

(2016) 10 BOM CK 0021

In the Bombay High Court

Case No : Writ Petition No. 2025 of 2016

Parmeshwar Das Agarwal

APPELLANT

Vs

The Additional Director (Investigation)

RESPONDENT

Date of Decision : 05-10-2016

Acts Referred:

Companies Act, 2013 — Section 208, Section 212

Citation : (2016) 6 AIRBomR 488 : (2016) 199 CompCas 353 : (2017) 2 CompLJ 461 : (2016) 138 SCL 237

Hon'ble Judges : S.C. Dharmadhikari and B.P. Colabawalla, JJ.

Bench : Division Bench

Advocate : Mr. Rajneesh Agarwal with Ms. Shalaka Gujar - Karande, Advocates, for the Respondent No. 2; Mr. Girish Godbole with Dr. Abhinav Chandrachud and Ms. Monisha Mane - Bhangale i/b M/s. ALMT Legal, for the Petitioners

Final Decision : Disposed Off

Judgement

S.C. Dharmadhikari, J. (Oral)—By this writ petition under Article 226 of the Constitution of India, the petitioners seek the following relief:

"A. This Hon"ble Court be pleased to issue a writ of Certiorari under Article 226 of the Constitution of India or any other writ/order/direction in the nature of Certiorari calling for the records and proceedings in respect of the proceedings related to the investigation ordered by the Respondent and after going through the same, to quash and set aside the Order dated 6th May, 2016 passed by the Respondent No.2."

2. Since the petitioners as also the respondents counsel have been heard at great length, on conclusion of arguments, we dispose of this writ petition finally by the present judgment and order.

3. Rule. Respondents waive service. By consent, heard forthwith.

4. It is necessary to set out certain facts in order to appreciate the challenge raised in this writ petition. The petitioner Nos.1 to 6 and 9 are shareholders of

petitioner No.8, namely, Singhal Enterprises Private Limited (for short "the company"). That company is a Kolkata based company. The version of the petitioners is that they hold altogether 1849200 equity shares in this company constituting 89.58% of the total paid up share capital of this company. The petitioner Nos.1 to 6 and the petitioner No.7 are also Directors of the company.

They are related inter-se. We are not concerned with their relationship, but suffice it to state that these petitioners claim to be permanent residents of Raipur, the capital of the State of Chattisgarh. The first respondent to this writ petition is the Additional Director (Investigation) of Serious Fraud Investigation Office (for short "SFIO"). It initially issued a summons dated 26th May, 2016. The claim is that it was wrongly issued to the Managing Director of the petitioner No.9, but that company does not have any Managing Director. We will refer to the role of the SFIO and the respondent No.2 - Union of India a little later.

5. The petitioners state that the company carries on business of manufacturing sponge iron. The company has a factory located at two geographical locations, one at village Taraimal in District Raigarh in the State of Chattisgarh and one at village Hirma in District Jharsuguda in the State of Odisha.

This company was originally incorporated in 1997 to take over the business activity of a partnership firm Singhal Enterprises.

The partners of that firm were petitioner Nos.1 and 2, one Radha Krishan Agarwal and one Parmanand Agarwal. They are brothers of petitioner No.1 (hereinafter referred to as the said Radha Krishan and Parmanand). However, the company could not take over the business of partnership and undertook a distinct activity of business of manufacturing sponge iron.

6. It is the claim of the petitioners that the Raigarh unit was looked after and managed by petitioner Nos.3 and 5 while the Jharsuguda unit was looked after and controlled by the said Radha Krishan and his sons Hemant and Gaurav. The said Radha Krishan and his family held the remaining 215100 equity shares in the company constituting 10.42% of the total paid up share capital of the company. Thus, the entire shareholding of and in the company is held by the said Radha Krishan and his family and the petitioner Nos.1 to 6 and 9.

There are no other or public shareholders in the company. It is claimed that petitioner No.1 and Radha Krishan and Parmanand with their families were involved in several other businesses. Sometime prior to 24th April, 2007, there were disputes between the parties with regard to the division of various of businesses and assets between the family members.

With an intention to settle all such disputes, three Memorandums of Understanding were entered into by the three brothers and their groups on 24th April, 2007. Relying on the clauses of this MOU it is submitted that the businesses were to be divided in accordance therewith. The allegation is that Radha Krishan and Parmanand obtained substantial benefits under the MOU. In

terms of the MOU Parmanand, along with his family, sold all their shares in the company to the group of petitioner No.1. They obtained exclusive ownership and control of another sponge iron manufacturing company at Raigarh, namely, B.S. Sponge Private Limited. The petitioners state that in terms of the MOU, the Jharsuguda unit of Singhal Enterprises Private Limited was to be demerged to another company to be owned by the said Radha Krishan and his family. Further, since the two factories of the company were located in two geographically different regions, it was thought in the interest of the company to give effect to such scheme of demerger. The other company was identified as Singhal Enterprises (Jharsuguda) Private Limited and a company in control of Radha Krishan. For such demerger, the company - petitioner No.9 and Singhal (Jharsuguda) Private Limited filed proceedings before the Hon"ble High Court at Calcutta. They prayed for sanction to the scheme of demerger. The petition in that regard was jointly filed (Company Petition No.384 of 2007). However, Parmanand raised disputes with regard to the MOU. The allegation is that he sought to resile from his obligation thereunder. In January, 2008, he opposed the sanction to the scheme of demerger alongwith the said B.S. Sponge Private Limited. The said Parmanand followed up with the institution of a suit in March 2008, being Civil Suit No.47 of 2008 before the Hon"ble High Court at Calcutta seeking, inter alia, revocation of this family settlement recorded in the said MOU. There were applications filed for interlocutory/interim reliefs. That was for an injunction from giving effect to the MOU and various other reliefs. The said Radha Krishan and his group also joined hands with Parmanand and sought to resile from their obligations under the MOU. In May 2010, it is alleged that the said Radha Krishan changed his stand and filed an independent affidavit in the interlocutory proceedings. That was virtually supporting the case of Parmanand. It is claimed that a common judgment and order was passed on 3rd August, 2010, by the Hon"ble High Court at Calcutta disposing of all the interlocutory applications. The direction was that pendency of the suit shall not be an excuse for not implementing the outstanding obligations under the MOU. On 17th January, 2011, the same High Court sanctioned a scheme of demerger.

An appeal was filed against these orders. As far as the appeal from the interlocutory order dated 3rd August, 2010, the same was disposed of by a common judgment on 12th October, 2012.

Reliance is placed upon these orders to submit that the company appeal of Parmanand against the order sanctioning the scheme of demerger is pending. By reason of it, the scheme of demerger has yet to come into effect. Then, it is stated that Radha Krishan in November, 2014, filed an application through his company (Jharsuguda) to withdraw from the scheme. That is being opposed by the company, namely, petitioner No.9.

7. The first petitioner to this petition filed a Civil suit No.18 of 2011 against Parmanand and Radha Krishan for specific performance of the MOU. The first petitioner's suit and that of Parmanand filed in the year 2008 are pending.

8. It is then claimed that because of these disputes between two group of shareholders the consolidated annual accounts of the company could not be prepared after 31st March, 2007. Insofar as the annual accounts for 2007 are concerned, the same have been audited and were approved by the shareholders in the Annual General Meeting held on 27th September, 2007. The annual accounts were disclosed in the petition for sanction of the scheme for demerger filed in December, 2007.

