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IN THE HIGH COURT OF DELHI AT NEW DELHI
LPA 642/2016 & CM No.42509/2016

Reserved on : 4th July, 2018

RAJEEV DHINGRA

.... Appellant

Through: Sh.Rajshekhar Rao,
 Ms.Mani Gupta,
 Ms.Yukti Anand, and
 Mr.Sameer Dawar,
 Advocates.

versus

IFCI LIMITED & ORS.

.... Respondents

Through: Mr. P.S. Bindra,
 Ms.Rishika Arora,
 Mr.Bhuvnesh and
 Mr.Sani Abbot, Advs. for
 IFCI

CORAM:

HON'BLE MR. JUSTICE SANJIV KHANNA

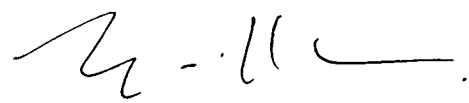
HON'BLE MR. JUSTICE CHANDER SHEKHAR

ORDER

% **20.12.2018**

For detailed order, see LPA No.641/2016, Coastal Projects Limited & Anr. V. IFCI Limited & Anr., pronounced today.


CHANDER SHEKHAR, J


SANJIV KHANNA, J.

DECEMBER 20, 2018

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IN THE HIGH COURT OF DELHI AT NEW DELHI

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Reserved on: 04th July, 2018.Date of Decision: 20th December, 2018

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LPA 641/2016 and CM Nos. 42466-42467/2016, 42469/2016 & 12846/2017**COASTAL PROJECTS LIMITED & ANR. ...Appellants**Through: Sh.Rajshekhar Rao,
Ms.Mani Gupta, Ms.Yukti Anand, and
Mr.Sameer Dawar, Advocates.

versus

IFCI LIMITED & ANR ...RespondentsThrough: Mr. P.S. Bindra,
Ms.Rishika Arora, Mr.Bhuvnesh and
Mr.Sani Abbot, Advs. for IFCI

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LPA 642/2016 and CM No. 42509/2016**RAJEEV DHINGRA ...Appellant**Through: Mr.Dayan Krishnan, Sr.
Adv. with Ms.Mani Gupta and
Ms.Aakashi Lodha, Advs.

versus

IFCI LIMITED & ORS ...RespondentsThrough: Mr. P.S. Bindra,
Ms.Rishika Arora, Mr.Bhuvnesh and
Mr.Sani Abbot, Advs. for IFCI**CORAM:****HON'BLE MR. JUSTICE SANJIV KHANNA****HON'BLE MR. JUSTICE CHANDER SHEKHAR****CHANDER SHEKHAR, J.**

1. By this common judgment, we shall dispose of the above-said

two Letters Patent Appeals wherein the appellants have challenged the order dated 22.09.2016 ('Impugned Order', for short) passed by a learned Single Judge of this Court in Contempt Case (C) No. 958/2013 filed by M/S IFCI Limited, (the respondent no. 1) before us. The learned Single Judge observed while passing the impugned order that the gist of the Chartered Accountant's Report *prima-facie*, disclosed serious allegations of diversion and rotation of funds of a large amount and directed the Serious Fraud Investigation Office ('SFIO', for short) to investigate the prima-facie allegations which have been referred to in the gist of the report. The learned Single Judge further directed the SFIO to give an opportunity of hearing to both the parties before submitting its report and suggesting the future course of action.

2. Briefly stated, the case of the appellants in LPA 641/2016 is that, the appellant no. 1 Company M/s Coastal Projects Limited is a company engaged in construction and engineering, procurement and construction services of infrastructure projects like metro rail, canal irrigation etc. The second appellant, Sabbineni Surendra along with his father Late Sabbineni Papaiah (respondent no. 2 in contempt case and died during the pendency of the case) were the promoters of the appellant no. 1 Company. Another appellant, Rajeev Dhingra in LPA 642/2016 was an employee of the appellant no. 1 Company, and held the position of Vice-President (Finance) in the said company until January 2014 where-after he stated to have resigned from the company.

