitutes financial mismanagement and supports the applicant's contention that the affairs of Respondent No. 1 were conducted with intent to defraud its creditors.

4.12 The materials on record disclose sufficient circumstances for this Hon'ble Tribunal to exercise its jurisdiction under Section 213(b) of the Companies Act, 2013. Under the guise of financial distress, the respondents raised substantial borrowings without proper authority or due diligence instead of adopting genuine measures to mitigate the Company's financial difficulties, thereby causing severe operational and financial mismanagement.

4.13 The present case warrants an investigation under Section 213(b) of the Companies Act, 2013, as the materials on record establish that Respondent Nos. 2 to 4 conducted the affairs of Respondent No. 1 through dubious and illegal transactions with the intent to defraud its creditors which is evident from the Order dated 25th Jan, 2019. The Company continues to suffer severe financial distress as a direct consequence of their misconduct and financial mismanagement.

4.14 The lack of transparency in the affairs of Respondent No. 1 is evident from the Minutes of the Board Meetings annexed to CP No. 24/GB/2022. Some of the highlights of which are as follows:

(i) The Minutes of the Board Meeting dated 16.03.2019 (Page. 91–92 of CP No. 24/GB/2022) record purported loans of ₹99,03,284.50 from Respondent No. 2, ₹44,92,000 from Smt. Monju Chakravarty (Director), and ₹5,00,000 from Smt. Jyoti Chakravarty. However, no supporting documents, particulars of the loans, or evidence regarding the lenders' status as money lenders have been produced, and the transactions are not properly reflected in the books of accounts.

(ii) The Minutes (Page 94) further state that investments were made during 2015–16 towards plantation, factory and licences; however, no supporting records or particulars of such investments are available with Respondent No. 1.

(iii) A majority of the Company's liabilities remain unconfirmed by third parties, rendering their genuineness and accuracy incapable of verification.

4.15 A conjoint reading of the Order dated 25.01.2019 passed in CP No. 28/241(4)/242(4)/234(1)(b)/GB/2017, the pleadings along with annexures in CP No. 24/GB/2022, and the Board Minutes prima facie reveals illegal financial transactions, fraudulent conduct and financial mismanagement in the affairs of Respondent No. 1. The materials on record indicate that such acts have adversely affected the interests of the Company's creditors and stakeholders, thereby warranting an investigation under Section 213 of the Companies Act, 2013 to ascertain the true extent of the irregularities.

4.16 Respondent Nos. 2, 3 and 4 hold DIN Nos. 540171, 375004 and 374963, respectively. Their DINs remained inactive from 01.11.2018 to 31.10.2023 under Section 164(2) of the Companies Act, 2013. Despite such disqualification, they continued to function as Directors of Respondent No. 1, thereby attracting the provisions of Section 167(2) of the Act. Copies of the relevant MCA records are annexed as Annexures 1 to 3 to the written submissions.

4.17 It is well settled, as held by the NCLAT in ***RS Wind Energy Pvt. Ltd. v. PTC India Financial Services Ltd. (Company Appeal No. 15 of 2016),*** that while considering an application under Section 213(b), the Tribunal is only required to form a prima facie opinion on the basis of the materials placed before it, whereas the detailed collection and examination of evidence is the function of the Inspector during investigation. The materials on record sufficiently disclose fraud, financial mismanagement and other violations warranting an investigation.

4.18 The Hon'ble Supreme Court in ***Barium Chemicals Ltd. & Anr. v. Company Law Board & Ors. (AIR 1967 SC 295)*** has held that an investigation is exploratory in nature and does not restrict the Company's right to carry on its business, notwithstanding any incidental inconvenience or impact on its credit. Consequently, no legal impediment exists to the exercise of powers under Section 213(b) of the Companies Act, 2013.

4.19 The cumulative facts and circumstances establish that the respondents failed to exercise due care, diligence and prudence in managing the affairs of Respondent No. 1. Their delay, faulty planning, financial mismanagement and unauthorized transactions resulted in substantial losses and unnecessary liabilities, reasonably suggesting that the affairs of the Company were conducted fraudulently and in a manner prejudicial to the interests of the Company, its creditors and its members. These circumstances constitute sufficient grounds for directing an investigation under Section 213(b) of the Companies Act, 2013.

