



* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

% **Judgment reserved on: 10 November 2023**
Judgment pronounced on: 06 December 2023

+ **W.P.(C) 2385/2020, CM Nos. 8341/2020, 54457/2022, 55432/2022 & 43467/2023**

ALCHEMIST HEALTHCARE LTD. & ORS. Petitioner

Through: Mr. Vikram Chaudhari, Sr.
Adv. with Mr. Rishi Sehgal,
Ms. Muskan Khurana & Ms.
Nikita Gill, Advs.

versus

UNION OF INDIA & ORS. Respondents

Through: Mr. Kirtiman Singh, CGSC
with Ms. Vidhi Jain, Ms. Nupur
Grover, Mr. Akshay Kumar
Singh, Mr. Kartikay Yadav, Mr.
Pankaj Mohan & Mr. Lakshay,
Advs. for UOI/SFIO.

CORAM:
HON'BLE MR. JUSTICE YASHWANT VARMA

J U D G M E N T

1. The nine petitioners who are constituents of the Alchemist Group of Companies have impugned the summons dated 21 December 2018, 20 March 2019 and 13 June 2019 issued by the **Serious Fraud Investigation Office**¹ intimating them of the initiation of an investigation under Section 212 of the **Companies Act, 2013**² and the appointment of an Investigating Officer in connection therewith. The petitioners also seek an issuance of a writ of

¹ SFIO

² The 2013 Act



prohibition restraining the respondents from taking further proceedings pursuant to the impugned summons.

2. The challenge is essentially based on the contention of the petitioners that since proceedings under the erstwhile **Companies Act, 1956**³ had been initiated prior to the enforcement of Section 212 of the 2013 Act, the respondents stand denuded of jurisdiction to initiate proceedings afresh under Section 212. It is also contended that the provisions of the 1956 Act came to be repealed only upon the energization of Section 465 of the 2013 Act on 30 January 2019. It is in that light that it was urged that since the provisions of the 1956 Act prevailed till at least 30 January 2019, no proceedings under Section 212 of the 2013 Act could have been initiated. The challenge is additionally founded upon the judgment and orders passed in an earlier round of litigation which was instituted by **Alchemist Infra Reality Limited**⁴, and the contention of the petitioners that by virtue of the orders passed on those writ petitions and the **Letters Patent Appeal**⁵ filed in connection therewith, the respondents stand restrained from initiating any proceedings under the 2013 Act not just against AIRL but also against the other petitioners in the present Writ Petition.

3. For the purposes of evaluating the challenge as raised, we deem it apposite to notice the following essential facts.

4. On 27 March 2012, the **Registrar of Companies**⁶ is stated to have addressed a communication to AIRL seeking information

³ The 1956 Act

⁴ AIRL

⁵ LPA

⁶ RoC



invoking the powers conferred by sub-sections (1) and (7) of Section 234 of the 1956 Act. The aforesaid communication was followed by another letter of the Registrar of Companies addressed to the Regional Director dated 24 August 2012 recommending the initiation of an investigation under Section 235 of the 1956 Act.

5. Acting upon that report, the Union Government on 05 November 2012 directed the commencement of an investigation into the affairs of AIRL. Since the aforesaid decision of the Union Government would have some bearing on the issues which were canvassed for our consideration on this writ petition, we deem it apposite to extract the same hereinbelow:-

“No. 04/59/2012 – C-II (NR)
Government of India
Ministry of Corporate Affairs

5th Floor, “A” Wing, Shastri Bhawan,
Dr. R.P. Road, New Delhi-110001
Dated: 05th November, 2012

ORDER

Whereas the Central Government is empowered under the section 235 of the Companies Act, 1956 to order investigation into the affairs of any company on the basis of the report of the Registrar of Companies, under the section 234(6) of the said Act and to appoint one or more competent persons as inspectors to investigate the affairs of the company.

2. AND whereas RoC, Delhi, vide his report dated 24th August, 2012, submitted to the Central Government under section 234(6) of the Companies Act, 1956 has recommended investigation into the affairs of the company i.e., M/s. Alchemist Infra Realty Limited.

3. Now, therefore, in exercise of powers conferred under section 235 of the Act, the Central Government hereby orders investigation into the affairs of the above mentioned company, to be carried out by the following officers of the Serious Fraud Investigation officer, who are hereby appointed as Inspectors for the purpose of such investigation:

1. Shri P.R. Lakra, Addl. Director



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2. Shri R.K. Mishra, Sr. Asstt. Director
3. Shri Prem Sunder Singh, Asstt. Director

4. The Inspectors so appointed by this order to investigate into the affairs of the above mentioned company, shall exercise all the powers available to them under the Companies Act, 1956. The Inspector shall complete their investigation and submit the report to the Central Government within a period of three (3) months from the date of issue of this order.