3. On 28.03.2011 the appellant no. 1 Company entered into a

Debenture Subscription Agreement with the respondent no. 1 and agreed to issue Compulsory Convertible Debentures ('CCDs', for short) having face value of Rs.10,00,000/- (Rs. Ten Lakhs) by way of a private placement for cash aggregating a value of Rs. 100,00,00,000/- (Rs. One Hundred Crores). Simultaneously, the promoters of the appellant company, i.e. appellant no. 2 and his father (since deceased) (the 'said promoters', for short) also entered into two other agreements, namely 'Put Option Agreement' and 'Call Option Agreement' with the respondent no. 1- IFCI Ltd.. The 'Put Option Agreement' provided the respondent no. 1 with the right to sell the CCDs to the promoters of the appellant no. 1 Company any time after the occurrence of a 'Put Option Event'.

4. Subsequently on 31.03.2011, as per the terms of the Debenture Subscription Agreement, the respondent no. 1 disbursed the sum of Rs.100 crores to the appellant no. 1 Company.

5. In consequence of the default on the repayment of interest on the CCDs by the appellant no. 1 Company the respondent no.1 on 01.10.2012 exercised 'Put Option' under the 'Put Option Agreement' requesting the said promoters to purchase the CCDs and make payment of Rs. 100 crores together with interest within 15 days.

6. Subsequently, on 06.10.2012 a letter was issued by the appellant, no. 2 to the respondent no. 1 stating that he and Late Sabbineni Papaiah would exercise their call option at a price of Rs.104,32,52,704/-. In response to the afore-mentioned letter, the respondent no. 1 on 09.10.2012 also issued a letter though accepting

the exercise of call option by the said promoters but asked them to pay a sum Rs.105,19,39,394/- instead of Rs.104,32,52,704/- in the designated account of the respondent no. 1. Thus, a dispute arose between the parties.

7. Aggrieved, the respondent no. 1 on 06.11.2012 invoked arbitration clause and appointed one Arbitrator, and also filed a petition being, OMP 1087/2012 seeking stay on the appellants from selling, encumbering, alienating or creating third interests in the properties belonging to the said promoters. This Court vide order dated 23.11.2012 passed an *ex parte ad interim* order restraining the appellants from selling the personal properties of the promoters.

8. During the pendency of the said petition, the respondent no. 1 on 11.01.2013, issued a letter to the appellant no.1 Company conveying its decision to declare them as a 'wilful defaulter', and further on 17.01.2013 issued another letter to other banks and financial institutions including RBI (the lenders of the appellant company) communicating its decision to declare the appellant no. 1 Company as a 'wilful defaulter'.

9. Aggrieved, the appellants filed a writ petition being W.P.(C) No. 393/2013 against the respondent no. 1 seeking to quash the afore-said letters. Vide order dated 24.01.2013, the writ petition was disposed of with the consent of the parties in accordance with the terms of the settlement entered into between them whereby the appellants made a solemn promise to pay Rs.100 crores to the respondent no. 1 in three installments in the following manner:

“(i) The first installment of Rs. 10 Crores will be paid by the petitioner to the respondent on or before 15.03.2013;

(ii) The second installment of Rs. 15 Crores will be paid by the petitioner to the respondent on or before 20.04.2013;

(iii) The third installment of Rs. 75 Crores will be paid by the petitioner to the respondent on or before 30.06.2013.”

10. Upon the appellants undertaking to pay the aforesaid installments, the interim injunction order dated 23.11.2012 passed in OMP 1087/2012 was varied and additionally, the notices dated 11.01.2013 and 17.01.2013 declaring the appellants as ‘wilful defaulters’ were also stayed.

11. The appellants failed to abide by the terms of the settlement, in as much as they failed to make the payments on the relevant dates and the third installment of Rs.75 crores which was due on or before 30.06.2013 was not paid.