9. On account of the disputes between the shareholders, the consolidated annual accounts of the petitioner No.8-company could not be filed with the Registrar of Companies. The petitioners claim they were unable to hold an Annual General Meeting of the company on account of the non-cooperation from Radha Krishan and his group. The claim of the petitioners is that at all material times and to the best of their ability, they have complied with the statutory obligations under the provisions of the then Indian Companies Act, 1956, but in the absence of the information about the affairs of the Jharsuguda unit controlled by Radha Krishan it was not possible to prepare the consolidated accounts.

10. The company and its Directors received notice from the Registrar of Companies from time to time with regard to non-compliance of the statutory provisions relating to filing of annual accounts and/or holding of the AGMs and copies of these notices together with the replies thereto are referred extensively at page 11 of the paper-book.

11. Thus the petitioners state that they are in receipt of the notices from the Registrar of Companies on their alleged failure to fulfil the statutory obligation and these notices were duly replied. The Registrar has not thought it fit to pursue his action initiated by these notices.

12. The petitioners also claim that under section 633 of the Companies Act, 1956, they can seek a protection from the High Court and that is how Company Petition Nos. 475 and 112 were filed in the year 2010 and 2012 in the High Court at Calcutta. Interim orders were passed by that Court against the Registrar of Companies restraining him from prosecuting the petitioners during the pendency of the applications invoking section 633 of the Indian Companies Act, 1956.

13. Thus, the claim of the petitioners is that there are disputes despite which they have endeavoured to prepare the accounts of the Raigarh unit, get them audited and they have also filed the relevant returns with the Income Tax authorities. They have also complied with their obligations insofar as certain banks are concerned.

14. The petitioners have also instituted proceedings for the purpose of holding AGMs and that is how they filed a petition before the Company Law Board, Kolkata numbered as Company Petition No.62 of 2012. The Company Law Board passed an order on 16th April, 2012, allowing AGMs for the Financial Years 2007-08 to 2010-11 to be held. However, on account of non-cooperation and non-supply of particulars of accounts relating to the Jharsuguda unit, the order of the

Company Law Board could not be implemented. Though the AGMs were held, the annual accounts could not be approved.

The meetings had to be adjourned sine die. It is then claimed that a round of complaints was commenced by the said Radha Krishan and his group. They approached the Registrar of Companies for the alleged non filing of DIN-3 as also non filing of accounts and annual returns after 2007. That was in relation to the business of the petitioner No.8-company.

However, the company replied to the letter from the Registrar of Companies and set out the entire factual position, including how Radha Krishan and his group and Parmanand and his group have involved each of them in some litigation.

Thereafter, a show cause notice was issued under section 234(1) of the Companies Act on 1st October, 2012 and an explanation was sought with regard to the affairs of the company. The petitioners pointed out in detail as to how the entire attempt on their part is to comply with law, but given the pending disputes between family members and the litigation, they are unable to do so. The petitioners also forwarded alongwith their replies, copies of the relevant orders passed by the High Court of Calcutta. They also gave a detailed explanation as sought by the Registrar when he invoked section 234(1) of the Indian Companies Act, 1956.

15. It is stated that since Radha Krishan and his group were acting in a manner prejudicial to the interest of the company and oppressing the petitioners group of shareholders by also closing down the Jharsuguda unit, the petitioners had no alternative, but to initiate proceedings invoking sections 397 and 398 of the Indian Companies Act, 1956. Once again, they approached the Company Law Board in March, 2013. The proceedings were numbered as Company Petition No.60 of 2013. In these proceedings also orders were passed by the Company Law Board from time to time. The first interim order was passed on 23rd April, 2013, copy of which is Annexure-S.

There are further orders passed but the petition is pending adjudication.

16. The petitioners then complain that a letter was sent in June 2013 by the Registrar of Companies, West Bengal, Kolkata forwarding the complaint of a third party having no connection whatsoever with the company and called upon the company to provide the comments on the same. After referring to the details of this complaint what has been set out is that there is detailed correspondence with the Registrar of Companies. The Registrar of Companies may have called for certain explanations but the petitioners promptly provided them. There was nothing that agitated or dissatisfied the Registrar of Companies. Once it was brought to the notice of the said Registrar and through him to the competent authorities that there are legal proceedings between the two groups and which are pending, then, nothing was required to be done at their end. The petitioners went on apprising the Registrar about the legal proceedings and the stage at which they are pending. They have yet not concluded.

17. It is, therefore, claimed that after 8th April, 2015, no further queries were raised by the Registrar of Companies but suddenly a summons was issued on 26th May, 2016, by the first respondent. That is on the basis of an order dated 6th May, 2016, of the Central Government. The petitioner Nos.1 to 8 were called upon to appear in person on 20th, 21st, and 23rd June, 2016, in order to answer certain queries raised. These queries were raised in furtherance of a purported investigation. The intent was to direct production of all books and papers relating to the company and transactions with other concerns which are in their custody and power. Once again, a summons was sought to be issued to the Managing Director, but the petitioner No.9 does not have a Managing Director.

18. It is stated that the summons discloses no allegation nor indicates the nature of the purported investigation by the Union of India/Central Government. Though the summons refers to an order dated 6th May, 2016, purportedly passed by the second respondent under section 212(1) clause (c) of the Companies Act, 2013, a copy of the said order was neither enclosed nor provided to the petitioners at the time of service of the impugned summons. A copy of this order, however, was provided by the first respondent when the petitioners demanded it through their advocate's letter. The petitioners submit that there is no justification or basis for passing of this order. It is extremely vague and unsubstantiated. It bears no reasons whatsoever to justify any investigation against the petitioners in terms of the aforesaid statutory provision. That order has been passed pursuant to a report dated 13th January, 2016, submitted by the Registrar of Companies, West Bengal, but at the relevant time, no copy thereof was enclosed or provided. Therefore, the report was not available for the petitioners to resist these orders effectively.

19. Reliance is also placed upon a letter dated 13th June, 2016, issued to the company by the State Bank of India informing and recording that the company obtained a total credit of only Rs. 22.82 crores from the bank as on 12th June, 2016.

20. It is in the above circumstances that this writ petition has been filed.

21. The writ petition has been amended extensively by incorporating and raising grounds to challenge the order dated 6th May, 2016, copy of which is at Annexure-Z to the writ petition. The petitioners point out that though this writ petition was filed on 14th June, 2016, there was no reply received to it till 31st August, 2016. We have on record a reply of one Sanjai Rai, Additional Director, SFIO. It is stated that the Central Government was informed by the Registrar of Companies vide a letter dated 13th January, 2016, that there are gross irregularities committed by the said company. The Central Vigilance Commission (for short "CVC") desired a factual report on the complaint of one Lok Sabha MP Gajendra Singh Rajukhedi. The important issues raised by the Registrar of Companies are that the petitioner-company had obtained more than Rs. 100 crore loan from the State Bank of India, Park Street Branch, Kolkata. The petitioner-company has not filed balance sheets/annual returns since the year

2007. The petitioner-company does not possess record of a Board Meeting Notice since 2007. The petitioner-company is involved in offences like sale of material to other plants, misuse of coal mines and money laundering. This letter, now styled as a report from the Registrar of Companies, is referring to the Ministry of Corporate Affairs letter dated 30th October, 2015, that claimed that there is hardly any progress in the matter of investigation into the affairs of the company despite reference from the said MP and the CVC. A factual report has been sent by the Registrar on 22nd July, 2015. In addition to that, there is a comprehensive report and that is how this letter/report reads. We shall refer to the details of that a little later.