5. The Written Submissions filed by Respondents Nos. 2, 3, and 4, are reproduced and summarized hereunder. In the said Written Submissions, the following contentions have been raised:

5.1 Respondent No. 1 is a closely held family company, with its shareholding distributed among the family members of the three sons of Late Nandeswar Chakravarty, namely: (i) UPC Group – 42.5%; (ii) BPC Group – 28.8%; and (iii) TPC Group – 28.7%. The Company owned Madarkhat Tea Estate with its factory P.F Reg.No.E-112, Parbatipur Tea Estate P.F Reg.No.E-203 and Parbatipur Tea Estate P.F Reg.No.E-149. For decades, its affairs were managed by the UPC and BPC Groups, while the TPC Group had no role in its management.

5.2 The TPC Group, led by Mr. Shanta Prasad Chakravarty, instituted CP No. 28/241(1)/242(4)/234(1)(b)/GB/2017 alleging oppression and mismanagement. Pursuant to the Order dated 25.01.2019, this Hon'ble Tribunal granted the TPC Group proportionate representation on the Board and permitted the appointment of an Independent Director. Consequently, the Board was reconstituted by appointing Shanta Prasad Chakravarty, Madhu Sandhya Barkataki, Madhu Krishna Baruah and Ranjan Mukherjee (Independent Director).

5.3 Respondent No. 1 was facing severe financial distress and had no access to bank finance. Accordingly, the Board, in exercise of its powers under Article 91 of the Memorandum and Articles of Association, bona fide obtained loans from M/s Surya Tea Company and Shri Dindayal Verma to meet essential operational expenses, including payment of wages and procurement of agricultural inputs. Such commercial decisions, taken within the powers conferred by the Articles, are protected by the rule in *Foss v. Harbottle* and the doctrine of indoor management, and therefore do not warrant judicial interference.

5.4 The respondents further contend that the members of the UPC and BPC Groups resigned from the Board pursuant to a condition allegedly imposed by Mr. Shanta Prasad Chakravarty during a meeting with the Assam Chah Mazdoor Sangha (ACMS) on 18.04.2019 that he would finance the Company only upon the resignation of all the directors of the Board and the new Board is constituted according to him. Accordingly, Respondent Nos. 2 and 3 resigned on 26.04.2019 and Respondent No. 4 resigned on 18.08.2022.

5.5 Pursuant to the Tribunal's Order dated 25.01.2019, the management of Respondent No. 1 came under the control of the TPC Group and the answering respondents ceased to have any control over the affairs of the Company. The respondents contend that, despite this, the members of the TPC Group have not been impleaded in the present proceedings. It is further alleged that the subsequent attachment of the tea gardens and factory by the Assam Tea Employees' Provident Fund Organisation on 28.02.2022 and their sale by public auction on 30.12.2022 were consequences of the mismanagement of the TPC Group.

5.6 The applicant was appointed as an Independent Director on 03.05.2019 and remained in office until his resignation on 04.03.2022. During this period, he neither reported any alleged acts of mismanagement to any competent authority nor took steps to rectify the alleged irregularities. The respondents submit that the present petition, filed only on 08.07.2022 after the applicant's resignation, is barred by delay and laches, as equity does not assist a person who sleeps over his rights.

5.7 The respondents contend that the applicant has no locus standi to maintain the present proceedings. An application under Section 213(a) of the Companies Act, 2013 can be made only by shareholders, whereas an application under Section 213(b) requires circumstances prima facie suggesting fraud, misfeasance or misconduct. According to the respondents, the present petition discloses no such circumstances, and the applicant, being neither a shareholder nor a member within the meaning of Sections 2(55), 241 and 244 of the Act, lacks the statutory entitlement to seek the reliefs claimed. It is further submitted that the applicant is merely attempting to recover his alleged unpaid remuneration.

5.8 The respondents further submit that Respondent No. 1 is a closely held family company and, therefore, no question of public interest arises so as to justify an investigation under Section 213 of the Companies Act, 2013.

5.9 Lastly, it is submitted that following the public auction of the tea estates and factory by the Assam Tea Employees' Provident Fund Organisation on 30.12.2022, Respondent No. 1 has become defunct. Consequently, directing an investigation at this stage would serve no practical purpose and would merely be an academic or paper exercise.

6. **ANALYSIS AND FINDINGS**

6.1 We have heard the Learned Counsel appearing for the Applicant and the Learned Counsel appearing for the Respondents at length and carefully considered the Company Petition, reply affidavits, written submissions, documents and materials placed on record, the relevant statutory provisions and the judicial precedents relied upon by the parties. It is also pertinent to note that Respondent No. 1 was proceeded *ex parte vide* Order dated 09.11.2023. The Applicant has invoked the jurisdiction of this Tribunal under Section 213 of the Companies Act, 2013, principally seeking an investigation into the affairs of Respondent No. 1 Company and the conduct of Respondent Nos. 2 to 4, along with payment of his alleged outstanding remuneration as an Independent Director.