12. Later on, the appellants filed an application seeking modification of the order dated 24.01.2013 requesting re-schedulement of the third installment of Rs.75 crores, and since the respondent no. 1 was agreeable to the same, the order dated 24.01.2013 was modified vide order dated 12.08.2013 to the extent mentioned in the revised terms and conditions. One of the mutually agreed revised terms and conditions clearly stipulated that in case of default during the extended repayment period, the respondent no.1 would have the right to move a contempt petition.

13. The appellants failed to comply with the orders dated 24.01.2013 and 12.08.2013 and failed to make payment in terms of the consent orders passed by this court.

14. Consequently, in the month of December 2013 the respondent no. 1 filed the contempt petition no. 958/2013 against the appellants and the learned Single Judge vide order dated 04.08.2015 held the appellants guilty of civil contempt which was further challenged by the appellants vide a recall application.

15. While, the recall was pending, the learned Single Judge vide the impugned order dated 22.09.2016 commanded an enquiry into the financial affairs of the appellants by the SFIO.

16. We have heard the learned counsel for the parties and have also gone through the record of the cases.

17. The main contention of the learned counsel for the appellants is that the impugned order directing an investigation by the SFIO could not have been passed in the exercise of contempt jurisdiction by the learned Single Judge.

18. To buttress his arguments, learned counsel for the appellants has relied upon the judgments of the Supreme Court titled as *V.M. Manohar Prasad vs. N. Ratnam Raju and Another*, (2004) 13 SCC 610 and *Sudhir Vasudeva and Others vs. M. George Ravishekar and Others*, (2014) 3 SCC 373.

19. Learned counsel for the appellants further contended that the report filed by the respondent no. 1 is full of errors on the face of the

record, and this aspect was brought to the notice of the learned Single Judge and the same has also been recorded in the impugned order, but nevertheless the learned Single Judge proceeded in a summary manner and passed a direction ordering the SFIO investigation.

20. The Constitution as well as the Criminal Procedure Code and other enactments have construed certain rights and duties and also the obligations that even an ordinary citizen has to inform the concerned authorities regarding a crime or the violation committed by any individual or body corporate, etc. The directions contained in the impugned order are nothing but a request and communication to the SFIO to initiate the action against the appellants, certainly, as per law and following the due process provided under the Act and the Rules there-under.

21. The Courts while exercising the powers under Article 226 or Article 32 of the Constitution of India or any other enactment or if it comes to the knowledge of the Court that there is breach, violation or crime committed by any individual or body corporate or legal entity, are fully empowered to communicate and/or direct and/or request the concerned authorities to investigate the matter and initiate the action, *albeit*, as per law and the Rules framed in that regard. Hence, the impugned order is nothing but a communication and direction to investigate the prima-facie allegations which were referred to in the gist of the report and came to the knowledge of the court, certainly and objectively as per law.

22. Further, the power to order fresh, de-novo or re-investigation is

vested with the Constitutional Courts. If the facts of a given case so warrant, the High Court or the Supreme Court can order for an investigation in exercise of its extra-ordinary jurisdiction under Article 226 and Article 32 of the Constitution respectively. The ample power of the Constitutional Courts to direct an investigation has been observed in ***Zahira Habibullah Sheikh and Ors. vs. The State of Gujarat and Ors.***, AIR 2006 SC 1367. In this case, the Supreme Court gave directions to the Registrar General of the Court to act as an investigating officer and conduct a detailed examination as to which version of Zahira Habibullah Sheikh was a truthful version. The Supreme Court further held that it was necessary to do so because various documents have been placed to show that she had made departure from her statements/stands at different points of time. The Supreme Court also passed a direction to the income-tax authorities to initiate enquiry proceedings against her, requiring her to explain the sources of acquisition of the various assets and expenses met by her. Relevant paras of the said judgment are reproduced here-under:

“4. While the trial was on before a Court in Maharashtra pursuant to this Court's direction, it appears Zahira gave a press statement in the presence of some government officials that what she had stated before the trial Court in Gujarat earlier was correct. A petition was filed before this Court alleging that Zahira's statement was nothing but contempt of this Court. At a press conference held on 3.11.2004 few days before the scheduled appearance of the witnesses in the trial, she had changed her version, disowned the statements made in this Court, and before various bodies like National Human Rights Commission. Considering the petition filed orders were passed on 10.1.2005 and subsequently on 21.2.2005, giving

