(2026) 08 CAL CK 1167

In the Calcutta High Court

Case No : IA NO. GA/1/2026 IA NO. GA/2/2026 IA NO. GA/3/2026 IN CS/40/2026

Hindusthan National Glass And Industries Limited — APPELLANT

Vs

Amit Das And Others — RESPONDENT

Date of Decision : 03-08-2026

Acts Referred:

Insolvency and Bankruptcy Code, 2016 — Section 31, 36, 36 (4) (iii)
Code of Civil Procedure, 1908 — Order 39 Rule 3, XXXIX Rule 3, Section 80, XXXIX Rule 4, VII Rule 11(a), 94
Companies Act, 2013 — Section 212, 211
Employees' Provident Funds and Miscellaneous Provisions Act, 1952 — Section 17(5), 16, 17, 18, 36, 7A, 13, 7A(1), 13(2)
Indian Penal Code — Section 1963, 228, 196
Code of Criminal Procedure
Evidence Act, 1872 — Section 45
Bharatiya Sakshya Adhiniyam, 2023 — Section 39

Citation : (2026) 08 CAL CK 1167

Hon'ble Judges : Arindam Mukherjee, J

Bench : Single Bench

Advocate : For the Plaintiff : Mr. Jishnu Saha, Sr. Adv., Mr. Sakya Sen, Sr. Adv., Mr. Rishav Banerjee, Adv. Mr. Ishaan Saha, Adv., Mr. Shiv Ratan Kakrania, Adv. Mr. Tanuj Kakrania, Adv. Ms. Kiran Sharma, Adv., Ms. Shreya Goenka, Adv., Ms. Surabhi Mehta, Adv. Ms. Shadma Manzar, Adv. For the Defendant No.1 : Mr. Biswaroop Bhattacharya, Adv., Mr. Arik Banerjee, Adv., Mr. Shourjyo Mukherjee, Adv. Mr. Biswaroop Acharya, Adv., Ms. Neelanjana Ghorui, Adv., Ms. Anusmita Bhattacharya, Adv. For the Defendant No.2 : Mr. Ratnanko Banerji, Sr, Adv., Mr. Shaunak Mitra, Adv., Ms. Urmila Chakraborty, Adv. Mr. Pujon Chatterjee, Adv. For the Defendant No.3 : Mr. S. N. Mookerjee, Sr. Adv., Mr. Anirban Ray, Sr. Adv., Mr. Shaunak Mitra, Adv. Mr. Dhruv Chaddha, Adv., Ms.Urmila Chakraborty, Adv., Mr. Tanish Ganeriwala, Adv., Ms. Yamini Mookherjee, Mr. Arjun Ray, Adv., Mr. Pujon Chatterjee, Adv. For the Defendant No.4 : Mr. Anuj Singh, Adv., Mr. Pujan Chatterjee, Adv., Mr. Soumabho Ghosh, Adv., Mr. Sutosom Bhattacharyya, Adv. For the Defendant No.5,6,7 and 8 : Mr. Anindya Kumar Mitra, Sr. Adv., Mr. Soumya Majumder, Sr. Adv., Mr. Puspal Chakroborty, Adv., Mr. Victor Chatterjee, Adv., Ms. Sanjukta Dutta, Adv., Mr. Aman Agarwal, Adv. For the Defendant No.9 : Mr. Jishnu Choudhury, Sr. Adv., Mr. Vikram Wadehra, Adv., Mr. Yubaraj Bhattacharyya, Adv. For the SFIO : Mr. Dhiraj Kr. Trivedi, Ld. ASG, Ms. Aparna

Banerjee, Adv., Mr. Tirtha Pati Acharyya, Adv., Mr. Pushpendra Kumar, Sr.P.P Ms. Anupriya Sengupta,Adv., Mr. Irshad Ahmed, Adv. For the Respondents No.13 : Mr. Ritzu Ghoshal, Sr.Adv., Mr. Sankarsan Sarkar, Adv., Mr. Shayak Mitra, Adv., Ms. Shreyashi Maity, Adv.

Final Decision : Dismissed

Judgement

Arindam Mukherjee, J:

1. In a suit for money claim with relief for declaration and injunction instituted on 11th June, 2026, the plaintiff has taken out an application being G.A.7 of 2026 inter alia for injunction. The application was moved ex parte on June, 16 2025 when an ad interim order was passed which was subsequently corrected on 18th June, 2026. The defendant no. 3 and defendant nos. 5 to 8 have taken out their respective vacating applications being G.A. 2 of 2026 and G.A.3 of 2026.

Brief Facts:

1. The Plaintiff company, Hindustan National Glass & Industries Limited (HNGIL), is currently under the management of Independent Sugar Corporation Limited (INSCO) following a successful resolution process under the Insolvency and Bankruptcy Code, 2016 (IBC) approved by an order dated 14th August, 2026 passed by the National Company Law Tribunal (in short, "NCLT")

2. Prior to this takeover, HNGIL operated an Exempted Provident Fund through a trust known as the 'HNG Group Companies Provident Fund Institution' for its employees. (hereinafter for the sake convenience referred to as the said Trust).

3. Upon assuming control of the plaintiff company in September 2025, the new management conducted an internal review and audit with regard to the said Trust. This investigation said to have revealed massive financial irregularities perpetrated by the erstwhile trustees (Respondents 2-8) and a former employee of HNGIL (Respondent 1). On the basis of the above facts, the plaintiff company instituted the suit and filed an injunction application therein. The facts pleaded in the plaint and those alleged in the said injunction application persuaded this Court to hold that a prima facie, case has been made out by the plaintiff which was sufficient for passing on ex parte an ad-interim order of injunction dated 16th June, 2026 restraining the defendants from using the bank accounts and processing any transaction - against the Respondent nos. 1 to 8, 10, 11, 12 and the banks and financial institutions. Further, an investigation by Serious Fraud Investigation Office (in short, 'SFIO') was also directed. The plaintiff was further directed to comply with the provisions of Order 39 Rule 3 of the Code of Civil Procedure, 1908 (in short, 'CPC'). The order dated 16th June, 2026 was subsequently corrected by an order dated 18th June, 2026.

4. After service of the application, the defendant nos. 1 to 8 have appeared and opposed the continuance of the ad interim order dated 16th June, 2026 as

corrected by the order dated 18th June, 2026. The defendant nos. 3 has filed an application for vacating the order dated 16th June, 2026 as corrected by the order dated 18th June, 2026 being G.A. 2 of 2026 *intera lia* taking several grounds for the same. Although, the defendant no. 3 claims to have filed this application but on a perusal of the same, it appears to have been made also on behalf of defendant no. 2 and 4. The defendants no. 5 to 8 have also taken out an application for vacating the order dated 16th June, 2026 as corrected by the order dated 18th June, 2026 being G.A. 3 of 2026.

Submissions on behalf of defendant no. 1.

i. It is submitted by the defendant no. 1 that no copy of the application or the plaint has been served on the said respondents. The plaintiff, according to the respondent no.1, has failed to comply with the provisions of Order XXXIX Rule 3 of `CPC' despite there being a specific direction in the order and that the statute also mandates such service. It is, therefore, prayed by the defendant/respondent no.1 that the ad interim order of injunction passed on 16th June, 2026 as corrected by order dated 18th June, 2026 should be vacated. For non-compliance of a mandatory provision.

ii. In elucidating the objection regarding non-compliance of the provisions of Order XXXIX Rule 3 of CPC, the Respondent No. 1 has referred to the Judgment reported in (1993) 3 SCC 161 and 2025 SCC Online 1674. By relying upon the said two judgments it is submitted by the Respondent No.1 that the provisions of Order XXXIX Rule 3 of CPC is mandatory in nature as held by the Hon'ble Supreme Court. Only by serving a copy of the application will not amount to compliance with such mandatory provisions. The plaint has to be served separately from the application even if a copy of the plaint is annexed to the application as in the instant case.

iii. It is further submitted that assuming without admitting that on the plaint being annexed to the application amounts to compliance of the Provisions of Order XXXIX Rule 3 of CPC then also in the instant case, the plaint has been annexed without the annexures and as such there is no compliance of the mandatory provisions.

iv. It is also the case of the respondent no. 1 that the plaintiff has no cause of action as against the said respondent to file and maintain the suit. The plaintiff company through its present management after taking over the company appears to have conducted an audit of the accounts through an Auditor/ Chartered Accountant engaged by them. The documents on the basis whereof the said auditor formed his opinion is not known to the respondent no. 1. The present management of the plaintiff company has attempted to fasten liability on the Respondent No.1 on the basis of such documents but the same were not given to the said respondent to allow him to respond or contrive of and are also not disclosed with the application. The respondent no. 1 was never given an opportunity to give his comments in this regard, even after the auditors report was prepared. The Respondent No.1 refers to Page 863 being Annexure AG to this application appearing in Volume VII thereof and the corresponding pleadings in Paragraph 59 at Page 15 of the application in Volume I in this regard. The Respondent No.1, therefore, submitted that the ad interim order dated 16th June, 2026 as corrected by the Order dated 18th June, 2026 should be vacated.