22. Based on this report, it is stated, that the SFIO comes into picture. When there is a serious allegation and misuse of public funds, coal mines, sale of minerals to other plants then it is in public interest that the investigation has to be held. For that purpose, the SFIO is fully empowered. That apart, the Central Government is fully empowered vide section 212(1) of the Companies Act, 2013, to cause the enquiry and investigation to be held. That is how in terms of section 217 of the Companies Act, 2013, the Directors have been summoned.

It is stated there are multiple litigation in various Courts and all the facts have to be proved by documents in Court. Therefore, the deponent does not wish to make any comment.

It is stated that the investigation into the affairs of the company is resisted in the light of the gross irregularities and serious offences. Therefore, timely action should be permitted.

23. This affidavit comes only after this Court, on filing of this writ petition had, on 31st August, 2016, passed the following order :

"1. When this writ petition was called out for admission and together with a notice of motion, the respondents contesting the petition have filed an affidavit in reply. It is tendered in Court today. We take it on record.

2. Since Mr. Godbole for the petitioners complains that the petitioners' Advocates have received it just now in Court, we agree to his request for an adjournment. For that purpose, we grant time and list these matters on 23-9-2016.

3. In the meanwhile, we direct the Additional Director, Serious Fraud Investigation Office to procure all original records and files, particularly from the Registrar of Companies at Kolkata so as to enable this Court to peruse them and if necessary. We also clarify that no further affidavit in reply shall be filed by the respondents."

24. It is on the above material that we have heard the learned counsel appearing for parties.

25. Mr. Girish Godbole learned counsel appearing for the petitioners would submit that there is no compliance with the direction of this Court contained in

the above quoted order.

He submitted that the Additional Director SFIO has not procured all the original records and files from the Registrar of Companies. Though this direction was issued, the records have not been produced for perusal of this Court. Mr. Godbole submits that apart from this non compliance on a perusal of the impugned orders and the summonses issued it would be evident that there is no case absolutely made out for invoking the powers of the Central Government to investigate the affairs of the company.

26. Mr. Godbole would submit that this is a private limited company. The public at large is not concerned with its affairs, much less internal management. The petitioners have pointed out as to how there is a large family involving about three brothers. These three brothers, in turn, have formed separate groups comprising of their families, There are two units one at Raigarh in Chattisgarh and another at Jharsuguda in the State of Odisha. The company manufactures sponge iron.

That there are disputes between these groups who have the entire shareholding of the company and those disputes are subject matter of several proceedings pending before the High Court of Calcutta. There was an attempt made to resolve the disputes amicably. A settlement document/MOU was drawn up with respective obligations and to be discharged by the groups, there are allegations and counter allegations of failure to discharge them. An attempt is made to resile from the said obligations and have the entire arrangement or settlement cancelled or declared invalid and illegal. There are some Suits in relation thereto are pending before the High Court of Calcutta. An attempt was also made to resolve the disputes by demerging the businesses of the company. Though this demerger was taken forward and a company petition seeking approval to the scheme of demerger was filed in the Calcutta High Court, one group member backed out and filed an affidavit in opposition. That is how the scheme could not go through.

Thereafter, the orders were passed by the single Judges of the High Court of Calcutta refusing interim reliefs and sanctioning the scheme. Appeals from the said order were preferred and as far as appeal against interim order in the suit are concerned, that has also been dismissed. The appeal from the order passed by the company Judge in the High Court of Calcutta approving the scheme is still pending. Then there are various acts of oppression and mismanagement alleged and they are pending before the Company Law Board.

27. The above events and developments are not held back and made known to the respondents. The details are also disclosed from time to time. It is in these circumstances that we must view this matter according to Mr. Godbole. He would submit that the Central Government cannot exercise the power under section 212 of the Act of 2013 when there are allegations and counter allegations of groups of shareholders and family disputes and legal proceedings are pending in

a competent Court. Thereafter, the Central Government cannot at the behest and instance of one rival or disgruntled group seek to investigate the affairs of the company. Precisely that has happened in the instant case. The aggrieved group has approached one Member of Parliament. That Member of Parliament on their behalf, has addressed a letter to the Central Vigilance Commission. That letter contains a complaint with regard to the alleged mismanagement of affairs of the company and, therefore, that complaint was forwarded by the CVC to the Central Government. The Central Government took cognizance of that complaint and caused an inquiry to be made by the Registrar of Companies, Kolkata, and report by him. Mr. Godbole submits that this writ petition has been filed without in any manner submitting to these authorities pursuant to the summons and the reason for the same is that this is a case of complete abuse of the power vesting in the Central Government. The Central Government, before it seeks to investigate the affairs of a company, must form an opinion that the circumstances which are referred in the statutory provisions are existing, enabling it to exercise that power. The opinion must be that of a reasonable person. The opinion must be based on specific grounds and reasons. In the absence of such grounds and reasons, an investigation cannot be directed.

If that course is adopted, it would be evident that the Central Government is acting at the behest and instance of one of the disgruntled and aggrieved groups. Mr. Godbole, therefore, emphasised that the foundation for the exercise of power under section 212 is a family dispute pending in court of law. The company has provided enough and reasonable explanation for its inability to comply with some of the statutory provisions to the Registrar of Companies. The Registrar of Companies may have threatened at one time to proceed against the company in competent courts, but even with regard thereto, the company resisted by approaching the Company Judge and seeking his protection by invoking section 633 of the Indian Companies Act, 1956. Mr. Godbole submits that there are enough powers in the Act enabling the Registrar of Companies to take action against erring and non-compliant companies and their officers.

In every such case, the Central Government does not and need not step in. It is only in this case of this company, and that too a private limited company, that the rival group moves one Member of Parliament. That Member of Parliament addresses a letter to the Central Government and suddenly everybody swings into action. Mr. Godbole submits that the action is, therefore, not bona fide. It being at the behest of a rival group, it is clear case of a abuse of the power and that this Court, therefore, should quash and set aside the entire order of the Central Government and the proposals for an investigation stated to be pending with it.

28. Mr. Godbole submits that even the so-called grounds and which are contained in the report of the Registrar of Companies based on which the impugned order is passed would demonstrate that none of them have any basis. If a bank like a Nationalized Bank has any pending dues and stated to be huge or in crores

nothing prevents it from invoking the appropriate statutory powers, particularly the measures in the SARFAESI Act and to recover its monies by invoking the right vesting in it.