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directions which read as follows:

Order dated 10.1.2005

Having heard learned Counsel for the parties, we are of the considered view that a detailed examination is necessary as to which version of Zahira Habibullah Sheikh is a truthful version. It is necessary to do so because various documents have been placed to show that she had made departure from her statements/stands at different points of time. Allegations are made by Mr. P.N.Lekhi, learned senior counsel appearing for Zahira Habibullah Sheikh that she was being threatened, coerced, induced and/or lured by Teesta Setalvad. On the contrary, learned Counsel appearing for Teesta Setalvad submits that she was being threatened, coerced, lured or induced by others to make statements or adopt stands contrary to what she had stated/adopted earlier. In this delicate situation, the appropriate course would be to direct an inquiry to be conducted to arrive at the truth. We direct the Registrar General of this Court to conduct the inquiry and submit a report to this Court within three months. The Registrar General shall indicate in the report (a) if Zahira Habibullah Sheikh was in any - manner threatened, coerced, induced and/or in any manner pressurised to depose/make statement(s) in any particular way, by any person or persons, and (b) if the answer to (a) is in the affirmation, who the person/persons is (or) are...

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41. In the aforesaid background, we direct as follows:

(1) Zahira is sentenced to undergo simple imprisonment

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for one year and to pay cost of Rs. 50,000/- and in case of default of payment within two months, she shall suffer further imprisonment of one year;

(2) Her assets including bank deposits shall remain attached for a period of three months. The Income Tax Authorities are directed to initiate proceedings requiring her to explain the sources of acquisition of various assets and the expenses met by her during the period from 1.1.2002 till today. It is made clear that any observation made about her having not satisfactorily explained the aforesaid aspects would not be treated as conclusive. The proceedings shall be conducted in accordance with law. The Chief Commissioner, Vadodara is directed to take immediate steps for initiation of appropriate proceedings. It shall be open to Income tax authorities to direct continuance of the attachment in accordance with law. If so advised, the Income Tax Authorities shall also require Madhu Srivastava and Bhattoo Srivastava to explain as to why the claim as made in the VCD of paying money shall not be further enquired into and if any tangible material comes to surface, appropriate action under the Income Tax Law shall be taken notwithstanding the findings recorded by the Inquiry Officer that there is no acceptable material to show that they had paid money, as claimed, to Zahira. We make it clear that we are not directing initiation of proceedings as such, but leaving the matter to the Income Tax Authorities to take a decision. The Trial Court shall decide the matter before it without being influenced by any finding/observation made by the Inquiry Officer or by the fact that we have accepted the report and directed consequential action."

23. In ***Vinay Tyagi vs. Irshad Ali and Ors.***, (2013) 5 SCC 762 the Supreme Court held as under:

"43. At this stage, we may also state another well-settled canon of criminal jurisprudence that the superior courts

have the jurisdiction under Section 482 of the Code or even Article 226 of the Constitution of India to direct 'further investigation', 'fresh' or 'de novo' and even 'reinvestigation'. 'Fresh', 'de novo', and 'reinvestigation' are synonymous expressions and their result in law would be the same. The superior courts are even vested with the power of transferring investigation from one agency to another, provided the ends of justice so demand such action. of course, it is also a settled principle that this power has to be exercised by the superior courts very sparingly and with great circumspection."

24. Further, in **Dharam Pal vs. State of Haryana and Ors.**, 2016

(2) ACR 1440, it was held by the Supreme Court as under:

"20. Be it noted here that the constitutional courts can direct for further investigation or investigation by some other investigating agency. The purpose is, there has to be a fair investigation and a fair trial. The fair trial may be quite difficult unless there is a fair investigation. We are absolutely conscious that direction for further investigation by another agency has to be very sparingly issued but the facts depicted in this case compel us to exercise the said power. We are disposed to think that purpose of justice commands that the cause of the victim, the husband of the deceased, deserves to be answered so that miscarriage of justice is avoided. Therefore, in this case the stage of the case cannot be the governing factor.