Submission by Respondent no. 2.

a. It is submitted by the respondent no. 2 that the said respondent has been served with a copy of the application on 22nd June, 2026, but no copy of the plaint has been served. It is further submitted by the said respondent that even on merits the ex parte ad interim order dated 16th June, 2026 as corrected by order dated 18th June, 2026 is required to be discharged and/or vacated. The learned senior advocate representing the said respondent has drawn the attention of the court to various documents including the advice said to have been given by the learned advocate for the plaintiff to his client for filing the suit to demonstrate that there is no allegation as against the said respondent contained either in the plaint or in the application.

b. It is the case of the respondent no.2 who is incidentally one of the promoter of the plaintiff company, its director till the change in management and also the trustee of the exempted trust fund that there is no allegation that the money required to be deducted from the employees, staff and workers of the plaintiff company were not deducted or along with the employers' contribution was not deposited with the trust fund on regular basis as required under the statute. There is also no allegation that the employees, who had superannuated or in the case where their family members became entitled to the terminal benefits the same were not so paid. The resolution plan, so far as the provisions contained therein on being approved cannot be further questioned in a collateral proceeding unless an appeal has been preferred against the same. In the instant case the plaintiff has concealed the fact that an appeal challenging the acceptance of the resolution has been filed by the erstwhile management of the plaintiff company including the respondent no. 2 which is now pending before the National Company Law Appellate Tribunal, (in short, NCLAT) .

c. It is also the case of the respondent that at the present pursuant to the First Information Report (in short, FIR) having been lodged, there are two agencies; one who under the statute pursuant to the FIR is entrusted to investigate and the other in terms of the order dated 16th June, 2026 as corrected by the order dated 15th June, 2026. There may be a conflict in the process of investigation. Although, the respondent no. 2 is not feared to face the investigating agencies, yet that part of the order directing SFIO to carry out the investigation should be vacated for such reason. The respondent no.2 also draws attention to the averment in the plaint and the reliefs also to show that the plaintiff never came before the court for protecting the interest of the employees but to shield any liability that may have been fastened to the plaintiff pursuant to the take-over.

It is also the case of the respondent no.2 that despite specific direction in the order dated 16th June, 2026 the mandatory provisions of Order 39 Rule 3 of CPC has not been complied with. On that ground alone, the ex parte ad interim order is required to be vacated.

Submission by Respondent no. 3

A. It is submitted by the respondent no. 3 that the said respondent has already filed a vacating application being IA No. GA/2/2026 wherein apart from the merits, the said defendant/respondent has taken the plea of non-service of the plaint as one of the grounds for vacating the ad interim order dated 16th June, 2026 as corrected by order dated 18th June, 2026. The defendant no. 3 also objects to the supplementary affidavit filed by the plaintiff/petitioner being taken on record. It is the case of the said defendant that the issue of vacating or contriving of with the ad interim order shall be on the basis of the documents already on record and as such the supplementary affidavit of the plaintiff should not be considered at this stage.

B. In course of argument, the learned Senior Advocate for the respondent no. 3 has referred to paragraph 10A at page 19 of the supplementary affidavit filed by the plaintiff and then had referred to pages 27 and 29 of the said supplementary affidavit. By relying upon these documents, it is submitted by that prior to filing of the suit a specific criminal complaint on the selfsame allegations has been made on the basis whereof a First Information Report (in short, FIR) is said to have been registered. The complaint was made by one Rohit Agarwal, who has also verified the plaint and affirmed the instant application. The said Rohit Agarwal was aware of the complaint and as such ought to have disclosed such fact. Having not done so it is suppression of material fact for which the ad interim order should be set aside. Furthermore, once such FIR is registered it is within the purview of the authority to whom the complaint has been made to investigate into the same and bring it to a logical conclusion. The complaint made is based on the allegation of misappropriation and defalcation of trust fund. Since a competent authority is already in *seisin* of the matter SFIO is not required to be directed to further investigate. Moreover, according to the said respondent SFIO is empowered to investigate into the affairs of the company under Section 212 of the Companies Act, 2013 and not into the affairs of the trust fund which is independent and stands outside the ambit of the assets belonging to the company. Assuming without admitting that there has been a defalcation then also it is also submitted that the plaintiff’s money has not been defalcated for the recovery of which a civil suit like the instant one can be maintained that too during the pendency of the criminal case. The alleged defalcation, if any is in respect of trust fund to which the plaintiff has no right to seek recovery and as such the civil suit cannot be maintained on the basis of such allegations. Mr. Mookherjee thereafter placed paragraphs 64, 66 to 68 of the plaint to show the allegation on the basis whereof the plaintiff has come to Court and submitted that the same does not relate to either the respondent no. 3

or any of the trustees. It is further submitted that none of these allegations concern the respondent no.3, a managing trustee of the trust fund. There is also no allegation that the amount required to be deposited as per the provisions of the Employees' Provident Fund and Miscellaneous Provisions Act, 1952 (in short, PF Act) to the trust fund has not been deposited. There is also no allegation that the amount which fell due to an employee, staff or worker of the plaintiff company on his superannuation or death as retiral benefit or the terminal benefit have not been paid between 2021 to 2025. Mr. Mookherjee has also placed reliance on page 352 of the application in Volume-III thereof to draw the attention of the court to the financial statement contained therein to contend that no deficit far less defalcation of the trust fund has taken place. It is also the case of respondent no. 3 that records reveal that the assets of the trust far exceed its liabilities.

C. The respondent no.3 has further relied upon the resolution plan pursuant to which the order dated 14th August, 2025 was passed by NCLT. The said order is at page 190 (annexure-D – Volume-II of the application). Keeping side by side the resolution plan and the order dated 14th August, 2025, it was argued that the resolution plan submitted by the present management of the plaintiff company actually intended to extinguish the claims and/or dues of the employees, staff and workers of the plaintiff company, which on being approved becomes binding on the employees in view of the provisions of Section 31 of the IBC. The trigger date as contained in page 39 of the resolution plan has also been informed to the Court to give the date from which the present management has become liable for the PF dues. The suit has been filed to avoid any penal consequence against the present management of the plaintiff company for default in paying the statutory dues in the garb of allegations against the trust and the trustees which are untrue on the face of record. Referring to paragraphs 43, 45, 48 and 49, it is submitted by Mr. Mookherjee that there is no allegation as against the said respondent of having received any siphoned off money from the trust. No particulars of bank account of the respondent no.3 has also been provided alleging that money said to have been siphoned off from the trust fund has been parked into the said account. It is also the case of the respondent no.3 that the allegation regarding change of management of the trust fund during the pendency of CIRP also does not hold good in respect of the respondent no.3 as the said respondent was not present in the meeting dated 16th December, 2023 and his leave of absence was granted as specifically recorded in the minutes of the meeting which is at page 796, Volume-VI of the application.

D. Mr. Mookherjee has also referred to page 799 and annexure AA at page 815, annexure AD at page 844 and page 944 annexure AK to demonstrate that there is no allegation as against the respondent no.3 and as such the plaintiff has no cause of action to file and maintain the suit as against the said respondent. In that view of the matter, no interim or ad interim order can or could be passed against the respondent no.3. The order directing investigation by SFIO, however, acts as a prejudice to the interest of the respondent no.3 in the absence of any specific allegation against the said respondent and, as such, the said part of the order directory investigation by SFIO should be vacated or in the alternative the same for the time being should be stayed.