Secondly, there is no basis for presuming that the raw material has been diverted or that there are certain acts which would endanger and adversely affect the rights of the public in the mines. There are several provisions enabling the authorities in charge of managing and administering the mines or issuing licences for prospecting minerals therefrom and those authorities can use them. There is no substance in such allegation because there is no divergence as is claimed. Even if there is diversion alleged, action can be taken under distinct laws for the alleged violation of the rules and regulations enabling mining and transport of coal or other minerals. For all these reasons, Mr. Godbole would submit that this is a fit case where this Court should exercise its jurisdiction and strike down a patently mala fide action. He also submitted that the impugned order is ex facie illegal and erroneous. It is vitiated by errors of law apparent on the face of record. No useful purpose would be served by the petitioners submitting themselves to the jurisdiction of the authorities referred above when the entire action initiated cannot be sustained in law.

Thus, the impugned order is ex facie without jurisdiction and, therefore, be declared as such and quashed and set aside.

29. Mr. Godbole relied upon the following decisions in support of his above contentions :

- (1) (1969) 1 SCC 325 Rohtas Industries v. S.D. Agarwal and ors.
- (2) (1997) 5 SCC 446 Sri Ramdas Motor Transport Ltd. and Ors. v. Tadi Adhinarayana Reddy and Ors.
- (3) (1979) 4 SCC 729 Moolchand Gupta v. Jagannath Gupta and Co. (P) Ltd.
- (4) 1987 MhLJ 775 Hariganga Cement Ltd. v. The Company Law Board, Delhi.
- (5) (1978) 1 SCC 405 Mohinder Singh Gill v. The Chief Election Commissioner, New Delhi.
- (6) AIR 39 (1952) SC 16 Commissioner of Police, Bombay v. Gordhandas Bhanji.
- (7) (1995) 5 SCC 302 Anirudhsinhji Karansinhji Jadeja v. State of Gujarat.
- (8) (2004) 2 SCC 65, Bahadursinh Lakhubhai Gohil v. Jagdishbhai M. Kamalia.

30. On the other hand, Mr. Agarwal appearing on behalf of the respondents would submit that the Central Government has no intent of interfering in family disputes. It does not intend to take any sides at all. However, whether it is a company privately managed or otherwise, if it is brought to the notice of the Central Government that its affairs are being managed in such a way as would prejudice the interest of the public, then, to protect such larger public interest, powers are conferred in the Central Government. Mr. Agarwal relied upon the

entire scheme contained in The Indian Companies Act, 1956 and The Companies Act, 2013. He submits that the power akin to section 235 of the Companies Act, 1956 and now to be found in the Companies Act, 2013, vide section 212, has been exercised. That has been exercised on the footing that the report of the Registrar enables the Central Government to appoint Inspectors to investigate affairs of the company and to report thereon. It is in these circumstances that the power has been exercised. The grounds which have been set out in the report which forms the basis for the ultimate step can be said to be real and existing. It is not at the behest of any group that the Central Government has acted. The SFIO steps into the picture only because the Central Government formed the requisite opinion. The grounds or the contents of the report enabled the Central Government to form that opinion. The opinion is reasonable. The discretion has been exercised by applying correct judicial principles and there is no deviation from the same. For these reasons and when the petition is premature, this Court should not interfere in writ jurisdiction and the petition be dismissed.

31. The Indian Companies Act, 1956 (for short "1956 Act") and The Companies Act, 2013 (for short "2013 Act") are both enacted to consolidate and amend the law relating to companies and certain other associations. As far as the 2013 Act is concerned, on its initial enactment and later on its amendment, it has been clarified that the legislation relating to incorporation and registration of companies had to be consolidated and brought in tune with the current situation prevailing in the country and abroad. Several provisions had to be introduced which were hitherto not introduced. As far as the power and referable to the provisions of these two enactments are concerned, their basic foundation remains the same.

32. As far as the 1956 Act is concerned, the same contains provision enabling the Central Government to act upon a report made by the Registrar under sub-section (6) of section 234 or sub-section (7) of section 234 read with subsection (3) thereof and appoint one or more competent persons as Inspectors to investigate into the affairs of the company and to report thereon in such manner as the Central Government may direct. The further powers in terms of section 236 enables members of the company to approach the Central Government for causing an investigation to be made. That is a situation dealt with by section 236. Without prejudice to the powers under section 235, the Central Government independently can direct investigation, but that is in other cases. The said power is to be found in section 237.

33. What we have to note is that this investigation of affairs of a company can be directed by the Central Government on the basis of a report made by the Registrar under section 234(6). Section 234 of the Companies Act, 1956, enables the Registrar to call for information or explanation. If on perusing any document, which a company is required to submit to him under the Act, the Registrar is of the opinion that any information or any explanation is necessary with respect to

any matter to which such document purports to relate, he may, by a written order call on the company submitting the document to furnish in writing such information or explanation within such time as he may specify in the order. On receipt of this order, the duties of the companies are then enumerated in section 234(2). The officer of the company is also obliged to perform his duty as set out in sub-section (3) of section 234. If there is a non-compliance with the order and information or explanation is not furnished or if any information or explanation is furnished, but, in the opinion of the Registrar, is inadequate, then, he has a power and which is enumerated in section 234(3A) which sub-section has been introduced by the Act 65 of 1960. Then comes a situation where the company or any person as referred to in the above sub-sections refuses or neglects to furnish any such information or explanation or if the company or any such person as is referred to in sub-section (3A) refuses or neglects to produce any such books and papers, that is an offence in terms of sub-section (4) of section 234. Sub-section (5) of section 234 enables the Registrar to annex a writing, book or paper or where that book or paper is required by the company, any copy or extract thereof to the document referred to in sub-section (1), and he shall annex that writing in pursuance of the order he passes under sub-section (3A) or of an order under sub-section (4). Sub-section (6) of section 234 deals with a situation where information or explanation called for is not furnished within the specified time or furnished but on such information or explanation being perused the Registrar forms an opinion that the document referred to in sub-section(1) together with such information or explanation or such books and papers discloses an unsatisfactory state of affairs or does not disclose a full and fair statement of any matter to which the document purports to relate, the Registrar shall report in writing the circumstances of the case to the Central Government.

34. By sub-section (7) of section 234, the Registrar can act on a representation and material placed before him by any contributory or creditor or any other person interested that the business of a company is being carried on in fraud of its creditors or of persons dealing with the company or otherwise for a fraudulent or unlawful purpose, he may, after giving the company an opportunity of being heard by a written order, call on the company to furnish in writing any information or explanation on matters specified in the order, within such time as he may specify therein and thereupon the other sub-sections commencing from sub-sections (2) to (6) would apply. The Registrar can also refuse to act on the representation if it is found to be frivolous or vexatious. Thereupon he has an obligation to disclose the identity of his information to the company.