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

(R.K. Bakshi)

Deputy Director

Copy forwarded for necessary action to:-

1. Director, SFIO, New Delhi
2. Shri P.R. Lakra, Addl. Director
3. Shri R.K. Mishra, Sr. Asstt. Director
4. Shri Prem Sunder Singh, Asstt. Director”

6. AIRL in the meanwhile instituted W.P.(C) 7529 of 2012 before this Court impugning the communication of the RoC dated 27 March 2012. While entertaining the said petition, the Court on 04 December 2012 provided that while it would be open to the AIRL to file a reply to the Show Cause Notice and for the RoC to proceed thereon, no final orders would be passed. Thereafter and on 14 December 2012, the Inspector proceeding on the basis of the order of the Union Government dated 05 November 2012 issued a notice to AIRL summoning all records for the purposes of investigation.

7. The communication dated 14 December 2012 came to be challenged by way of a separate petition being W.P.(C) 8065 of 2012. The Court, while issuing notice on the aforesaid writ petition on 07 March 2013, stayed the operation of the aforementioned communication.

8. During the pendency of those two writ petitions, a report dated



25 October 2018 was submitted by the RoC recommending the initiation of an investigation in respect of all companies of the Alchemist Group, except AIRL under Section 210 of the 2013 Act.

9. This report was followed by an order dated 6 December 2018 vide which the respondents proceeded to open an investigation in purported exercise of powers conferred by Section 212 of the 2013 Act against the Alchemist Group of Companies. The order of the Union Government dated 06 December 2018 is reproduced hereinbelow:-

“F. No. 7/217/2018/CL-II (NR)
Government of India
Ministry of Corporate Affairs
Office of Director General (Corporate Affairs)

Kota House
1, Shahjahan Road,
New Delhi - 11,0001
Dated: 6.12.2018

ORDER

1. Whereas, the Central Government is empowered under Section 212 (c) of the Companies Act, 2013 to order investigation into the affairs of company.
2. AND Whereas, the Central Government has formed an opinion to ordered investigation into the affairs of Alchemist Group of Companies namely Alchemist Township India Limited, Alchemist Limited, Alchemist Holdings Limited, Alchemist Realty Limited, Alchemist Life Science Limited, Netedge Technosoft Private Limited, Alchemist Capital Limited, Alchemist Hotels Resorts Limited and their Associates/subsidiaries or any other company which is related to /part of Alchemist Group under Section 212(1)(c) of the Companies Act, 2013.
3. Now, therefore in exercise of powers conferred under section 212 (1)(c) of the Companies Act, 2013, the Central Government hereby ordered investigation into the affairs of Alchemist Group of Companies namely Alchemist Township India Limited, Alchemist Limited, Alchemist Holdings Limited, Alchemist Realty Limited, Alchemist Life Science Limited, Netedge Technosoft Private Limited, Alchemist Capital Limited, Alchemist Hotels Resorts



Limited and their Associates/subsidiaries or any other company which is related to /part of Alchemist Group under Section 212(1)(c) of the Companies Act, 2013.

4. That the Central Government hereby authorize Director, Serious Fraud Investigation Office to nominate Inspector(s) under section 212 (1) of the Companies Act, 2013 in investigate into the affairs of the above mentioned companies. The said investigation shall be carried out by officers of the as nominated by Director, SFIO.
5. That the Inspector(s) so appointed shall exercise all the powers available to him under section 217 of the Companies Act, 2013 including power conferred under section 219 of the Companies Act, 2013 after seeking approval of Central Government where ever required. The inspector(s) complete the investigation and submit the report to the Central Government within a period of 03 (three) Months.
6. This order is issued for and on behalf of the Central Government.

Sd/-
(V.R. Sheth)
Assistant Director

To:

1. Director, Serious Fraud Investigation Office, 2nd Floor Deendayal Antyodaya Bhawan, CGO Complex, Lodhi Road, New Delhi - 110003
2. ROC, Delhi
3. RD (NR)
4. Guard File.”

10. Pursuant to the aforesaid order, the SFIO on 14 December 2018 appointed four of its officers to undertake the requisite investigation. Subsequently and on 21 December 2018, summons came to be issued to the petitioner nos. 2 to 9.

11. The writ petitions in the meanwhile came to be allowed by a common order on 07 February 2019 in the following terms:-

“9. Having stated the above, this Court cannot be oblivious of the fact that there are serious allegations against the petitioner company and several complaints were received. The petitioner company has been duly informed of the allegations that it had accepted money from public for allotment of land/plot/development of infrastructure and had failed to discharge



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its obligations. It is also alleged that the money collected by the petitioner company amounted to the petitioner company floating a collective investment scheme.