Submission by Respondent no. 4

I. It is submitted by the respondent no. 4 that that the ad interim order of injunction dated 16th June, 2026 as corrected by order dated 18th June, 2026 should be vacated in the facts and circumstances of the instant case. The respondent no. 4 further submits that there is no allegation as against the said respondent for siphoning out of funds. Referring to paragraphs 32, 34, 38 and page 754 of Volume-III of the application, it is submitted by Mr. Singh that the respondent no.4 was all along been shown and treated as an employee of the plaintiff company. As an employee, the respondent no.4 was entitled to get a car as per the prevailing scheme of the plaintiff company. The amount of Rs.35 lakhs alleged to have been taken away by the respondent no.4 was permitted by the said respondent as per a scheme of the plaintiff company by which a motor car was purchased and given to the respondent no. 4 as an employee. On repayment of the purchase price, the said car had become an asset of the respondent no. 4. The car was never a part of the asset of the plaintiff company or the trust and as such the question of taking away or retaining the same in an un-authorised manner cannot and does not arise.

II. It is also the case of the respondent no. 4 that assuming without admitting that the amount was not repaid under the scheme then also such fact and figure ought to have been shown in the resolution plan. It was not shown in the resolution plan as nothing was due. The resolution plan is a conclusive one and cannot be reopened in this proceeding by the plaintiff alleging the car to be an asset of the plaintiff company wrongfully taken away by the respondent no.4. It is also submitted by respondent no.4 that the said respondent was absent in the meeting held on 12th December, 2023 wherein the management of the trust was altered which, according to the plaintiff, is in violation of the statutory provisions during the pendency of CIRP. The leave of absence was specifically recorded in the minutes and as such the respondent no. 4 cannot be handed up for the same.

In the light of the aforesaid submissions and by adopting the submissions made on behalf of respondent nos.2, 3, 5 to 8 and respondent no.1, it is submitted by the respondent no.4 that the plaint discloses no cause of action as against the respondent no.4 and the plaintiff also does not have any cause of action to file and maintain the suit against the respondent no.3. in such situation no order, in interim or ad interim form, can be passed or continued against the respondent no.4.

Submission on behalf of Respondent no. 5 to 8

1. It is submitted by the respondent no. 5 to 8 that the application to which the plaint is annexed has been served, but the annexures to the plaint are not

annexed to the application. Assuming without admitting that service of the application with a copy of the plaint annexed thereto is substantial compliance of the provisions of Order 39 Rule 3 of CPC then also service of a copy of the plaint as an annexure to the application without the annexures of the plaint is not a proper service in compliance with the provisions of Order XXXIX Rule 3 of CPC. The ex parte ad interim order dated 16th June, 2026 as corrected by the order dated 18th June, 2026 is, therefore, liable to be vacated and/or discharged on that ground alone. It is further submitted, that no copy of the order has been served and, as such, his clients were unable to appreciate the scope of the order. Furthermore, on the facts of the instant case there is no necessity of passing of any interim order in favour of the plaintiff/petitioner.

2. On behalf of the Respondent Nos. 5 to 8, it is also submitted that the plaintiff has no cause of action as against either of the Respondent Nos. 5, 6, 7 and 8 inasmuch as the money of which defalcation is complained of is not the money of the plaintiff company. It is at the highest the money of the employees, staff and workers of the plaintiff company which was to be deposited with the trust fund in compliance of the statutory provisions. It is further submitted by the said Respondent Nos. 5 to 8 that if the money does not belong to the plaintiff, the plaintiff cannot have any grievance about its alleged defalcation or shortfall. The plaintiff, therefore, cannot file and maintain the suit. The Order dated 16th June, 2026 as corrected by the Order dated 18th June, 2026 as a consequence thereof, should be vacated on this ground alone.

3. The respondent nos. 5 to 8 submit that the relief claimed in the suit cannot be granted to the plaintiff. Assuming without admitting that the plaintiff has a cause as against the defendant nos. 1 to 14 then also the relief(s) claimed in the suit cannot be granted. By referring to prayer (a) of the plaint appearing at page 933 of the application and paragraph 67 of the plaint at page 928 of the application, it is submitted that the money claimed by the plaintiff does not belong to the plaintiff. The genesis of the money is deduction from the employees added to the employer's contribution towards the provident fund which is kept in a trust fund. The trust is a separate entity. The money in the trust fund is that of the employees, staff and workers of the plaintiff company. Once the money is deducted from the employees and with the employer's contribution is deposited in the trust fund, it loses the character of the money belonging to the plaintiff. Since the plaintiff is not entitled to the money, no relief as in prayer (a) on the basis of the pleading as in paragraph 67 of the plaint can be given to the plaintiff. Similarly, the prayer (b) read with paragraph 68 of the plaint cannot be also granted to the plaintiff. The allegation of the plaintiff is that the trustees have defalcated and/or swindled out money belonging to the plaintiff, is a completely incorrect statement on the face of the record. Assuming without admitting that the trustees have misappropriated the fund then also the said money can be recovered at the instance of the workers, staff and employees of plaintiff and has to be either put into the trust fund or with the balance money lying in the trust in case of the exemption being revoked is to be deposited with the provident fund

authorities and not to the plaintiff as claimed under any circumstances. The suit according to the respondent no. 5 to 8 also suffers from misjoinder and non-joinder of parties. The trust wherein the money was being deposited had several trustees which comprised of representatives of the employer and the employee. Neither the employer's representative nor the employees' representative have been made parties to the suit. Furthermore, the allegation as to misappropriation of fund spreads over from 2021-22 to 2025-26. During this period, several trustees have changed. All these trustees were required to be made parties but only some of them and not have been made so. Any action against the trust has to be against all the trustees. It is well-settled principle of law that an action where all the trustees have not been made parties to a suit like that framed in the instant case is bound to fail. The respondent nos. 5 to 8 has also referred to page 796 of the application to submit that Manoj Bhaskaran, who was admittedly a trustee, was not made a party to cite as instance of non-joinder of parties. No interim order in aid of the reliefs claimed in the suit, for the reasons aforesaid, according to the respondent nos. 5 to 8 can or could be passed in favour of the plaintiff.

4. The respondent nos. 5 to 8 also submit that the plaintiff has not only suppressed the material fact but has given an incorrect picture of the fact regarding cancellation of the exemption granted to the trust. By referring to the provisions of the Employees' Provident Fund and Miscellaneous Provisions Act, 1952 (in short 'PF Act'), it is submitted that the exemption is granted by the appropriate government. The appropriate government in the instant case is the central government who granted the exemption by issuing a notification. A notification dated 11th January 2011 is placed before the Court to demonstrate that the central government had given the exemption. It is also the case of the respondent nos. 5 to 8 that the exemption, if had to be cancelled, can only be done by the central government on issuing a further notification. The PF authorities or any other authority not being the central government can cancel the same. No such cancellation has taken place as yet and as such, the question of passing an order treating the exemption to have been cancelled, cannot be passed or be continued.

5. The respondent nos. 5 to 8 also submit that no suit at the instance of the plaintiff can or could be maintained inasmuch as the right to take any action against the trustees if at all, is with the PF authorities in case of defalcation or misappropriation of fund. The veracity of the allegation is required to be scrutinized by the PF authorities to find out whether the plaintiff as the employer had deposited the correct amount from time to time as per the statutory provision. Unless the ascertainment takes place, it cannot be said that the plaintiff company as the employer had deposited the correct sum and that such sum has been misappropriated by the trustees. The respondent nos. 5 to 8 also submit that while approving the Resolution Plan the NCLT was informed by the PF authorities that a sum of Rs.5,27,500/-was the shortfall amount. By an order passed by the NCLT in the application of the PF authorities, the said sum of

Rs.5,27,500/- had been made over to the PF authorities and as such, there is no further dues. Moreover, the case that the plaintiff is trying to run is contrary to the record as in the Resolution Plan there has been no amount shown to be due from the trustees to the plaintiff company whom the plaintiff company was under CIRP. The respondent nos. 5 to 8 has also referred to the provisions of Section 36 of the IBC in this regard. It is also the case of the respondent nos. 5 to 8 that no order for investigation by the SFIO can or could have been passed in the facts of the case. There is no pleading or prayer for such a relief. In absence of pleading and specific claim, no order in aid of the final relief claimed in the suit, can or could be passed at the interlocutory stage. The respondent nos. 5 to 8 refers to Section 212 of the Companies Act, 2013 to demonstrate that only the central government on the happening of certain events can direct investigation by SFIO. The Court is not empowered to do so. The Court can in an appropriate 6 case request the central government to enquire and if necessary, direct investigation through SFIO, provided such pleading is made and relief is claimed in the suit. The suit is also bad as no notice under Section 80 of the Code of Civil Procedure, 1908 (in short, CPC) had been issued to PF authorities though they have been impleaded as a party defendant. In the light of the arguments advanced, the respondent nos. 5 to 8 submit that the interim order dated 16th June, 2026, as corrected by the order dated 18th June, 2026 should be vacated.