35. It is, therefore, in terms of such a report from the Registrar or independent of that in terms of an action under sub-section (7) of section 234 that the investigation of affairs can be directed by the Central Government. As far as these provisions are concerned, the Hon"ble Supreme Court of India had an occasion to examine their ambit and scope. The first decision that is referred to by Mr. Godbole is in the case of Rohtas Industries (supra). Rohtas Industries was a case where the company having its registered office at Dalmianagar in Bihar

was alleged to have conducted its affairs with intent to defraud its creditors, members or other persons and the persons concerned in the management of its affairs have in connection therewith been guilty of fraud, misfeasance, or other misconduct towards the company or its members. Therefore, the power under section 235 was exercised in relation to that company by the Central Government. The argument before the Hon'ble Supreme Court was that the Central Government had no material before it from which it could have come to the conclusion that the business of the appellant-company is being conducted with intent to defraud its creditors, members or other persons or the persons concerned in the management of its affairs having connection therewith being guilty of fraud, misfeasance etc. The challenge was raised before the Patna High Court. The Patna High Court dismissed the writ petition holding that the opinion formed by the Central Government under section 237(b) of the 1956 Act is not open to judicial review and that is conclusive. It is that decision which was challenged in the Hon'ble Supreme Court. After stating the facts in great details and the rival contentions, the Hon'ble Supreme Court set out both the provisions, namely, from section 235 to section 237 and held as under :

"5. Before taking action under Section 237(b)(i) and (ii), the Central Government has to form an opinion that there are circumstances suggesting that the business of the company is being conducted with intent to defraud its creditors, members or any other persons, or otherwise for a fraudulent or unlawful purpose or in a manner oppressive to any member or that the company was formed for any fraudulent or unlawful purpose or that the persons concerned in the formation or the management of its affairs have in connection therewith been guilty of fraud, misfeasance or other misconduct towards the company or towards any of its members.

From the facts placed before us, it is clear that the Government had not bestowed sufficient attention to the material before it before passing the impugned order. It seems to have been oppressed by the opinion that it had formed about Shri S.P. Jain. From the arguments advanced by Mr. Attorney, it is clear that but for the association of Mr. S.P. Jain with the appellant-company, the investigation in question, in all probabilities would not have been ordered. Hence, it is clear that in making the impugned order irrelevant considerations have played an important part.

The power under Sections 235 to 237 has been conferred on the Central Government on the faith that it will be exercised in a reasonable manner. The department of the Central Government which deals with companies is presumed to be an expert body in company law matters. Therefore the standard that is prescribed under Section 237(b) is not the standard required of an ordinary citizen but that of an expert. The learned Attorney did not dispute the position that if we come to the conclusion that no reasonable authority would have passed the impugned order on the material before it, then the same is liable to be struck down. This position is also clear from the decision of this Court in

Barium Chemicals v. Company Law Board., (1966) 36 Comp. Cas. 639 (SC)

It was urged by Mr. Setalvad, learned Counsel for the appellant that clause (b) of Section 237 prescribes two requirements i.e. (1) the requisite opinion of the Central Government and (2) the existence of circumstances suggesting that the company's business was being conducted as laid down in sub-clause (1) or that the persons mentioned in sub-clause (2) were guilty of fraud, misfeasance or misconduct towards the company or any of its members. According to him though the opinion to be formed by the Central Government is subjective, the existence of circumstances set out in clause (b) is a condition precedent to the formation of such opinion and therefore the fact that the impugned order contains recitals of the existence of those circumstances, does not preclude the court from going behind those recitals and determining whether they did in fact exist and further whether the Central Government in making that order had taken into consideration any extraneous consideration. But according to the learned Attorney the power conferred on the Central Government under clause (b) of Section 237 is a discretionary power and the opinion formed, if in fact an opinion as required by that section has been formed, as well as the basis on which that opinion has been formed are not open to judicial review.

In other words according to the learned Attorney no part of section 237(6) is open to judicial review, the matter is exclusively within the discretion of the Central Government and the statement that the Central Government had formed the required opinion is conclusive of the matter.

Courts both in this country as well as in other Commonwealth countries had occasion to consider the scope of provisions similar to Section 237(6). Judicial dicta found in some of those decisions are difficult of reconciliation....

11. Coming back to Section 237(b), in finding out its true scope we have to bear in mind that that section is a part of the scheme referred to earlier and therefore the said provision takes its colour from Sections 235 and 236. In finding out the legislative intent we cannot ignore the requirements of those sections. In interpreting Section 237(b) we cannot ignore the adverse effect of the investigation on the company. Finally we must also remember that the section in question is an inroad on the powers of the company to carry on its trade or business and thereby an infringement of the fundamental right guaranteed to its shareholders under Article 19(1) (g) and its validity cannot be upheld unless it is considered that the power in question is a reasonable restriction in the interest of the general public. In fact the vires of that provision was upheld by majority of the Judges constituting the Bench in Barium Chemicals" case principally on the ground that the power conferred on the Central Government is not an arbitrary power and the same has to be exercised in accordance with the restraints imposed by law. For the reasons stated earlier we agree with the conclusion reached by Hidayatullah, and Shelat, JJ. in Barium Chemicals" case that the existence of circumstances suggesting that the company's business was being conducted as laid down in subclause (1) or the persons mentioned in sub-clause

(2) were guilty of fraud or misfeasance or other misconduct towards the company or towards any of its members is a condition precedent for the Government to form the required opinion and if the existence of those conditions is challenged, the courts are entitled to examine whether those circumstances were existing when the order was made. In other words, the existence of the circumstances in question are open to judicial review though the opinion formed by the Government is not amenable to review by the courts. As held earlier the required circumstances did not exist in this case."

36. Therefore, the Central Government has to form an opinion that there are circumstances suggesting as above and the Central Government, before it acts, has to comply with the statutory prerequisites. The above dictum of the Hon"ble Supreme Court was also applied in the case of Sri Ramdas Motor Transport (supra). There, the factual position was that a private limited company established in the year 1944 continued to be privately managed until 1st February, 1975. On that date, by virtue of section 43-A of the 1956 Act, it became a public limited company. Yet it continued to be closely held consisting of 61 shareholders including 11 employees and ex-employees.

This was also a case where there were disputes between the Managing Director and his son-in-law who was a former Director. The dispute started in 1993. In 1994, eight shareholders of the company filed before the Company Law Board, Principal Bench, New Delhi, a Company Petition invoking section 397 and 398 of the 1956 Act on the ground of oppression of a minority shareholder and mismanagement in the affairs by the second and third appellants. In the said petition, injunction was sought to restrain the first appellant before the Hon"ble Supreme Court from proceeding with the Rights Issue of its shares. The Company Law Board declined to grant any interim order. Thereafter, the rival groups filed another Company Petition before the Company Law Board.

There also, an interim injunction was sought but the application in that regard was rejected. Then, the rival groups filed a Company Application for appointment of an Administrator.

37. Thereafter, the first respondent to the appeal before the Supreme Court filed a writ petition under Article 226 of the Constitution of India before the High Court of Andhra Pradesh seeking a writ of mandamus directing the Union of India to forthwith prosecute the appellant Nos.2 and 3 in accordance with law. The Hon"ble Supreme Court referred to the allegations in the writ petition and then held that based on a prayer for investigation into the affairs of the first appellant-company and to take action, that the writ petition was filed.