10. Mr Wadhwa, learned Senior Counsel appearing for the petitioners also conceded that the petitioner company would have no objection if an opportunity of hearing is afforded to the petitioner company in terms of the decision of this Court in **Hardicon Ltd.** (supra).

11. The aforesaid course commends to this Court. Accordingly, the impugned order dated 27.03.2012 is set aside. It is directed that the present petitions will be treated as a representation by the Registrar of Companies, who shall afford the petitioner company an opportunity of being heard. The petitioner company will appear before the Registrar of Companies through its authorised representative on 22.02.2019 at 2:00 pm and if required, on subsequent dates fixed by the Registrar. After hearing the parties, the Registrar may pass an order calling upon the petitioner company to submit the information as required. The Registrar shall also consider the petitioner company's contention as to whether provisions of Section 234 (1) of the Act are applicable.

12. It is clarified that if any such order is passed, the petitioner company shall furnish all information within the period as specified by the Registrar. Needless to state if such information not provided, the Registrar is at liberty to initiate such penal proceedings as provided in the Act or the Companies Act, 2013.

13. Since, it is not disputed that the order dated 05.11.2012 directing investigation of the affairs of the petitioner company under Section 235 of the Act and the order dated 14.12.2012 appointing inspectors also follow from the orders passed under Section 234(7) of the Act, the said orders are also set aside. This would not preclude respondent no.1 from directing investigation of the affairs of the petitioner company either on the report submitted by the Registrar or in Public Interest."

12. It appears that AIRL aggrieved by the observations entered by the learned Judge in the final judgement according liberty to the respondents to initiate penal proceedings either in accordance with the 1956 Act or alternatively under the 2013 Act, it assailed the said directions as contained in the final judgment by way of LPA 189 of 2019. The aforesaid LPA came to be disposed of on 18 March 2019



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with the Division Bench holding as follows:-

“According to Mr. Rajiv Nayar, learned Senior Advocate, by virtue of the aforesaid provision the inquiry or investigation into the matter has to be in accordance with the provisions of Sections 234 and 235 of the Companies Act, 1956 and not in accordance to the rules or procedure prescribed in the Companies Act, 2013. We see much force in the aforesaid contention.

We, therefore, clarify and direct that an inquiry be held in pursuance to the direction issued by the learned writ Court strictly in compliance with the provisions contemplated under the Companies Act, 1956. The parties may raise all objections as may be permissible with the statutory authority causing an inquiry into the matter under the Companies Act, 1956 in pursuance to the communication or the complaints received.”

13. While things rested here, on 18 March 2019 and in fact, the same day when the LPA came to be disposed of, the RoC invoking the provisions of Section 206(4) of the 2013 Act called upon AIRL to furnish all information as required in terms of the earlier communications dated 27 March 2012 and 06 July 2012. AIRL assailed the aforesaid proceedings evidently on the ground that the decision in the LPA restricted the respondents from taking any action except in accordance with the provisions of the 1956 Act. It thus questioned the very basis on which the 2013 Act and its provisions were sought to be invoked against it.

14. The aforesaid controversy came to be laid before this Court with AIRL filing CM. APPL. 16956 of 2019 in the disposed of appeal. During the pendency of the aforesaid application, SFIO came to issue summons against petitioner nos. 2 to 9 on 20 March 2019, requiring them to provide the requisite information in terms of the earlier summons that had been issued.

15. CM. APPL. 16956 of 2019, in the meantime, came up for consideration before the Division Bench of the Court on 10 April



2019. Taking note of the final directions in terms of which the appeal itself had been disposed of, the Court by its order of 10 April 2019 provided that the respondents shall stand restrained from taking any coercive steps pursuant to the summons dated 18 March 2019 and 20 March 2019. The Court, however, indicated that in case the respondents wished to proceed they could do so strictly in accordance with the directions framed by the Court on 18 March 2019 while disposing of the LPA. Heeding to the aforesaid order passed on CM. APPL. 16956 of 2019, the RoC proceeded to recall the notice of 18 March 2019 by way of a separate order passed on 07 May 2019.

16. In a further development, SFIO issued a communication dated 13 June 2019 to the first petitioner, Alchemist Healthcare Limited, being one of the companies under investigation requiring it to provide information in respect of the investigation which had been commenced in respect of the affairs of the Alchemist Group of Companies. Alchemist Healthcare asserting that the same clearly amounted to a wilful disobedience of the judgment passed by this Court instituted an action for contempt and which came to be numbered as Contempt Case (C) No.610/2019.

17. In a related development, CM. APPL. 16956 of 2019 came to be disposed of on 31 July 2019 by the Division Bench while continuing the interim order that had been passed and which was directed to remain operative during the pendency of the contempt case.