Submission on behalf of respondent no. 9.

It is submitted that the respondent no. 9 was the Resolution Professional (in short, RP) appointed by the National Company Law Tribunal (in short, `NCLT), Kolkata Bench. The said respondent is neither a necessary nor a proper party to the suit. Although no orders have been passed against the said respondent but the said respondent prays and further intends to make an application for expunging his name from the array of the defendants.

Submission on behalf of respondent no. 13.

On behalf of the respondent no.13, it is submitted that the said respondent was engaged as the statutory auditor of the plaintiff company for the years 2018-19, 2019-20, 2021-22 and 2024-25. The statutory auditor (respondent no.13) did not personally visit the office of the Provident Fund Authorities to scrutinise the records. The statutory auditor also did not personally go and scrutinise the accounts at the premises of the plaintiff but only acted on the basis of the particulars, documents and accounts provided by the plaintiff which was collected by his team and scrutinised at the office of the statutory auditor. The statutory auditor, therefore, claims to be neither a necessary nor a proper party to this proceeding. No order can or could be passed against the said statutory auditor. It is further submitted that the name of statutory auditor be deleted and/or expunged from the array of defendants.

Submission on behalf of respondent no. 15.

On behalf of the respondent No. 15 it is submitted that the said respondent has been served with the copy of the application. The learned Advocate, however, on instruction submits that the second volume of the application has not been served on her client. However, in compliance with the order dated 16th June, 2026 as corrected by order dated 18th June, 2026, the said bank has stopped operation of the accounts as also passed necessary directions so that the securities, if any of the respondent no. 1 to 8 are not dealt with.

Submission on behalf of respondent no. 31.

It is submitted on behalf of the respondent No.31 and submits that no relief has been claimed against the said respondent. In the order there is also no direction upon them.

Submission on behalf of respondent no. 36.

It is submitted on behalf of the respondent No.36, the Employees Provident Fund Organisation (in short, 'EPF') submits that the plaintiff had on 16th June, 2026 as recorded in the order had made an incorrect submission. The trustees of the Exempted Provident Fund Trust of the plaintiff company did not deposit the amount as required under the provisions of Section 17(5) of the Employees Provident Fund and Miscellaneous Provisions Act, 1952 (hereinafter referred to as the PF Act) read with condition No. 28 of Para 27AA of the Scheme framed under the PF Act. Despite the exemption being recalled by the appropriate Government, it is also the case of the said respondent that only after the present management of the plaintiff company corresponded with the EPFO authorities it came to the notice of the EPFO authorities that there has been a deficit/shortfall in the funds required to be deposited towards employees contribution along with the employers contribution for the financial year 2025-2026 and for a further period of one month. It, however, appears that EPFO authority has taken no steps as against the trustees for having not complied with the provisions of Section 17(5) of the PF Act.

In course of argument, the PF authorities have relied upon the following judgments :

i. ***[1998] 6 SCC 35; (Jiyajeerao Cotton Mills Employees' Provident Fund Institution v. Dev Kumar Holani & Ors.)***

ii. ***[2025] SCC OnLine Bombay 1754; (Dalmia Cement (Bharat) Ltd. & Ors. v. Central Board of Trustees, Employees Provident Fund Organisation.)***

By relying upon paragraph 9 of *Jiyajeerao Cotton Mills Ltd. [supra]* it is submitted by learned advocate representing the PF authorities that the Hon'ble Supreme Court while considering the scheme of 1952 along with the amendments thereto did not hold that the scheme is *ultra vires* to any statutory provision. The only finding of the Hon'ble Supreme Court is that the amendments to the scheme are required to be notified which has been subsequently done by an order published by the concerned Ministry. The learned advocate for the PF

Authorities has also placed before the court an order of the Government of India, Ministry of Labour and Employment dated 5th April, 2016 to contend that the exemption was extended in terms of paragraph 27A of the 1952 Scheme to the plaintiff company with effect from 04.02.2005. a copy of such order is taken on record.

By referring to Dalmia Cement it is submitted by PF authorities that as late as in 2025 the Division Bench of the Bombay High Court did not find any infirmity or anomaly in the provisions of the scheme to hold that the same are not binding. It is further submitted by PF authorities that in view of such legal position clause 29 of Appendix A to the 1952 scheme is binding. Once there has been a transfer of any nature the exemption stands withdrawn or revoked.

However, the fact remains that no notification has been placed by the PF authorities withdrawing or revoking the exemption though the exemption was granted by way of a notification which has been relied upon by respondent nos.5 to 8.

It is further submitted by respondent no. 36 that The PF authorities have placed before Court the print out of Form RM-2 being the annual audited returns of the trust fund filed with such authority wherein the employers' and the employees' contribution as per the provisions of the Employees' Provident Fund Miscellaneous Provisions Act, 1952 (in short, PF Act) were to be deposited in respect of the plaintiff company. By submitting five such returns received by the PF authorities on different dates of December, 2023 which are taken on record it is submitted that there was no shortfall in the amount required to be deposited as per the provisions of PF Act with the trust fund till the financial year 2023-24. The only deficit was the surcharge amount which has been recorded pursuant to orders of National Company Law Tribunal (in short NCLT). It is further submitted by the PF authorities that until returns for the financial year 2024-25 and 2025-26 are not submitted and the details of the accounts relating to the trust fund showing the amount deposited are not provided, it will not be possible for the PF authorities to comment whether there has been any shortfall or deficit subsequent to the financial year 2023-24. It will also not be also possible for the PF authorities in such facts and circumstances to assertively say as to whether there has been any siphoning of fund from the said trust account which can only be computed if there is any difference between the money now lying in the trust fund and the money with interest that should be in the trust fund on the date of take over is noticed. It is also the case of the PF authorities that in terms of paragraph 27AA and clause 16 and 29 of Appendix A of the Scheme of 1952 the exemption granted to the plaintiff company for depositing the employees' and employers' contribution as per the statutory provisions with the exempted trust fund automatically stands revoked once there has been an acquisition or transfer of any kind. In the instant case, the plaintiff company on being taken over by another entity in terms of the resolution plan approved by the NCLT under the provisions of Insolvency and Bankruptcy Code, 2016 will amount to acquisition or at least a transfer of any kind. This will automatically attract the provisions of clause 16 and 29 of Appendix A read with paragraph 27AA of the 1952 Scheme for which the funds lying with the trust are required to be transmitted to the Employees' Provident Fund Organisation (in short, EPFO) in terms of the statutory provisions. The money lying with the trust on having not been transmitted to the EPFO is clear in violation of the statutory provisions. It is the further case of the PF authorities that the employer is liable for any deficit or shortfall in the amount which was required to be deposited after deduction with such trust fund along with applicable interest and penalty co-extensively with the trustees and the trust.

On behalf of PF authorities provisions of Sections 16, 17 and 18 of the PF Act has also been placed before this court to elucidate the responsibility of the employer and that of the trust apart from a writ petition filed by the plaintiff company before the High Court at Punjab and Haryana which has now been withdrawn by the present management of the plaintiff company.

It is also the case of the PF authorities that there has been financial loss for consecutive 10 years from 2012-2013 which is evident from the report of a third party auditor engaged by the PF authorities. A copy of the said report has been placed before the Court is taken on record. The report also suggests that the exemption should have been withdrawn with effect from 1st April, 2015. It is the further case of the PF authorities that serious fraud has been committed in this matter and as such the order of investigation by SFIO is not only justified but should be continued. The PF authorities also say that the ad interim order dated 16th July, 2026 as corrected by the order dated 18th June, 2026 should not be vacated as any money which may be found to be siphoned off cannot be received and will cause serious detriment to the interval of the employees of the plaintiff company.

Submission on behalf of the plaintiff.