21. We may further elucidate. The power to order fresh, de-novo or re-investigation being vested with the Constitutional Courts, the commencement of a trial and examination of some witnesses cannot be an absolute impediment for exercising the said constitutional power which is meant to ensure a fair and just investigation. It can never be forgotten that as the great ocean has only one test, the test of salt, so does justice has one flavour, the flavour of answering to the distress of the people

without any discrimination...”

25. The law is well-settled that whenever facts of a case demonstrate or depict the need to inform authorities empowered to investigate and enquire into violations as alleged, the Court is not powerless to pass an order. The only precaution which is required to be undertaken is to exercise this power sparingly and with great circumspection taking into consideration the facts of each and every case. There cannot be any straightjacket formula for this purpose. In ***Dharam Pal v. State of Haryana & Ors.*** (supra), it has been held that the Constitutional Court can direct for further investigation or investigation by some other investigation agency. The purpose is to conduct a fair investigation and a fair trial.

26. The facts of the present case demonstrate that the learned Single Judge judiciously exercised the power and passed the impugned order. There is *prima facie* stated to be sufficient material on record for passing the direction to investigate *prima facie* allegations which have been referred to in the gist of the report. This Court would wish to clarify here that the learned Single Judge in the impugned order has only stated that *prima facie* serious allegations of diversion and rotation of funds of a large amount has been disclosed and directed the SFIO to investigate the *prima facie* allegations, which does not mean that the Court in any manner has given its verdict on the same and/or expressed any final opinion about the same. The learned Single Judge so far as the investigation is concerned, has also directed that the investigation shall be conducted as per law and following the due

process of law under the Act and the Rules thereunder and the SFIO shall certainly submit the report and shall suggest the future course of action after giving an opportunity of hearing to both the parties.

27. This is not an order of punishment per se but a communication by the Court that certain facts have come to light which were required to be communicated to the SFIO for them to decide whether they should examine the case within the powers conferred by the statute upon them.

28. Order of the Single Judge is not to be considered as an order of mandamus and direction to SFIO to conduct an inquiry without procedure prescribed by law. The SFIO is to act as per and within the framework of law. If any precondition or requirements are to be satisfied under the statute before investigation can be undertaken, the authority shall be bound to undertake the said steps and satisfy itself whether or not facts justify investigation and inquiry. In such circumstances, it would be the satisfaction of the authorities on due application of mind which would confer jurisdiction. We clarify that the impugned order does not substitute and does not bind the SFIO to record their satisfaction, one way or the other.

29. The observation and communication directed by the Single Judge is not an order of punishment under the Contempt of Courts Act. It is merely a communication given by the Court to SFIO in exercise of its plenary powers which are inherent in the High Court. There is no punishment in the form of fine, penalty or imprisonment.

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30. Counsel for the appellants have drawn our attention to Sections 211 and 212 of the Companies Act, 2013. The Sections are as under:

“211. Establishment of Serious Fraud Investigation Office

(1) The Central Government shall, by notification, establish an office to be called the Serious Fraud Investigation Office to investigate frauds relating to a company:

Provided that until the Serious Fraud Investigation Office is established under subsection (1), the Serious Fraud Investigation Office set-up by the Central Government in terms of the Government of India Resolution No. 45011/16/2003-Adm-I, dated the 2nd July, 2003 shall be deemed to be the Serious Fraud Investigation Office for the purpose of this section.

(2) The Serious Fraud Investigation Office shall be headed by a Director and consist of such number of experts from the following fields to be appointed by the Central Government from amongst persons of ability, integrity and experience in,—

- (i) banking;
- (ii) corporate affairs;
- (iii) taxation;
- (iv) forensic audit;
- (v) capital market;
- (vi) information technology;
- (vii) law; or
- (viii) such other fields as may be prescribed.