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 locus standi to maintain the present proceedings?

ii. Whether the allegations relating to the borrowings, alleged breach of fiduciary duties and financial mismanagement, considered individually or cumulatively, disclose circumstances warranting an investigation under Section 213 of the Companies Act, 2013?

iii. Whether the alleged participation of Respondent Nos. 2 to 4 in Board Meetings despite disqualification under Section 164(2) constitutes sufficient circumstance for directing investigation under Section 213?

iv. Whether the auditor's observations and alleged non-availability of books and records warrant investigation?

v. Whether the subsequent financial distress and auction of the Company's assets establish fraud or misfeasance?

vi. Whether the non-impleadment of persons who subsequently exercised control over the affairs of the Company affects the maintainability or merits of the present proceedings?

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 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 allegations relating to the borrowings, alleged breach of fiduciary duties and financial mismanagement, considered individually or cumulatively, disclose circumstances warranting an investigation under Section 213 of the Companies Act, 2013?

i. The Applicant alleges that Respondent No. 2, as Managing Director of Respondent No. 1, raised ₹33,50,000/- from M/s Surya Tea Industries and ₹72,59,500/- from Mr. Dindayal Verma without requisite Board approval, affixation of the common seal or compliance with the Articles of Association, and contends that the manner and timing of such borrowings indicate an intention to prejudice the Company and its creditors.

ii. The Respondents dispute the allegations of unauthorized or fraudulent borrowing and contend that the Company was facing severe financial distress, had no access to bank or institutional finance, and required funds for workers' wages, statutory liabilities and other operational expenses. They rely upon Article 91 of the Articles of Association and the Board proceedings to contend that the need for finance was considered by the Board. They have also relied upon unsecured financial assistance of ₹1,95,19,770.50/- allegedly provided by members of the UPC Group for protecting the Company's business and workers.

iii. The Applicant has relied upon the timing of the ₹33,50,000/- borrowing in relation to the Order dated 25.01.2019 and alleged that the Respondents failed to undertake any comparative analysis of lenders, interest rates or alternative sources of finance. However, such circumstances may at best raise questions regarding commercial prudence and, without further material, do not establish fraudulent intention or an intention to defraud creditors.

iv. The Applicant has also relied upon the alleged agreements relating to the borrowings of ₹33,50,000/- and ₹72,59,500/-. However, no sufficient independent material has been placed on record to establish the purpose and utilisation of the alleged loans, such as corresponding entries in the books of account, balance sheets or other supporting records. Further, no prima facie material has been shown to establish any wrongful gain to the Respondents, wrongful loss to the Company, or fraudulent or unlawful intention behind the borrowings.

v. The Applicant has further alleged breach of fiduciary duties under Section 166 and deficiencies in the Company's books, assets, operations and statutory records, including unsupported loans, investments and liabilities reflected in the Board Minutes. However, the absence of records or the need for verification of transactions, without more, does not by itself establish fraud, misfeasance or misconduct.

vi. The Company's financial distress, accumulation of liabilities and subsequent attachment and auction of its assets may demonstrate deterioration of its financial position, but cannot retrospectively establish that the Respondents deliberately created such circumstances with an intention to defraud creditors. A clear prima facie nexus between the alleged acts and the fraudulent purpose is required.

vii. At the stage of Section 213, the Tribunal is not required to conduct a full-fledged trial or conclusively determine disputed transactions; however, it must form the requisite prima facie opinion on the material available. The power of investigation cannot be invoked merely to discover whether some irregularity or fraud might ultimately be found. The principles in *RS Wind Energy Pvt. Ltd. v. PTC India Financial Services Ltd.* and *Barium Chemicals Ltd. & Anr. v. Company Law Board & Ors.* do not dispense with this statutory requirement of prima facie satisfaction.

viii. Upon considering the allegations relating to borrowings, fiduciary duties, accounting irregularities and financial mismanagement, individually and cumulatively, we find that the material on record does not disclose a sufficient prima facie nexus with fraud, misfeasance, misconduct, fraudulent or unlawful purpose, or an intention to defraud creditors or members. The statutory threshold under Section 213 is therefore not met, and the issue is answered against the Applicant and in favour of the Respondents.