It is submitted by the plaintiff that admittedly the copy of the plaint is annexed to the interlocutory application. It is also the case of the plaintiff that the defendants/respondents have been made aware that a suit has been filed. It cannot, according to the plaintiff, therefore be contended that the defendants/ respondents were not aware about the statements made in the plaint. The annexures to the plaint are separately annexed to the application and, as such, it cannot also be said that the defendants/respondents were not aware or could not look into the annexures to the plaint for making submissions. It is an admitted position that a copy of the application has been served along with the copy of the plaint annexed thereto. It may be correct that the plaint has not been separately served but there has been substantial compliance of the provisions of Order 39 Rule 3 of the Code of Civil Procedure, 1908 (in short, CPC) and, as such, the order should not be vacated on such ground as contended by the defendants/ respondents. It is further submitted that there has been no suppression of any material fact. The allegation made by the respondents that the particulars of the police complaint were not disclosed in the plaint though the suit was instituted subsequent to the registration of FIR does not hold good if the events are chronologically taken note of. The plaint was verified and affirmed so as the application, on 8th June, 2026. On the same day the police complaint was lodged at around 4.30 pm with the police station which will be evident from the endorsement on the receipt copy annexed to the supplementary affidavit filed in this application. The police complaint and the FIR were made and registered after affirming the plaint. By referring to paragraph 61 it is submitted that a clear indication has been given in the plaint that the plaintiff shall rely upon the FIR or any complaint that may be made as the plaint was contemplating to make such complaint. There is, as such, no suppression of fact far less suppression of material fact.

In course of argument, the plaintiff has further made the following submissions:

The First Information Report (in short, `FIR') in terms of the complaint made by the plaintiff on 8th June, 2026 was registered on 18th June, 2026 i.e. subsequent to institution of the suit by presenting the plaint and passing of the order dated 16th June 2026 and 18th June, 2026. In this regard the plaintiff has referred to page 63 of the supplementary affidavit in support of the date and time when the FIR was registered. The plaintiff says that neither the fact of making of the complaint nor the registration of the FIR can or could have been included in the plaint due to their respective filing and/or registering dates and time since the plaint and petition were verified and affirmed on 8th June, 2026. The FIR was, in fact, registered after the initial order dated 16th June, 2026 was passed which was corrected by the order dated 18th June, 2026. The plaintiff at the earliest opportunity has brought such facts to the notice of the Court by filing the supplementary affidavit which was affirmed on 30th June, 2026, apart from making a statement in the plaint which demonstrate the fact that the plaintiff was contemplating to make a complaint. There is, as such, no suppression of any fact far less material fact which requires the ad interim order of injunction to be discharged and/or varied under the provisions of Order XXXIX Rule 4 of the Code of Civil Procedure, 1908 (in short, `CPC').

The plaintiff then submits that the contention of the respondent nos. 1, 2,3 and 5 to 8 that the plaintiff does not have any cause of action to file and maintain the suit or the plaint does not disclose any cause of action is untenable apart from the fact that there is no application for rejection of plaint on such ground. On a holistic reading of the plaint it will appear that the plaintiff company being an "establishment" under the Employees' Provident Funds and Miscellaneous Provisions Act, 1952 (in short, `PF Act') was granted the exemption for maintaining the trust fund for the purpose of depositing the employees contribution after deducting the same as per the provision of PF Act along with the employers contribution and other statutory charges as applicable. In the event there is a shortfall in the amount required to be deposited in the trust fund as per the statutory provision it is the liability of the plaintiff as the employer and an “establishment” under the PF Act to make good such shortfall along with the applicable interest and penalty as per the statutory provisions. The plaintiff, therefore, remains liable to the employees as also the PF authority and the appropriate Government who had granted the exemption to the plaintiff company. The plaintiff then says by referring to page 796 that the defendant nos. 5, 6,7 and 8 continued to remain as trustees along with the defendant Nos. 2, 3 and 4 even after reconstitution that took place on 16th December, 2023. The said defendants, therefore, cannot absolve their responsibility and liability as trustees just by contending that there is no shortfall without giving the amount which is now lying with the trust fund or was there with the trust on the triggered date from which the Resolution Plan approved by the National Company Law Tribunal (in short, `NCLT’) in respect of the plaintiff company become operated. The pleadings in paragraphs 61, 63 and 64 of the plaint according to the plaintiff clearly disclose the reasons for which the plaintiff has come to Court.

The respondent Nos. 1, 2, 3 and 5 to 8 according to the plaintiff in course of their submissions have not denied or disputed their involvement with the trust. They have also submitted that there has been no default in depositing the money with the trust fund but none of them have come forward to show the amount presently lying with the trust fund though the respondent Nos. 2 to 8 even after reconstitution of the trust in 2023 continued to remain to be the trustees. The balance-sheet of the trust which has been shown to contend that there is no shortfall in the trust fund and that the asset of the trust exceeds its liabilities is dated 16th March, 2026. Subsequent thereto on audit as stated in the plaint was conducted wherefrom the plaintiff has come to know of the shortfall of over Rs.20 crores in the trust fund. In course of tracing out such deficit, the plaintiff has come to know about money belonging to the trust lying with the defendant No.1 and the trustees being the defendants Nos. 2 to 8, the particulars whereof as far as available to the plaintiff as on the date of filing the plaint has been provided. Further details which came to the notice and knowledge of the plaintiff have been included in the supplementary affidavit affirmed on 30th June, 2026. The plaintiff then refers to notice of revocation of exemption dated 15th April, 2026 appearing at pages 289-290 of Volume-III of the petition to submit that the Ministry of Labour and Employment, Government of India through the Regional Provident Fund Commissioner-1, EPFO Regional Office, Howrah, has revoked the exemption and have directed the plaintiff company through its present Directors to deposit the entire money lying with the exempted trust fund with the Office of the Employees’ Provident Funds Organization, (in short, `EPFO’). This notice in itself has given rise to a cause of action in favour of the plaintiff. The plaintiff has to deposit the entire amount which has been deducted from the employees as per the provisions of the PF Act along with the employers’ contribution and other charges. If there is any shortfall in such deduction or deposit, the same has to be made good by the plaintiff. The PF Authorities in course of their submissions have produced audited returns of the trust fund till 2023-2024. There is no audited document in respect of the financial years 2024-2025 and 2025-2026. Any shortfall for these periods has to be accounted for by the plaintiff as the employer. The plaintiff, therefore, is entitled to collect the deposit or have the shortfall collected and deposited with the EPFO failing which the amount has to be paid by the plaintiff. The Resolution Plan approved by the NCLT in view of the provisions of Section 36 of the PF Act has not taken into consideration the provident fund dues. The plaintiff, therefore, due to misdeeds of the trustees will be saddled with the liability of shortfall in the deposited money. The plaintiff, therefore, is entitled to proceed against the respondent nos. 1 to 8 who were admittedly trustees during the financial years 2024-2025 and 2025- 2026 or beneficiaries thereunder. This is plaintiff's cause of action which is clearly stated in the plaint. It is therefore, incorrect to allege that the plaintiff has no cause of action or the plaint discloses no cause of action. The plaintiff also says that the arguments advanced by the respondent nos. 1,2,3,4 and 5 to 8 are technical in nature to confuse the Court if possible in a desperate attempt to avoid the rigors of being proceeded with. The plaintiff also says that the order of appointing Serious Fraud Investing Office (in short, `SFIO') is also justified in the facts and circumstances of the instant case. In this context the plaintiff has relied on a judgment reported in ***2023 SCC OnLine Del 8197 (R.K. Gupta and Others-Versus- Union of India Through Ministry of Corporate Affairs and Another)*** to further contend that in an appropriate case even if it is not prayed the hands of the Court are not fettered to appoint SFIO since it can be appointed to investigate by the appropriate Government. The plaintiff further says that "affairs of the company" as provided under Section 212 of the Companies Act, 2013 cannot be given a restrictive meaning particularly in the facts and circumstances of the instant case. The affairs of the plaintiff include the deduction and deposit of the employers contribution which is shown in the balance sheet of the company for each year and statutorily required to be deposited with the exempted trust, the exemption whereof has been granted to the plaintiff company as an establishment under the PF Act. The affairs of the trust though managed by the trustees some of whom are the Directors of the Company or employees representative as the custodian of the fund cannot be delinked from the affairs of the company. There is also no embargo on SFIO in investigating the matter even if a complaint has been lodged with the jurisdiction police authorities.