The Hon"ble Supreme Court referred to the powers conferred in the Central Government in paragraphs 7 and 8 of the decision. Thereafter, following Rohtas Industries, in paragraphs 9, 10 and 13, it held thus :

"9. The power, therefore, to appoint Inspector to investigate the affairs of a company has to be exercised by the Central Government after a proper

preliminary scrutiny by the Registrar or by the Company Law Board as the case may be. It cannot be instituted simply on the basis of allegations made by one shareholder. Under Section 237, there is a further power given to the Central Government to appoint Inspectors to investigate the affairs of a company if the company, by a special resolution, or the court, by order declares that such investigation is necessary. Similarly, this may be done if in the opinion of the Company Law Board there are circumstances suggesting that the business of the company is being conducted with the intent to defraud its creditors, members or any other person or otherwise for a fraudulent or unlawful purpose or in a manner oppressive of any of its members or that the company was formed for any fraudulent or unlawful purpose. The Company Law Board may also come to a conclusion that there are circumstances suggesting that the persons concerned in the formation of the company or management of its affairs have been guilty of fraud, misfeasance or other misconduct towards the company or towards any of its members; or that the members of the company have not been given all the information with respect to its affairs which they might reasonably expect. In these circumstances, on the basis of the opinion so framed by the Company Law Board, the Central Government may order an investigation. Neither the Central Government nor the Company Law Board has been moved by the 1st respondent in accordance with law for this purpose. In the case of *Rohtas Industries Ltd. v. S.D. Agarwal*, (1969) 39 Comp Cas 781 (SC) this Court examined the nature of the power conferred on the Central Government under Section 235 as well as 237(b) and held that the scheme of these sections makes it clear that unless proper grounds exist for investigation of the affairs of a company, such investigation will not be lightly undertaken. An investigation may seriously damage a company and should not be ordered without proper material gathered in the manner provided in the Companies Act. The power of investigation has been conferred on the Central Government on the faith that it will be exercised in a reasonable manner. The department of the Central Government which deals with companies is presumed to be an expert body in company law matters. Therefore, the standard that is prescribed under Section 237(b) is not the standard required of an ordinary citizen but that of an expert.

10. In the present case an attempt has been made by the first respondent to get the affairs of the company investigated in the manner provided under the Companies Act. Neither the Central Government nor the Company Law Board has been moved by the 1st respondent in accordance with law for this purpose. Instead of moving the authorities prescribed under the Companies Act the first respondent has chosen to resort to the writ jurisdiction of the High Court for a direction to have the affairs of the company investigated by the C.B.I. ? ? ?

13. ? ? ? ? The only ground for intervention appears to be "public interest". We fail to see what public interest is involved in disputes of the kind referred to in the writ petition. They basically deal with mismanagement of the affairs of the company and oppression of the minority shareholders. The company is only a deemed public limited company. Its shareholding is very closely held. The only

other factor referred to in the writ petition to invoke the doctrine of so called public interest, is the fact that the company had borrowed moneys from public institutions. This is no ground for not availing of the statutory remedies provided under the Companies Act before the appropriate statutory forums which are designed for this very purpose. We are distressed to find that the well-reasoned judgment of the Single Judge was interfered with in a casual manner. The impugned judgment rests on fragile foundations and reads more like an ipse dixit.

38. Therefore, the single Judge of the High Court of Andhra Pradesh was right in dismissing the writ petition, but in appeal the Division Bench erroneously interfered therewith is the conclusion of the Hon''ble Supreme Court. The Hon''ble Supreme Court holds that there is no public interest involved when the disputes of the nature referred to in the Supreme Court decision are existing. Thus, there is great substance in the contention of Mr. Godbole that in order to settle or to get over certain private disputes and legal proceedings resulting therefrom, the intervention of the Central Government was sought even in the present case and that could not have been taken cognizance of for exercising the subject power.

Surprisingly, this was also the issue in Sri Ramdas Motor Transport (supra). Between Rohtas and Ramdas, a Division Bench of this Court also had an occasion to consider somewhat identical controversy. The decision of the Division Bench reported in 1987 MhLJ 775 Hariganga Cements (supra) is also referring to the powers of the Central Government to cause an investigation. There as well, the company was promoted to set up a mini steel plant. It obtained finances from various financial institutions and Nationalized banks. A non-resident Indian T.L. Arora was the Director of that company at the relevant time and held 20000 equity shares in his own name and 20000 jointly with his wife. He started creating difficulty in the management of the company as was urged before the Division Bench. Though he retired from the office of the Director by rotation and failed to get himself re-elected, he by himself and his associates went to the extent of proposing a resolution at the Annual General Meeting and for removal of the Chairman and the Director of the company who were the main promoters. He sought his associates to be replaced as Directors in the resultant vacancies. The resolution as proposed by him failed. The Annual General Meeting was scheduled on 31st March, 1986, but K.R. Batra another shareholder filed an application before the Company Law Board and Arora joined therein. The allegations made by the said Batra and Arora are somewhat identical to the present case and to be found in paragraph 4. They read as under :

"(1) That the Chairman and his brother had diverted funds of the Company and siphoned out the same through series of transactions to other sister concerns;

(2) That the Annual General Meeting on 31-3-1986 was misconducted; and

(3) That Shri G.R. Agarwal had invested over Rs. 25 lakhs in the names of poor and illiterate villagers of Jeetpura, Haryana, in the sums of Rs. 10,000/- to Rs.

25,000/- each even though those persons had no resources. It is, therefore, Shri G.R. Agarwal, who is actively controlling the affairs of the company on the basis of such bogus shares.

To substantiate these allegations, the said Arora had collected signatures and thumb impressions and statements from the said villagers, who had stated that they had never applied for such shares."

39. The Company Law Board passed an order and the detailed findings in the same have been noted by the Division Bench. The Company Law Board directed an investigation to be caused in terms of the above statutory powers vesting in the Central Government and that order of the Company Law Board came to be challenged before the Division Bench. The Division Bench, relying on the dictum in Barium Chemicals and Rohtas Industries held as under :

"11. Some of the principles governing the orders passed by the Company Law Board under section 237(b) of the Companies Act may be borne in mind. The earlier view of the Supreme Court reported in AIR 1953 SC 53 was not approved subsequently. In the said decision in 1953, the Supreme Court had held that "whenever a provision of law confers certain power on an authority on its forming a certain opinion on the basis of certain facts, the courts are precluded from examining whether the relevant facts on the basis of which the opinion is said to have been formed were in fact existed." This decision in 1953 has been overruled by the subsequent decision of the Supreme Court in the matter of Rohtas Industries Ltd. v. S.D. Agarwal and another reported in AIR 1969 SC 707, in which the Supreme Court has observed that the 1953 decision cannot be considered as authority for this proposition. It was further held by the Supreme Court, approving the decision in Barium Chemicals" case (AIR 1967 SC 295) that "the existence of circumstances suggesting that the company's business was being conducted as laid down in sub-clause (i) or the person mentioned in subclause (ii) were guilty of fraud or misfeasance or other misconduct towards the company or towards any of its members is a condition precedent for the Government to form the required opinion and, if the existence of those conditions is challenged, the courts are entitled to examine whether those circumstances were existing when the order was made. In other words, the existence of the circumstances in question is open to judicial review though the opinion formed by the Government is not amenable to review by the courts....". Thus, even though the subjective opinion formed by the Company Law Board is not amenable to challenge, the judicial courts can certainly look at the circumstances as to whether they were existing, or if they were existing, whether they had any nexus to the opinion formed by the Company Law Board.