III. Whether the alleged participation of Respondent Nos. 2 to 4 in Board Meetings despite disqualification under Section 164(2) constitutes sufficient circumstance for directing investigation under Section 213?

i. The Applicant has relied upon the minutes of the Board Meetings dated 29.12.2018, 27.02.2019, 16.03.2019, 09.04.2019, 26.04.2019, 13.07.2019 and 21.11.2020 to contend that Respondent Nos. 2 to 4 continued to participate in Board Meetings despite their alleged disqualification under Section 164(2) of the Companies Act, 2013.

ii. The Respondents have denied having knowledge of any such disqualification and contend that their participation in the Board Meetings, if any, was bona fide and without knowledge of the alleged statutory consequences. They further contend that they had duly resigned from the Company and that the requisite Form had been filed with the Registrar of Companies. They also contend that no competent authority had informed them of any such disqualification.

iii. Even if the participation of a disqualified person in a Board Meeting is assumed to constitute a statutory violation, such participation alone does not establish fraud, misfeasance, misconduct, or an intention to defraud the Company's creditors or members so as to warrant an investigation under Section 213.

iv. The Applicant has primarily relied upon the alleged participation of Respondent Nos. 2 to 4 in certain Board Meetings to infer fraudulent conduct. However, no specific fraudulent transaction or wrongful gain arising from such participation has been established. A clear nexus must exist between the alleged statutory violation and the circumstances contemplated under Section 213, which has not been demonstrated.

v. Accordingly, any statutory violation, if independently established before the competent authority, may attract consequences under the Companies Act, 2013. However, such violation, by itself, cannot constitute sufficient prima facie grounds for directing a comprehensive investigation under Section 213.

vi. Therefore, the alleged participation of disqualified Directors in the Board Meetings, without any further material indicating fraud, misfeasance or misconduct, does not by itself warrant an investigation under Section 213 of the Companies Act, 2013.

IV. Whether the auditor's observations and alleged non-availability of books and records warrant investigation?

i. The Applicant has relied upon the statutory auditor's observations regarding non-availability of records, deviations from accounting principles and doubtful transactions. The Applicant further alleges that the books of account and statutory records were not properly maintained or made available, resulting in financial statements that did not reflect the true and fair financial position of the Company. However, no letter or communication from the statutory auditor containing or specifying such observations has been annexed to the petition, and therefore, the actual observations made by the statutory auditor cannot be independently ascertained from the record.

ii. The Respondents have denied responsibility for the alleged non-availability of records and stated that Respondent Nos. 2 and 3 ceased to have control over the Company's affairs after their resignation. They further rely upon correspondence showing that, when the newly appointed statutory auditor sought information, Respondent No. 2 informed the then Managing Director that he did not have access to the Company's records and requested that the concerned employees and documents be made available.

iii. Although every company is required to maintain proper books of account and statutory records and prepare financial statements in accordance with law, the mere existence of auditor qualifications, adverse observations or inability to verify certain records does not, by itself, establish fraud or misfeasance by any particular Director.

iv. The Applicant has not specifically identified any fraudulent transaction reflected in the financial statements, the person who benefited from it, the loss caused to the Company, or how such transaction is attributable to Respondent Nos. 2 to 4. The allegation that the financial statements require recasting is primarily a matter of accounting verification and, by itself, does not satisfy the requirements for investigation under Section 213.

v. It is also relevant that the Respondents have disputed having control over the Company's books and records after their resignation and contend that, pursuant to the Order dated 25.01.2019, the management of the Company had substantially shifted to the TPC Group.

vi. In the absence of specific material connecting the alleged deficiencies in the books and accounts with fraudulent conduct, misfeasance or misconduct by the Respondents, an investigation cannot be directed merely to determine whether some irregularity may ultimately be found.

vii. Accordingly, the auditor's observations and alleged deficiencies in the maintenance or availability of records, particularly in the absence of the statutory auditor's letter or communication evidencing the specific observations relied upon by the Applicant and without specific prima facie material connecting them with fraud, misfeasance or misconduct on the part of the Respondents, do not warrant an investigation under Section 213 of the Companies Act, 2013.

V. Whether the subsequent financial distress and auction of the Company's assets establish fraud or misfeasance?

i. The Respondents have placed on record that attachment proceedings were initiated against the assets of Respondent No. 1 and that its factory and tea estate assets were subsequently subjected to public auction.

ii. The subsequent financial deterioration of the Company is undoubtedly a matter of concern. However, the mere fact that a company suffered financial distress, incurred liabilities, faced statutory recovery proceedings or ultimately lost its assets through auction cannot, in the absence of further material, by itself establish that its affairs were conducted fraudulently or that the persons concerned were guilty of misfeasance.

iii. For attracting Section 213 of the Companies Act, 2013, there must be a discernible causal nexus between the alleged acts of the Respondents and the circumstances contemplated under the said provision. On a consideration of the material placed before us, such nexus has not been satisfactorily established.

iv. The Respondents have placed a competing explanation before the Tribunal, contending that Respondent No. 1 was already facing severe financial distress and lack of institutional finance and that private borrowings were undertaken to meet its operational requirements. It has further been contended that the management of the Company subsequently passed to another group. In these circumstances, the subsequent financial failure of the Company and auction of its assets cannot, by themselves, be treated as conclusive evidence that the earlier borrowings or management decisions were fraudulent or constituted misfeasance.