In reply the defendant no. 1 and 3 has submitted that the banks have frozen the accounts which are not part of the order dated 16th June, 2026 as corrected by the order dated 18th June, 2026. It is further submitted that freezing of these accounts are causing hardship to the wife and the children of the said respondents. On behalf of the respondent no.1 a chart is handed over showing four accounts maintained with IndusInd Bank Limited, the defendant no.19. On a perusal of the chart it appears that the first account bearing no.152006070400 is a Savings bank account maintained in the name of the defendant no.1. The second and the fourth account respectively bearing no.159007352466 and 201036334059 are in the name of Tania Das as the first account holder while

Amit Das, the defendant no.1 is a joint account holder. The bank account bearing no. 201036334059 appears to be an overdraft account while the other one bearing no. 159007352466 is a savings bank account. The bank account bearing no.158017475547 is a savings bank account with Ankita Das as the first account holder while the defendant no.1 is one of the joint account holders. It is submitted on behalf of the respondent nos.1 and 3 that apart from the bank accounts which are maintained only in the name of the defendant no.1, the operation of other bank accounts should be allowed.

The prayer for a specific direction as sought for by the defendants no. 1 and 3 to allow operation of the other bank accounts is opposed by the plaintiff. The Respondent No.1 has also submitted that the submissions made by the EPFO authority are not the reflection of true and correct fact. In this regard, the Respondent No. 1 has referred to an Order dated 14th August, 2025 passed by the NCLT in an application filed by the Provident Fund Authorities being IA/2002/2024.

It is submitted by the plaintiff that although the first bank account is exclusively in the name of the defendant no.1, the defendant no.1 is the joint account holders of the other accounts. One of the accounts being overdraft account cannot also form part of the dispute. Unless specific particulars of the accounts are provided by way of an affidavit, the Court should not take cognizance of this part of the submissions made on behalf of the respondent nos.1 and 3. On behalf of the IndusInd Bank, the respondent no.19 it is submitted that initially the account apart from that mentioned in Annexure ‘AK’ appearing at page 944 of the application was not frozen. The other accounts were frozen in view of letters issued to the bank. The bank has, however, not produced the letters to ascertain the background under which the other accounts were said to be implicated. These aspects will be considered at a subsequent stage when fuller and better particulars are available.

Points for consideration:

After hearing the respective submissions of the parties and considering the materials on record, the following points fall for consideration to decide as to whether the interim order dated 16thJune, 2026 as corrected by the order dated 18th June, 2026 should be continued or modified or vacated:

(i) Whether there has been compliance of the requirement of Order XXXIX Rule 3 of the CPC ?

(ii) Whether the plaintiff has a cause of action to file and maintain the suit ?

(iii) Whether the plaint discloses any cause of action ?

(iv) Whether jurisdiction of this Court is ousted in view of the provisions of the PF Act ?

(v) Whether the suit is barred for mis-joinder and non-joinder of necessary and proper parties ?

(vi) Whether there is any suppression of fact for which the ex parte ad interim order is required to be varied and/or discharged?

(vii) Whether investigation by SFIO can or could have been ordered or be continued ?

Discussion and Analysis:

Before taking up the aforesaid points for consideration, I find after considering the submissions made by the parties that the respondent nos.1 to 8 have made elaborate arguments to persuade this Court to vacate the interim order by pointing out the alleged flaws in the plaintiff's case without themselves trying to prima facie satisfy the Court that the allegation of defalcation or misappreciation of trust fund is false as the money deducted and depreciated are lying in the trust fund.

The defendant ns.3 and defendant nos.5 to 8 have respectively filed vacating applications being GA 2 of 2026 and GA 3 of 2026 but the said application also do not contain any document to show that this was the deduction from this number of employees, staff and workers and this is the employer's contribution and the same is lying with the trust fund. No attempt has been even made to show the facts and figures after the year 2022-2023 upon which PF authorities have admitted to have received the audited accounts. Although, the learned Senior Advocate for the defendant nos.5 to 8 insisted to record that the argument advanced by the said defendants was only restricted to vacating of the order and not for the purpose of arguing the vacating application but on a comparative analysis of the entire argument advanced by the defendant no.5 and the grounds of challenge summarised in paragraph 24 of their application being GA 3 of 2026 it is apparent that there subsists no further point in the said vacating application which requires to be considered separately. The same is the situation with the vacating application made by the defendant no.3 being GA 2 of 2026 (paragraph 23 thereof) which has been noted hereinabove. The said application being GA 2 of 2026 can also be construed to have been made on behalf of the defendant nos.2 and 4 from the statement made in paragraph 1 and the affidavit thereof.

In the above facts and circumstances, on the completion of the arguments it was made clear to the learned Senior Advocates/Advocates representing the parties that the vacating applications will be considered to have been heard in course of hearing of the plaintiff's injunction application being GA 1 of 2026 in which the defendant nos.1 to 8 have opposed the continuance of the interim order.

Analysis of point (i)

On the issue of compliance and/or non-compliance of the provisions of Order XXXIX Rule 3 of CPC, there is no dispute that the said provisions are mandatory in nature. The judgments cited by defendant no. 1 in this context also speaks of the same, however the ratio laid down therein has to be applied in the facts of the instant case. The object of the said provisions is to permit the defendant(s) to appear on the returnable date and oppose the ex parte ad interim order that may have been passed at the instance of the plaintiff(s) in a well-versed manner. The application and the plaint are, therefore, required to be served so that the defendants are not only put to notice about the institution of the suit but are made aware about the pleadings in the plaint and the averments in the application so that the defendant(s) can make appropriate submissions after considering the plaintiff's case in the plaint and in the application on the returnable date. The copy of the plaint is directed to be served under the said rules because it takes some time to serve a copy of the plaint along with the Writ of Summons by which time the hearing of the interlocutory applications may be concluded, particularly keeping in mind that the application may not contain all the facts of the plaint.

In the instant case, the allegations are that a copy of the plaint and the petition were not served beyond the timeframe provided under the said rule. The *ex parte* ad interim order was obtained on 16thJune, 2026 which was corrected on 18thJune, 2026 but the application was served after 24 hours from the date of the passing of such order. The second grievance is that a copy of the plaint has not been served.

After considering the submissions made by the plaintiff and the defendants it is an admitted position that a copy of the plaint is annexed to the interlocutory application which has been admittedly served on the defendant nos.1 to 8 who are opposing the same. The annexures contained in the plaint are not annexed as part of the plaint as a complete annexure to the application but the annexures to the plaint have been separately annexed to the application with corresponding pleading. The plaintiff, therefore, has made substantial compliance of the provisions of Order XXXIX Rule 3 of CPC. None of the defendants while opposing the application was found to have been taken by surprise while arguing the matter, on the contrary they have argued copiously. So far as the timeframe is concerned, it is correct that the copy of the application was served beyond the timeframe but on that ground alone the ad interim order cannot be vacated when a copy of the application has been served much before the returnable date. It was open to the defendants to ask for a complete set of the plaint once they received the copy of the application with a copy of the pliant annexed thereto without annexures. None of the defendants have done so. On the contrary, the defendants no. 1 to 8 strenuously argued for vacating the order on that ground alone.

Analysis of point no. (ii) and (iii)

On the ground of cause of action the pivotal argument of the defendant nos. 1 to 8 is that the money of which defalcation has been alleged is not the money of the plaintiff and as such the plaintiff cannot file and maintain a suit for recovery of the same even if defalcation has taken place. The money lying with the Trust according to defendant nos. 1 to 8 is that of the employees, staff and workers of the plaintiff company. The misappropriation of such money if at all can only be raised by the employees, staff and workers of the plaintiff company as they will be the only sufferer. Apart from that the PF Authorities can haul up the defendant nos.1 to 8 for having misappropriated the funds required to be maintained as per statutory provisions. The PF Authorities have been before the NCLT where they had alleged only of a shortfall of Rs.5,27,500/- towards surcharge payable as per statute which has been duly paid in terms of the orders passed by NCLT. There is, as such, no shortfall far less misappropriation of money as alleged by the plaintiff. Moreover, the PF Authorities have produced the audited balance-sheet of the Trust up to the Financial Year 2022-2023 and have clarified without any ambiguity that there was no short fall in the funds of the Trust. The Resolution Plan approved by NCLT also did not contain any stipulation as to the money owned by the defendants nos. 1 to 8 to the plaintiff. The allegation of the plaintiff regarding misappropriation or defalcation of trust fund, therefore, is bereft of any truth and should not be considered as per the defendants nos. 1 to 8. The plaintiff is not entitled to recover any money from the defendant nos. 1 to 8.