(3) The Central Government shall, by notification, appoint a Director in the Serious Fraud Investigation Office, who shall be an officer not below the rank of a Joint Secretary to the Government of India having knowledge and experience in dealing with matters relating to corporate affairs.

(4) The Central Government may appoint such experts and other officers and employees in the Serious Fraud

Investigation Office as it considers necessary for the efficient discharge of its functions under this Act.

(5) The terms and conditions of service of Director, experts, and other officers and employees of the Serious Fraud Investigation Office shall be such as may be prescribed.

212. Investigation into affairs of Company by Serious Fraud Investigation Office

(1) Without prejudice to the provisions of section 210, where the Central Government is of the opinion, that it is necessary to investigate into the affairs of a company by the Serious Fraud Investigation Office—

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

(b) on intimation of a special resolution passed by a company that its affairs are required to be investigated;

(c) in the public interest; or

(d) on request from any Department of the Central Government or a State Government, the Central Government may, by order, assign the investigation into the affairs of the said company to the Serious Fraud Investigation Office and its Director, may designate such number of inspectors, as he may consider necessary for the purpose of such investigation.

(2) Where any case has been assigned by the Central Government to the Serious Fraud Investigation Office for investigation under this Act, no other investigating agency of Central Government or any State Government shall proceed with investigation in such case in respect of any offence under this Act and in case any such investigation has already been initiated, it shall not be proceeded further with and the concerned agency shall transfer the relevant documents and records in respect of such offences under this Act to Serious Fraud Investigation Office.

(3) Where the investigation into the affairs of a company has been assigned by the Central Government

to Serious Fraud Investigation Office, it shall conduct the investigation in the manner and follow the procedure provided in this Chapter; and submit its report to the Central Government within such period as may be specified in the order.

(4) The Director, Serious Fraud Investigation Office shall cause the affairs of the company to be investigated by an Investigating Officer who shall have the power of the inspector under section 217.

(5) The company and its officers and employees, who are or have been in employment of the company shall be responsible to provide all information, explanation, documents and assistance to the Investigating Officer as he may require for conduct of the investigation.

(6) Notwithstanding anything contained in the Code of Criminal Procedure, 1973, the offences covered under sub-sections (5) and (6) of section 7, section 34, section 36, sub-section (1) of section 38, sub-section (5) of section 46, sub-section (7) of section 56, sub-section (10) of section 66, sub-section (5) of section 140, sub-section (4) of section 206, section 213, section 229, sub-section (1) of section 251, sub-section (3) of section 339 and section 448 which attract the punishment for fraud provided in section 447 of this Act shall be cognizable and no person accused of any offence under those sections shall be released on bail or on his own bond unless—

(i) the Public Prosecutor has been given an opportunity to oppose the application for such release; and

(ii) where the Public Prosecutor opposes the application, the court is satisfied that there are reasonable grounds for believing that he is not guilty of such offence and that he is not likely to commit any offence while on bail:

Provided that a person, who, is under the age of sixteen years or is a woman or is sick or infirm, may be released on bail, if the Special Court so directs:

Provided further that the Special Court shall not take cognizance of any offence referred to this sub-section except upon a complaint in writing made by—

- (i) the Director, Serious Fraud Investigation Office; or
- (ii) any officer of the Central Government authorised, by a general or special order in writing in this behalf by that Government.

(7) The limitation on granting of bail specified in sub-section (6) is in addition to the limitations under the Code of Criminal Procedure, 1973 or any other law for the time being in force on granting of bail.

(8) If the Director, Additional Director or Assistant Director of Serious Fraud Investigation Office authorised in this behalf by the Central Government by general or special order, has on the basis of material in his possession reason to believe (the reason for such belief to be recorded in writing) that any person has been guilty of any offence punishable under sections referred to in sub-section (6), he may arrest such person and shall, as soon as may be, inform him of the grounds for such arrest.