12. It is well settled that the discretionary powers under Section 237(b) of the Companies Act must be exercised honestly and not for corrupt or ulterior purposes. The authority must form the requisite opinion honestly and after applying its mind to the relevant material before it. In exercising the discretion, the authority must have regard only to circumstances suggesting one or more of

the matters specified in sub clauses (i), (ii) and (iii) of Section 237(b) of the Companies Act. It must act reasonably and not capriciously or arbitrarily. It will be an absurd exercise of discretion, if, for example, the authority forms the requisite opinion on the ground the the director in charge of the company is a member of a particular community. Within these narrow limits, the opinion is not conclusive and can be challenged in a court of law. (refer paragraph-45 of Rohtas Industries Ltd.'s case AIR 1969 SC 707). The Supreme Court has also observed in the above case at paragraph-46 that - "If it is established that there were no materials upon which the authority could form the requisite opinion, the court may infer that the authority did not apply its mind to the relevant facts. The requisite opinion is then lacking and the condition precedent to the exercise of the power under Section 237(b) is not fulfilled. ? ? ?

15. The discretionary powers vested in the Company Law Board under Section 237(b) of the Companies Act are of a very wide nature and the said powers have to be exercised with great conception and retrospection and in a judicious manner. The powers under Section 237 have been conferred on the Central Government in the faith that it will be exercised in a reasonable manner. The Department of the Central Government which deals with companies is presumed to be an expert body in company law matters. Therefore, the standard that is prescribed under Section 237(b) is not the standard required of an ordinary citizen by that of an expert. Hence, if the court comes to the conclusion that no reasonable authority would have passed the impugned order on the material before it, then the same is liable to be struck down.

16. The formation of the opinion under Section 237 of the Companies Act by the Central Government is subjective, but the existence of circumstances relevant to the inference as the sine qua non for action must be demonstrable. It is not reasonable to say that the clause permits the Government to say that it has formed the opinion on circumstances which, it thinks, exist. Since the existence of "circumstances" is a condition fundamental to the making of an opinion, the existence of the circumstances, if questioned in court, has to be proved at least prima facie. It is not sufficient to say that circumstances exist and give no clue to what they are, because the circumstances must be such as to lead to a conclusion of certain definiteness. When it is challenged that the opinion has been formed mala fide or upon extraneous or irrelevant matters, the respondents must disclose before the court, the circumstance which will indicate that his action was within the four corners of his own powers."

40. Thus, the principle is that there has to be an opinion formed. That opinion may be subjective, but the existence of circumstances relevant to the inference as to the sine qua non for action must be demonstrable. It is not reasonable to hold that the clause permits the Government to say that it has formed an opinion on circumstances which it thinks exist.

Since existence of circumstances is a condition fundamental to the making of the opinion, when questioned the existence of these circumstances have to be

proved at least prima facie.

41. In that light if one peruses the powers conferred under the 2013 Act, they are also identical. By section 206, there is a power to conduct inspection and enquiry by section 207. Both these powers are to be exercised by the Registrar.

Then, the report has to be made by the Registrar and the Registrar or the Inspector after inspection of the Books of account or inquiry under section 206 and other books and papers of the company under section 207, shall submit a report in writing to the Central Government along with such documents, if any, and such report may, if necessary, include a recommendation that further investigation into the affairs of the company is necessary. For that, reasons in support have to be set out. We are not concerned with the power of search and seizure vesting in the Registrar in terms of section 209. Then comes the crucial provision in the 2013 Act, namely, section 210. That reads as under :

"210. Investigation into affairs of company.-

(1) Where the Central Government is of the opinion, that it is necessary to investigate into the affairs of a company -

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

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

(c) in public interest it may order an investigation into the affairs of the company.

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

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

42. Therefore, a perusal of this section would indicate that the Central Government must form an opinion, that opinion must be that it is necessary to investigate into the affairs of a company. The Central Government can act on the receipt of a report of the Registrar or Inspector under section 208 or on intimation of a special resolution passed by a company that its affairs are to be investigated or in public interest. Thus, there is a discretion to order an investigation into the affairs of the company.

43. As far as the principles laid down in the afore quoted decisions they are salutary and must apply even to the exercise of power in terms of section 210 of the 2013 Act. What we find is that the Registrar of Companies, West Bengal, received a letter from the Ministry of Corporate Affairs dated 30th October, 2015. It is evident that the letter referred to the complaint of the Member of Parliament and which complaint was addressed to the Central Vigilance Commission. The

CVC, in turn, forwarded it to the Central Government and the Central Government through the above Ministry of Corporate Affairs called for a report from the Registrar. The Registrar forwarded the report on the points referred in this complaint and that report dated 13th January, 2016, outlines the main issue. They are as under:

"a) That the Company namely M/s Singhal Enterprises Private Ltd had taken more than 100 crores loan from State Bank of India, Park Street Branch, Kolkata. The Manager/GM has supported the Company instead of stopping loan.

b) It appears that Hon"ble MP has also raised doubts that "If any thing wrong goes in balance sheet tomorrow and loan goes bad the bank will suffer".

c) The Company has taken Iron Ore from Barbil, Orissa to Raigarh, Chhattisgarh. The Company has got CBT allotment of 10 Railway Rack per month and doing fraudulent activity. They sale material to other plant and misusing the rack allotment. I has also stated that do proper investigation through Railway Board and there allotment of CBT should be suspend until the investigation is done.

d) Company has not filed its Balance Sheet since 5 years.

e) Various other issues like money laundering fraud/cheating etc have raised in enclosure of complaint." [See Pg. 188]

44. On each of these issues the Registrar of Companies stated that only the issue in paragraph 1(d) that the company has not filed its balance sheet for five years comes within his purview. However, his explanation says that the company has filed a petition before the Calcutta High Court being Company Petition Nos.475 of 2010 and 112 of 2012 restraining the Registrar of Companies from taking action. There is an interim order passed on 3rd October, 2010. As far as the loan transaction with State Bank of India, he says clearly in his report that it is not covered under the purview of the Companies Act. Wrong distribution of loan is a matter of investigation by the concerned Banking Regulatory Authority or other relevant agency. Thus the allegation from the Ministry"s letter appears to be that even the banks have acted contrary to public interest in granting credit facilities and extending loans to the said company. However, those allegations cannot be looked into as there are independent Regulators and a mechanism as a whole available under distinct statutes. As far as the allotment of coal mines, misuse of mines, sale of materials to the other plants were not covered under the purview of the Ministry of Company Affairs or the Registrar of Companies. The Member of Parliament has requested in his complaint that investigation with regard to these issues should be by the Railway Board.

45. The Registrar of Companies had already made a detailed report and forwarded it to the Ministry and the contents of which he has reproduced. He has also reported on the issue raised in the letter of the Ministry of Corporate Affairs dated 30th October, 2015. He points out in details as to how matters are sub-judice and with regard to sub-judice matters, it will not be possible for him to

undertake any investigation. He has pointed out clearly as to how the issues relating to non filing of annual accounts/annual returns, no action is required till the pendency of litigation and upto the final outcome. As far as serious issues regarding the above matters, namely, allotment of coal mines, extension of facilities he has opined that it is not for his office to take any action. It is on the basis of such a report that the impugned order has been passed. The impugned order reads as under :

"WHEREAS, the Central Government has the power under section 210 and section 212(1)(c) of the Companies Act, 2013 to order investigation into the affairs of a company in Public interest.