On a conjoint reading of various paragraphs of the plaint, it is also apparent, according to the defendant nos.1 to 8, that the plaint discloses no cause of action. The plaintiff has no right to sue and no relief as claimed by the plaintiff can be granted to it. Although, the ground that the plaintiff has no cause of action or that the plaint does not disclose any cause of action are grounds available under Order VII Rule 11(a) of the CPC for which the defendants are required to take out an application but these points were allowed to be urged and are considered since the vacating applications made by the defendant no.3 and defendant nos.5 to 8 contains this point on an elaborate manner.

On a plain reading of the plaint it is apparent that the plaintiff company went before the NCLT and underwent a Corporate Insolvency Resolution Process (in short CIRP). In the Resolution Plan submitted by the present management of the plaintiff (INSCO) there were stipulations as to an extinguishment of the claims of the staff, employees and workers of the plaintiff company as pointed out by the defendant no. 1 to 8 but the NCLT did not consider the same or gave any finding to that effect save and except kept the dues of the workers, employees and staff outside the purview of the Resolution Plan in view of the provisions of Section 36 (4) (iii) of IBC which specifically excludes such claims from the ambit of the Resolution Plan as a consequence thereof the Resolution Plan approved by NCLT has no binding effect under the provisions of Section 31 of IBC. The present management pursuant to the order dated 14thAugust, 2025 passed by the NCLT took over the plaintiff company as per the approved Resolution Plan and thereafter appointed auditors to find out the money lying with the Trust fund from which the benefits to the employees, staff and workers of the plaintiff company are to defrayed. Since the Resolution plan did not take in account the money lying in the trust fund, there was no embargo on the plaintiff company carrying out such exercise. In course of such audit, the auditors reported shortfall and apprehended defalcation. This prompted the plaintiff to proceed further to collect particulars and institute the suit for realising such money from the defendants no. 1 to 8 who were charged with such allegation. The defendant nos.1 to 8 in course of their lengthy argument have time and again tried to point out the lacunae of the plaintiff's case and its flaws but themselves did not come with any account to show that the amount which was deposited by the plaintiff company with the Trust is lying with the Trust and there has been no misappropriation or defalcation. This was also not an impossible task as the audited balance-sheet for the financial year 2022-2023 was available and has been submitted with the PF Authorities which has also been produced by the PF authorities. It is clear from such audited accounts that there is a no shortfall till up to 2022-2023. Only the final position for 2023-2024 and 2024-2025 and 2025-2026 up to August, 2026 was required to be placed before the Court and explained. It may be correct that the assets of the Trust exceeds the liabilities but that does not give right to any of the trustees or those associated with the Trust to siphon out money. The prima facie case of the plaintiff that the auditors have reported defalcation of trust fund which gives rise to a cause in favour of the plaintiff to recover such money was not even attempted to be dislodged. It is a different issue whether the plaintiff is entitled to get back the money or a decree in favour of the plaintiff if it is ultimately found that the trust fund is misappropriated. An enquiry, therefore, is prima facie necessary to find out the veracity of the plaintiff's allegation. It cannot be contended at this stage that the plaintiff has no cause of action or the plaint does not disclose any cause of action in absence of any prima facie cogent material from the side of the defendant nos. 1 to 8 dispelling the allegations outrightly. At the end of the day it is the plaintiff company who is "establishment" under the PF Act to whom the exemption has been granted. The trust may be a separate entity but has been specifically constituted for the purpose of depositing the money collected from the employees, staff and workers of the plaintiff company along with the employers contribution as required under the P.F. Act. The employees , staff and workers have no privity of contract with the trust. Their relationship is with their employer, the plaintiff. Only the statutory mandate commands the trust to pay the money to the employees, staff and workers. The claim is therefore lodged with the employer who certifies the correctness of the claim and makes a demand on the trust who in turn pay the employees, staff and workers. Any shortfall in the money has to be, therefore, accounted for by the plaintiff company as in the eyes of the PF Authority, the plaintiff is the establishment who has been granted the exemption and is required to comply with the statutory required.

I am, therefore, unable to agree with the contention of the defendant nos. 1 to 8 that the plaintiff has no cause of action to file and maintain the suit or the plaint does not disclose any cause of action.

Analysis on point no. (iv)

The Provident Fund Authorities are authorized under Section 7A and 13 of the PF Act to conduct enquiry which shall be deemed to be a judicial proceeding within the meaning of Section 1963 and 228 and for the purpose of Section 196 of the Indian Penal Code. The authority is also given the powers under CPC and Code of Criminal Procedure for even conducting search and seizure. The scope of enquiry, however, gets restricted in view of the provisions of Section 7A(1) and Section 13(2) of the PF Act. The PF authority in a case where defalcation is alleged against the trustees of the exempted provident fund trust account conduct a full-fledged investigation like an investigating agency. It is also to be borne in mind that for the instant case, the plaintiff company has several units in different states in under the aegis of separate regional provident fund commissions. Keeping in mind the legal provisions as also the practical inconvenience, the arguments advanced by the defendants no. 1 to 8 that the suit is barred in view of the provisions of the PF Act cannot be accepted. The interim order, therefore, cannot also be vacated on such ground.

Analysis on point no. (v).

On the issue of mis-joinder and non-joinder of parties it is correct that a trust is represented by its trustees and as such the trust has to either sue or can be sued through the trustees. Assuming without admitting that all the trustees who were associated with the trust for the period 2021-2025 have not been made a party as contended by the defendant nos. 1 to 8 but on a plain reading of the plaint it is apparent that specific allegation has been made against some of the trustees who have been made parties to the suit. It may be so that the plaintiff is of the view that the other trustees who were associated with the trust from time to time may not have been part of the misappropriation of fund and as such have not been made parties.

In such circumstances, at this stage, the suit cannot be held to be barred for non-joinder and mis-joinder of necessary and proper parties. The ad interim order also cannot be vacated on this ground alone.

Analysis on point no. (vi).

Elaborate arguments have been made by the defendant nos. 1 to 8 to demonstrate that the plaintiff has suppressed facts for which the ad interim order is required to be varied and/or discharged. It is the case of the defendants no. 1 to 8 that the plaintiff was required to state in the plaint that it had lodged a police complaint prior to institution of the suit on the selfsame allegation and that a FIR has been registered on the basis of such complaint. It is also urged that the plaintiff has made a mis-statement about the exemption granted to the plaintiff company with regard to the provident fund of the employees, staff and workers and thereby have suppressed the true and correct facts while it obtained the ex parte ad interim order. It is now settled position of law that an order can be vacated or discharged under the provisions of Order XXXIX Rule 4 of CPC if there is a suppression of fact by which the plaintiff obtains the ex parte ad interim order. The suppression as qualified by the Supreme Court in various judgments in such a case has to be material suppression. The test as to whether a suppression is of material fact it is to be seen that on such facts having been brought to the notice of the Court at the time of passing the order would have persuaded the Court from not granting such order. In the instant case the plaintiff has specifically pleaded in the plaint and the application that they intend to lodge a complaint regarding the defalcation of trust fund. The plaint and the petition were respectively verified and affirmed on 8thJune, 2026 and were filed with the Central Filing Department of this Court as required on the same date. The complaint was lodged on the same date i.e., 8thJune, 2026. The time endorsed in the document disclosed by the plaintiff in its supplementary affidavit gives an indication that the same was lodged after the plaint and the petition were affirmed and filed in the Central Filing Department of this Court. The FIR was lodged on 18thJune, 2026 which is admittedly after the suit was instituted upon presentation and admission of the plaint and the orders dated 16thJune, 2026 and 18thJune, 2026 were passed. At the highest, the plaintiff can be accused of not bringing to the notice of the Court about filing of the complaint on 16th June, 2026 or 18thJune, 2026 when the application was moved or the order was corrected even if this fact was brought to the notice of the Court it would not have persuaded the Court to retrieve the ad interim order of injunction. There can be as such no suppression far less material suppression. That apart and in any event a criminal case and a civil suit even if emanates from a common cause can be proceeded parallelly unless there is any legal embargo. The criminal investigation pursuant to the complaint will either lead to a filing of charge-sheet on the allegation bring prima facie establishes or a final report (FRT) will be filed. The subsequent action in such the criminal proceedings will be as per applicable law which will end in either holding the accused guilty or they will be acquitted. The money if any which is defalcated or misappropriated cannot be realised from the accused by imposing punishment under the applicable criminal law. In order to recover the money a civil suit has to be instituted and as such the two proceedings are permitted to continue simultaneously. So far as the cancellation of exemption is concerned, there is at least more than one document which shows that the PF Authorities have cancelled the exemption. As to whether the cancellation is in accordance with law or that the PF Authorities have exceeded their jurisdiction in cancelling the same when the exemption was granted by the Central Government relates to validity of the notice and the authority of the PF Authorities. This cannot be the subject matter of this suit or can be decided in this proceeding where plaintiff has alleged defalcation. This fact is also apparent when we find that the erstwhile management of the plaintiff company of which some of the defendants no. 1 to 8 were part of had filed a writ petition challenging the notice issued by the PF authorities in revoking the exemption before the Punjab and Haryana High Court in connection with its Rohtak unit.