(9) The Director, Additional Director or Assistant Director of Serious Fraud Investigation Office shall, immediately after arrest of such person under sub-section (8), forward a copy of the order, along with the material in his possession, referred to in that sub-section, to the Serious Fraud Investigation Office in a sealed envelope, in such manner as may be prescribed and the Serious Fraud Investigation Office shall keep such order and material for such period as may be prescribed.

(10) Every person arrested under sub-section (8) shall within twenty-four hours, be taken to a Judicial Magistrate or a Metropolitan Magistrate, as the case may be, having jurisdiction:

Provided that the period of twenty-four hours shall exclude the time necessary for the journey from the place of arrest to the Magistrate's court.

(11) The Central Government if so directs, the Serious Fraud Investigation Office shall submit an interim report to the Central Government.

(12) On completion of the investigation, the Serious Fraud Investigation Office shall submit the investigation report to the Central Government.

(13) Notwithstanding anything contained in this Act or in any other law for the time being in force, a copy of the investigation report may be obtained by any person concerned by making an application in this regard to the court.

(14) On receipt of the investigation report, the Central Government may, after examination of the report (and after taking such legal advice, as it may think fit), direct the Serious Fraud Investigation Office to initiate prosecution against the company and its officers or employees, who are or have been in employment of the company or any other person directly or indirectly connected with the affairs of the company.

(15) Notwithstanding anything contained in this Act or in any other law for the time being in force, the investigation report filed with the Special Court for framing of charges shall be deemed to be a report filed by a police officer under section 173 of the Code of Criminal Procedure, 1973.

(16) Notwithstanding anything contained in this Act, any investigation or other action taken or initiated by Serious Fraud Investigation Office under the provisions of the Companies Act, 1956 shall continue to be proceeded with under that Act as if this Act had not been passed.

(17)(a) In case Serious Fraud Investigation Office has been investigating any offence under this Act, any other investigating agency, State Government, police authority, income-tax authorities having any information or documents in respect of such offence shall provide all such information or documents

available with it to the Serious Fraud Investigation Office;

(b) The Serious Fraud Investigation Office shall share any information or documents available with it, with any investigating agency, State Government, police authority or income tax authorities, which may be relevant or useful for such investigating agency, State Government, police authority or income-tax authorities in respect of any offence or matter being investigated or examined by it under any other law.”

31. As per Section 211, the Central Government has the power to direct the investigation by the SFIO. This is further clear from Section 212(1) which states that the investigation by the SFIO is conducted at the instance of the Central Government. The investigation is conducted where the Central Government is of the opinion that it is necessary to conduct an investigation into the affairs of the company and it also specifically enlists the cases under which such investigation can be ordered.

32. Upon completion of the investigation by the officers of SFIO, the report also has to be submitted to the Central Government.

33.* The Court has the power while dealing with the matter under the Contempt of Courts Act, to order for an investigation of the matter which comes in the knowledge of the Court regarding any violation, breach of law etc. and such a power stands derived from the Constitution itself, hence the submission of the learned counsel for the appellants that the Court cannot pass any direction for investigation while dealing with the contempt petition is absolutely untenable in law, hence the same is rejected. The impugned order passed by the

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learned Single Judge, in view of the facts and circumstances of the case, has been passed fully within the precincts of the power of the Court and the direction for investigation by the SFIO into the *prima facie* allegations which have been referred to in the gist of the report is just and proper.

34. However, in view of the intent of Section 211 and Section 212(1) of the Companies Act, 2013, the order requires little modification and is modified to the extent that the impugned order of the Court shall be communicated to the Central Government which shall examine the same and may direct the investigation in terms of Section 211 of the Act. The Central Government shall communicate the decision taken in this regard, as expeditiously as possible, to the Court. However, in case the Central Government directs the investigation by the SFIO, the report submitted in this regard by the office of SFIO shall also be communicated by the Central Government to the Court.

35. The LPAs are accordingly disposed of. All the pending applications are also disposed of. However, the parties are left to bear their own costs.

CHANDER SHEKHAR, J

SANJIV KHANNA, J

DECEMBER 20, 2018/rk