

D/L. 26.
December 7, 2023.
MNS.

WPA No. 24360 of 2023

Ankur Tie up Private Limited and others
Vs.
Union of India and another

Mr. Soumya Majumder,
Mr. Rudrajit Sarkar,
Mr. Tamoghna Saha

... for the petitioners.

Mr. Swatarup Banerjee,
Mr. Sailendra Kumar Tiwari

...for the respondents-authorities.

1. Learned counsel for the petitioners submits that the writ petition is being moved only on behalf of the petitioner no. 1 and the other writ petitioners withdraw the same with liberty to sue afresh.
2. Such leave is granted
3. Learned counsel for the petitioner no.1 argues that the respondent authorities acted without jurisdiction in issuing a fresh notice to the petitioner no. 1 under Section 217 of the Companies Act, 2023 (2013 Act) after the inspection within the contemplation of Chapter XIV of the 2013 Act as well as the subsequent investigation having been over and having

culminated in action being taken against the petitioners under Section 224 of the 2013 Act.

4. It is argued that already a winding up proceeding as well as a criminal prosecution are ongoing against the petitioner no. 1 within the contemplation of Section 224 of the 2013 Act. As such, there was no occasion for the respondents to issue a fresh notice under Section 217 of the 2013 Act.
5. Learned counsel places reliance on a copy of the Inspection Report, which was submitted, on such count.
6. Learned counsel appearing for the respondent authorities argues that the petitioners are seeking to fish out a cause of action by filing the present writ petition, It is sought to be impressed upon the court by the respondents that Section 224 of the 2013 Act has several components, one of which is that even during the prosecution by the Central Government, it shall be the duty of all officers and other employees of the company or body corporate to give the Central Government the necessary assistance in connection with the prosecution.
7. It is contended that within the scope of the said impression “necessary assistance”

further information may be sought from the petitioners even during the continuance of the prosecution.

8. Upon hearing learned counsel for the parties, the provisions of the 2013 Act are required to be looked into. Section 206 of the 2013 Act contemplates the power to call for information, inspect books and conduct inquiries. Under Section 207, inspection and inquiry may be conducted thereafter which culminates in a report under Section 208 of the 2013 Act.
9. The said procedure leads to an investigation into the affairs of the company under the scheme of the present Act within the contemplation of Section 210 of the 2013 Act.
10. Ultimately, under Section 223 of the 2013 Act, an Inspector appointed under the concerned Chapter may, if so directed by the Central Government, submit interim reports to the Government and on the conclusion of the investigation, shall submit a final report to the Central Government.
11. Section 224 of the 2013 Act says that if from an inspector's report made under Section 223, it appears to the Central Government that any person has in relation to the company or in

relation to any other body corporate or other person or whose affairs have been investigated under this Chapter is guilty of any offence for which he is criminally liable, it may prosecute such person for the offence.

12. Sub-section (2) of Section 224 envisages a winding up proceeding on similar cause of action.

13. A composite reading of the said provisions indicates that the proceedings initiated under Section 206 of the 2013 Act by calling for information etc. culminates in proceedings (prosecution and winding up) being initiated under Section 224 of the 2013 Act.

14. A threadbare reading of Section 224(1) clearly indicates that the "Inspector's report" referred to therein, which is the genesis of the prosecution taken against the concerned accused company, is nothing but a final report within the contemplation of Section 223(1) of the 2013 Act and not an interim report. If it were to be construed otherwise, it would be an absurd interpretation since a final report to the Central Government would lose its efficacy altogether and an interim report would

then be sufficient for initiation of the prosecution.

15. In the present case, it is to be noted that all the said procedures from Sections 206 to 223 of the 2013 Act were already over. Thereafter, the proceedings as envisaged under Section 224 have been taken out against the petitioner no. 1, both by initiating criminal proceeding and a winding up proceeding which are ongoing.

16. Hence, the clock cannot be set back and a fresh notice be initiated under Section 217 of the 2013 Act. Hence, the impugned notice dated August 24, 2013 purportedly under Section 217 is bad in law and *de hors* the 2013 Act.

17. However, in the writ petition, the petitioner no. 1 has also challenged the steps taken under Section 210 of the 2013 Act which cannot be entertained at this stage, since all such proceedings have already culminated in action being taken under Section 224 of the 2013 Act.

18. In so far as the other argument of the respondents is concerned, the mention in Section 224(1) of necessary assistance being

given by all officers and other employees of the Government or body corporate to be given to the Central Government in connection with the prosecution does not call for or even refer to any further notice under Section 217 of the 2017 Act.

19. Section 224(1) itself is comprehensive enough to take within its fold the necessary assistance to be given in connection with the prosecution, which has nothing to do with a notice under Section 217 of the 2013 Act. Thus, the respondents acted palpably *de hors* the law and the provisions of the 2013 Act in issuing a fresh notice dated August 24, 2023, purportedly under Section 217 of the 2013 Act, to the petitioner no.1.

20. In such view of the matter, WPA No. 24360 of 2023 is allowed on contest to the extent that the impugned notice under Section 217 of the 2013 Act dated August 24, 2023 (Annexure P9 of the writ petition) issued to the petitioner no. 1 is set aside and quashed.

21. It is, however, made clear that nothing in this order shall prejudice or influence the ongoing action taken for winding up of the petitioner no. 1 as well as the criminal trial taken out

against the petitioner no. 1 under Section 224, sub-sections (1) and (2) of the 2013 Act in any manner whatsoever and/or affect the statutory provision/requirement of necessary assistance being given in connection with the said prosecution by all officers and other employees of the concerned Governments/body corporates.

22. It is made clear that all the observations made hereinabove pertain to the impugned notice insofar as it relates to the petitioner no. 1. As regards the other petitioners, it is submitted that the said petitioners do not want to proceed further with the present challenge.

23. Accordingly, the names of petitioner nos. 2 to 16 stand hereby deleted.

24. Necessary consequential amendment in the cause title of the writ petition shall be carried out by the learned Advocate for the petitioners during the course of the day.

25. Nothing in this order shall preclude the petitioner nos. 2 to 16 from moving independent challenges, if they so wish.

26. No observations hereinabove shall operate in respect of the said other petitioners than petitioner no. 1.

27. There will be no order as to costs.

28. Urgent photostat certified copies of this order,
if applied for, be made available to the parties
upon compliance with the requisite formalities.

(Sabyasachi Bhattacharyya, J.)