VI. Whether the non-impleadment of persons who subsequently exercised control over the affairs of the Company affects the maintainability or merits of the present proceedings?

i. The Respondents contend that after the Order dated 25.01.2019, the composition and control of the Board substantially changed. Respondent Nos. 2 to 4 thereafter resigned from the Company. It is further contended that the members of the TPC Group, who thereafter controlled the Company, have not been impleaded in the present proceedings

ii. The petition cannot be dismissed solely on the ground of non-joinder, particularly as the relief sought is an investigation into the affairs of the Company. However, the subsequent change in management is relevant in determining whether the allegations against the present Respondents have a sufficient nexus with the Company's subsequent financial and operational condition.

iii. Although the Applicant has attributed continuing deficiencies in the Company's affairs to Respondent Nos. 2 to 4, the composition and control of the Board had admittedly changed. In the absence of specific material showing that the alleged continuing deficiencies were attributable to the Respondents during the relevant period, such allegations cannot constitute sufficient circumstances for ordering an investigation against them.

6.6 It is also significant to note that the Applicant served as an Independent Director of the Company from 03.05.2019 to 04.03.2022. Although he claims to have raised certain concerns during his tenure, no contemporaneous material has been placed on record to substantiate such assertion and nor any material has also been produced to show that he invoked any statutory remedy or initiated proceedings upon becoming aware of the alleged fraud or misconduct. The present proceedings were instituted only after his resignation and are accompanied by a claim for 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 warranting an investigation under Section 213.

6.7 The circumstances placed on record indicate that the Company subsequently faced financial difficulties, underwent changes in management, raised private borrowings and had certain deficiencies in the maintenance or availability of records. The immovable properties of the Company were also subjected to recovery proceedings, pursuant to which an Order of Attachment of Immovable Property was passed on 28.02.2022 by Office of The Recovery Officer OF Assam Tea Employees Provident Fund Organization. Thereafter, an E-Auction Sale Notice was issued on 28.11.2022 by the Provident Fund Authorities pursuant to the said recovery proceedings and the Company was ultimately sold on 30.12.2022. These developments demonstrate the deteriorated financial condition of the Company and the recovery proceedings initiated against it; however, they do not, by themselves, establish fraud, misfeasance or misconduct warranting investigation under Section 213.

6.8 The Respondents have furnished explanations regarding the borrowings, the financial difficulties faced by the Company, their subsequent resignation from the Board and their alleged lack of control over the Company's affairs and records. However, the Applicant's allegations regarding the alleged disqualification and participation of Respondent Nos. 2 to 4 in Board Meetings, private borrowings, accounting deficiencies, non-availability of records, alleged breach of fiduciary duties and subsequent financial distress, whether considered individually or cumulatively, do not by themselves establish fraud or misfeasance. The question before us is whether the Applicant has placed sufficient prima facie material to justify the exercise of the exceptional jurisdiction under Section 213, which, in our considered view, has not been demonstrated.

6.9 On consideration of the material on record, we find that the allegations substantially require further inferences to be drawn from the existing documents and do not identify specific transactions or acts which, prima facie, establish fraudulent intention, fraud, misfeasance or misconduct on the part of Respondent Nos. 2 to 4. The jurisdiction under Section 213 cannot be invoked merely on the possibility that further investigation may reveal some irregularity; the circumstances already placed before the Tribunal must reasonably suggest the existence of the statutory grounds contemplated under the said provision.

6.10 Upon considering the allegations and material on record, both individually and cumulatively, we are of the view that the Applicant has failed to establish sufficient prima facie circumstances warranting an investigation into the affairs of Respondent No. 1 or the conduct of Respondent Nos. 2 to 4 under Section 213 of the Companies Act, 2013. This finding is confined to the exercise of jurisdiction under Section 213 and shall not be construed as a final determination on the correctness or otherwise of any individual transaction, accounting entry or allegation raised by the Applicant. 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/24/GB/2022** filed by the applicant is **dismissed**.
2. Accordingly, the Company Petition i.e. **CP/24/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 and the Interim Resolution Professional.
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/-	**Sd/-**
Yogendra Kumar Singh	**Rammurti Kushawaha**
Member (Technical)	**Member (Judicial)**

Signed this on 21st day of August, 2026

Niketa Choudhary (L.R.A.)