Analysis on point no. (vii)

The defendant nos. 1 to 8 have strenuously argued that the order directing investigation by SFIO could not have been passed either in law or on the facts of the case and as such should be vacated. The main thrust of the argument is that SFIO can be directed to investigate into the affairs of the company in view of the provisions of Section 211 and 212 of the Companies Act, 2013 and that can be directed only by the Central Government. Assuming without admitting that there has been defalcation of the trust fund then also the same does not form part of the affairs of the plaintiff company for which investigation by SFIO could be directed. Moreover, a complaint before a competent authority to investigate has been made by the plaintiff in relation to the self-same set of allegations. An FIR has been registered and as such the investigation is in progress. At this stage SFIO cannot be invited to make investigation on the same issue. Furthermore, the PF Authorities under the provisions of Section 7A of the PF Act have wide powers to investigate and take appropriate measures against and erring establishment. The matter relates to defalcation of money of the provident fund trust. It is, therefore, well within the jurisdiction of the PF Authorities to investigate the same. While considering the arguments advanced by the defendant nos. 1 to 8 one cannot lose sight of the fact that the plaintiff is the “establishment” before the PF Authorities has six units spread over India. The exempted provident fund trust is where the statutory deductions from the salary and wages of the employees, staff and workers of all the six units of the plaintiff company with employer’s contribution has to be deposited. All the employees, staff and workers of the plaintiff company are to get their retiral and/or terminal benefits from a single trust fund. Moreover, a unit in a particular zone is under the control of the Regional Provident Fund Authorities of that zone. The exemption is, however, granted to the plaintiff company as an establishment under the PF Act and not to the separate units. The plaintiff company is, therefore, subject to different Regional Provident Fund Authorities where it has a unit. It is apparent from the record that the Regional Provident Fund Authority, Northern Zone had issued notice revoking the exemption in connection with the Rohtak unit of the plaintiff company at Haryana which was challenged by the company prior to the present management took over the same in the High Court of Punjab and Haryana and not before this Court within the jurisdiction whereof the plaintiff’s registered office is situated. In such a fact scenario for the PF Authorities to proceed against the plaintiff company there has to be a coordinated action from all the Regional Offices wherein the records of a particular unit is situated. It is also evident from the documents produced by the PF authorities that the Regional Provident Fund Commission has to request the Central Board of the Provident Fund authorities in taking an action against the plaintiff company. It may so happen that after an enquiry/investigation there is no shortfall in respect of the contribution of a particular unit. The Regional Provident Fund Authority of that zone in such a case may not find it necessary to proceed against the plaintiff or the exempted trust fund in connection with such unit. At the same time on a preliminary investigation if the SFIO funds that there is no truth in the plaintiff's allegation then no further proceeding will take place against the defendants no.1 to 8. The power of the provident fund authorities to carry out investigation under the statutory provisions are also limited. The provident fund authorities at the highest can impose penalty and recover interest on the deficit amount and recover the same from the establishment to replenish any shortfall in the deposit. The provident fund authorities are not empowered to carry out a full fledged enquiry in case of alleged defalcation. If the PF authorities do not find any shortfall at the first instance they may not proceed for further enquiry unless non-payment is reported. The police authorities in West Bengal can investigate into the allegation of defalcation very conveniently within the State of West Bengal. However, there are five other units in different States the Police Authorities of this State may not find it convenient to investigate outside the State of West Bengal when the documents are spread over several States under the jurisdiction of the different regional provident fund commissions In the aforesaid facts and circumstances, an agency like SFIO is a more preferred agency for the purpose of investigation.

So far as the contention of the defendant nos. 1 to 8 that investigation by SFIO can only be directed by the Central Government is also unacceptable. The powers of the High Court being a Court of record with the authority to exercise constitutional jurisdiction cannot be fettered by referring the provisions of Section 212 of the 2013 Act. In an appropriate case if the Court finds that an investigation is required where the business of the plaintiff company is spread out Pan India, the Court can always direct SFIO to carry out the investigation. The authority granted under Section 212 of the 2013 Act to the Central Government does not require the Court to request the Central Government to engage SFIO to investigate into the affairs of the plaintiff company as that will lead to the Central Government sitting on appeal over the order of the High Court while it orders investigation by SFIO. The object of the provisions of Section 212 of the 2013 Act is to provide a check and balance from frivolous complaint being made by one set of directors or share-holders against the other to spoil the functioning of a company as it is often found allegation of fraud levelled to invite SFIO to investigate. This does not curtail the powers of the High Court to order investigation by SFIO in an appropriate case. Furthermore, the exemption under the PF Act is granted to the "establishment" being the plaintiff company in the instant case. The plaintiff company under the statutory mandate is required to deduct the requisite amount from the salary and wages of its employees, staff and workers and deposit the same with its contribution (employer's contribution) to the exempted trust fund. The deduction and the employer's contribution is reflected in the books and accounts of the plaintiff company. The allegation of the plaintiff is defalcation of such money. To adjudicate defalcation it is to be also seen whether the correct amount was deducted and with the employer's contribution was deposited in the trust fund from time to time. The money deducted and the employer's contribution, therefore, forms part of the affairs of the plaintiff company. Even if the money on being deposited with the trust fund changes its identity and character then also the issue of deduction and employer's contribution remains as affairs of the plaintiff company being the exempted establishment for which investigation by the SFIO under the provisions of Section 212 of the 2013 Act can also be directed. In a supplementary proceedings under Section 94 of CPC, the Court is empowered to pass interim orders for the ends of justice. Since the matter relates to the social security benefits of employees, staff and workers of the plaintiff company which not only has statutory approval but is also recognised under the constitutional framework this Court feels to be in the facts of the case to direct investigation by SFIO for the ends of justice. Furthermore, the Court can appoint an expert under the provisions of Section 45 of the Evidence Act, 1872 (now Section 39 of Bharatiya Sakshya Adhiniyam, 2023) to come to a conclusive finding as to the variety of the allegations. Investigation by SFIO can in such a case be treated to be an expert today.

Analysis of other issues:

So far as the submissions made by the respondent no. 9 and 13 are concerned, on a plain reading of the plaint, it cannot be held at this stage that the said defendants are neither a necessary nor a proper party. The prayer for expunging their respective names made without any specific application, for such purpose are considered and rejected at this stage.

This Court is also not required to clarify the scope of the interim order with regard to the bank accounts which the respondent no. 1 and 3 claimed to be not their accounts but the accounts maintained in the name of their family members as it appears from the accounts on which particulars are provided clearly shows that either the respondent no. 1 or the respondent no. 3are joint holders of such account. Even if, the respondent no. 1 and 3 are not the first account holder, as joint account holders can operate the account.

Conclusion

In the aforesaid facts and circumstances, I do not find any potential substance in the argument of the defendant nos. 1 to 8 to either vacate or vary or discharge or modify the order dated 16th June, 2026 as corrected by the order dated 18th June, 2026 which has been further extended from time to time.

The applications being GA/2/2026 and GA/3/2026 do not require any further consideration independently as the contents thereof has been elaborately argued by the parties. GA/2/2026 and GA/3/2026 are, accordingly, dismissed.

The application being GA/1/2026 requires to be heard on affidavits.

Let affidavit-in-opposition be filed by 3rdSeptember, 2026. Affidavit-in-Reply thereto, if any, be filed by 30th September, 2026.

Let this matter appear in the monthly list of October, 2026.

The interim order initially passed on 16thJune, 2026 and corrected by the order dated 18th June, 2026 which is in subsistence till 3rdAugust, 2026 is extended till disposal of GA/1/2026.

Urgent photostat certified copy of this judgment and order, if applied for, be supplied to the parties on priority basis after compliance with all necessary formalities.

Later:

Stay of operation of the order is prayed for by the respondent nos. 1 to 8, the prayer is considered and rejected.