2. AND WHEREAS ROC, West Bengal has submitted his report dated 13.01.2016 to the Central Government in the matter of Singhal Enterprises Pvt. Ltd. and has recommended that investigation be made by multi-disciplinary authorities/specialised agency to find out mis-utilisation of bank finance and other violations under provision of law.

3. NOW therefore, in exercise of powers conferred under section 212(1)(c) of the Companies Act, 2013, the Central Government hereby orders investigation into the affairs of Singhal Enterprises Pvt Ltd by the Serious Fraud Investigation Office (SFIO) of the Ministry of Corporate Affairs.

4. The Director, SFIO, in exercise of powers u/s 212(1), may decide such number of inspectors, as he may consider necessary and the Inspectors so appointed, shall exercise all the relevant powers under the Companies Act, 2013 for the purpose of the investigation.

5. SFIO shall complete the investigation and submit report to the Central Government within a period of four months from the date of issue of this order.

6. This order is issued for and on behalf of the Central Government.

Sd/-

(U. K. Sahoo)

Joint Director"

46. A bare perusal of this order would indicate that the Central Government has referred to the report dated 13th January, 2016, but completely misread and misinterpreted it. It has not recommended any investigations to be made under the Companies Act, 1956 or 2013. If at all the investigations are to be made in terms of this recommendatory report, or suggestion therein, that is for the multiple disciplinary authorities to find out misutilisation of bank finances and other violations of law. The respondents ought be aware that there is a difference in the language of the two relevant sections, namely, section 210 and section 212.

47. Section 210 falling in the same Chapter XIV titled Inspection, Inquiry and

Investigation contains these two sections. Section 210 confers a discretion in the Central Government to order an investigation into the affairs of the company and that power has to be exercised if there is an order passed by a Court or a Tribunal in any proceedings before it to the effect that the affairs of a company ought to be investigated.

Thus sub-section (1) of section 210 confers a discretion while sub-section (2) is mandatory in terms. By sub-section (3) and when the Central Government orders an investigation into the affairs of the company, it may appoint one or more persons as Inspectors so as to carry out this task and to report thereon in such manner as the Central Government may direct. By section 212 the seventeen sub-sections thereof enable investigation into the affairs of a company by Serious Fraud Investigation Office. This power is without prejudice to the provisions of section 210. This power is to be exercised if the Central Government is of the opinion that it is necessary to investigate into the affairs of a company by the SFIO.

Therefore, the power to investigate into the affairs of company is common to both provisions. In the former there are three clauses (a) to (c) in sub-section (1) of section 210 and the investigation is to be carried out by the Central Government by appointing Inspectors and there is a discretion in that behalf.

This power is stated to be akin to section 235 of the 1956 Act. The latter enables investigations into the affairs of a company by the SFIO and there is one more clause (d) in sub-section (1) of section 212 where the Central Government can act on a request from any department of the Central Government or a State Government. Therefore, in a given case there could be an action initiated on the request of the Central Vigilance Commission or based on its recommendations. However, by its very title, the investigation under section 212 by the SFIO ought to be on the basis of the opinion of the Central Government that it is necessary to investigate into the affairs of the company by SFIO. That opinion has to be based on the report of the Registrar or Inspector under section 208; on intimation of a special resolution passed by a company that its affairs are required to be investigated; in the public interest or on the request from any department of the Central Government or the State Government. By section 211, the SFIO is established to investigate frauds relating to a company. It is a very special office and headed by a Director and consists of such number of experts from the fields enumerated in subsection (2) of section 211 to be appointed by the Central Government from amongst persons of ability, integrity and experience. The wide powers that this office enjoys, as is set out in various sub-sections of section 212, would denote as to how its involvement comes after the investigations are assigned to it by the Central Government. By their very nature the investigations into frauds relating to a company have to be assigned. They have to be of such magnitude and seriousness demanding involvement of experts in the fields enumerated in sub-section (2) of section 211. Therefore, while exercising the powers under sub-section (1) of section 212, the Central

Government ought to be not only forming an opinion about the necessity to investigate into the affairs of the company, but further that such investigations have to be assigned to the SFIO.

48. We do not think that there were materials in the present case and which can be termed as enough to warrant the exercise of power by the Central Government by resorting to section 212(1) of the Act of 2013. The Central Government, in the order under challenge, did not spell out any circumstances, except outlining its power under the above sections to order investigation into the affairs of a company in public interest.

None disputes that power or its existence. In para 2 of the impugned order, however, a reference is made to the report of the Registrar of Companies, West Bengal, dated 13th January, 2016. We have already held that the findings in this report are not enough for the Central Government to exercise the drastic power. Something more was required and to be established as circumstances or material enough for exercise of the power. That is clearly lacking in this case.

49. This is the only basis, namely, the report of the Registrar of Companies, West Bengal, or its contents which has enabled the Central Government to exercise its powers under section 212(1)(c). It is, therefore, apparent that it has not necessarily acted in terms of its power conferred by section 212 to direct investigation into the affairs of the company in public interest. The foundation for reaching the opinion or satisfaction is the report of the Registrar. We have referred to the details in that report and we are of the firm opinion that based on that the Central Government could not have recorded a satisfaction or an opinion that investigation into the affairs of the company are necessary. There is no element of public interest which is projected, save and except some vague and general references to certain allegations in matters of bank finance and allotment of coal mines and alleged diversion of raw materials. There has been absolutely no details furnished nor referred in the report. Rather, the report proceeds on the basis that as far as these issues are concerned nothing can be done by the Ministry of Corporate Affairs or the Registrar of Companies. We fail to understand, therefore, how in the present facts and circumstances and based on allegations and counter allegations between two groups of shareholders can it be even held that it is necessary in public interest to direct an investigation into the affairs of the company. Once we reach the conclusion that there is lack of requisite material to arrive at the requisite opinion or record the necessary satisfaction, then, in exercise of our powers of judicial review, we can safely quash and set aside the impugned order. We find that the opinion recorded or the satisfaction reached is vitiated by total non application of mind. None of the factors which are germane and relevant for forming the opinion have been referred. The opinion or satisfaction is based only on the complaint of the Member of Parliament to the CVC and with regard to which report was called for from the Registrar. Even the contents of that report have been, as held above, misread and totally misinterpreted. Based on that no opinion could have been

recorded that it is necessary to investigate the affairs of the company in public interest.

50. Once we reach the above conclusion, it is not necessary to express any opinion as to whether the SFIO at Mumbai has the necessary territorial jurisdiction to summon the petitioners for an inquiry. We also do not record any opinion for we are satisfied that in the facts and circumstances of the present case even in relation to private company, a complaint could have been made and that complaint could have been probed further.

51. We are in complete agreement with Mr. Godbole that this is an investigation directed at the instance of the rival groups and though Mr. Agarwal tries to persuade us into holding that the Central Government has not been influenced by or is never interested in family matters or disputes, we find that to be the essential basis on which the whole action is initiated. It being so initiated at the threshold itself it is vitiated. The law does not permit entering into all such controversies as are essentially factual and existing between groups of shareholders of a private company locked in litigation and which litigation has not reached finality.

52. As a result of the above discussion, the writ petition succeeds. Rule is made absolute in terms of prayer (a). In the circumstances, there shall be no order as to costs.

53. In the light of the detailed judgment on the main writ petition, the Notice of Motion does not survive and it is, accordingly, disposed of.