18. The contempt action as initiated by Alchemist Healthcare ultimately came to be dismissed by a learned Single Judge of the Court with costs in the following terms:-



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“10. Quite strangely, after the disposal of the LPA in the foregoing terms, a CM No. 16956/2015 came to be filed before the Division Bench on account of summons issued by SFIO to Alchemist Ltd. and Alchemist Hotels & Resorts Ltd. under the provisions of the Act 2013 which application the applicants did not press and was disposed of as such by the Division Bench vide its order dated 31.07.2019. In other words, the filing of such application was inconsequential but for distracting the court proceedings inasmuch as on the filing of such application and the issuance of notice thereof by the Division Bench on 10.04.2019, the following order was passed:

" CM No.16956/2019 (for directions)

Issue Notice.

Mr. Jasmeet Singh, CGSC for respondent No.1 to 4 accepts notice.

Prima facie a perusal of the summons issued vide Annexure A-2 with this application dated 20.03.2019 shows that it is not in accordance with the directions issued by us on 18.03.2019 which reads as under:-

"Having heard the learned counsel for the parties, we find that in the order passed by the learned writ Court the direction issued to cause an inquiry in the matter and proceed in accordance with law on the ground that before taking the impugned action petitioners were not heard.

Our attention is invited by Mr.Rajiv Nayar, learned Senior Advocate to the provisions of sub-Section 16 of Section 213 of the Companies Act, 2013 which reads as under:

" (16) Notwithstanding anything contained in this Act, any investigation or other action taken or initiated by the Serious Fraud Investigation Officer under the provisions of the Companies Act, 1956 (1 of 1956) shall continue to be proceeded with under that Act as if this Act had not been passed."

According to Mr.Rajiv Nayar, learned Senior Advocate, by virtue of the aforesaid provision the inquiry or investigation into the matter has to be in accordance with the provisions of the Sections 234 and 235 of the Companies Act,



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1956 and not in accordance to the rules or procedure prescribed in the Companies Act, 2013. We see much force in the aforesaid contention.

We, therefore, clarify and direct that an inquiry be held in pursuance to the direction issued by the learned writ Court strictly in compliance with the provisions contemplated under the Companies Act, 1956. The parties may raise all objections as may be permissible with the statutory authority causing an inquiry into the matter under the Companies Act, 1956 in pursuance to the communication or the complaints received.

In view of the above, the appeal and the pending application stand disposed of."

Summons dated 20.03.2019 issued by the respondents speaks about action taken in accordance with the Companies Act, 2013. Respondent Nos. 1 to 4 to clarify the position within two weeks.

List on 17th July, 2019.

In the meanwhile, any coercive steps in terms of order dated 18.03.2019 (Annexure A-1) and summons dated 20.03.2019 (Annexure A-2) issued by the respondents shall be kept in abeyance. However in case the respondent Nos. 1 to 4 wish to proceed strictly in accordance with the directions issued by us on 18.03.2019, they may do so."

Assuming, the foregoing order dated 10.04.2019 passed by the Division Bench took into its scope Healthcare as a group company of Infra Realty, though, it is not so, the restraint order was to apply against taking any coercive steps, which, mere issuance of summons would not imply.

11. Seen from any angle, not even an iota of substance emerges from the record to say that any act of the respondent Nos.1 to 3 invites any order prayed for. The judgments relied upon by the petitioners are of no avail. It would suffice to say, the initiation of contempt proceedings depends on the facts and circumstances of a given case and that, it is to be exercised in the discretion of the court where required, founded on the well established principles of law.



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12. There is no doubt in the mind of the court that the instant petition preferred by Healthcare and one of its Directors is a calculative attempt to involve the respondent No.1 to 3 in unnecessary litigation in an overt attempt to overawe them in discharge of their statutory obligations and thereby, draw an undue advantage. Suffice it would be to observe, the serious allegations for the business of Infra Realty being carried on in fraud of its creditors, or otherwise for fraudulent or unlawful purpose - which were sought to be initiated way back in the year 2012, continue to remain at its infancy stage with the courts being clogged with vexatious proceedings.”

19. To complete the narration of facts, we may only note that the respondents had initiated action against all the petitioners as well as AIRL under Section 212 of the 2013 Act while issuing the notice dated 06 December 2018. On 06 November 2019, the respondents proceeded to issue a Corrigendum excluding AIRL from the investigation commenced against the Alchemist Group of Companies and which was proposed to be undertaken in accordance with the provisions of the 2013 Act.

20. In order to appreciate the submissions which were addressed, it would be appropriate to briefly notice the extent of the investigation which formed part of the report of the RoC dated 24 August 2012 which recommended investigation into the affairs of AIRL as well as the report dated 23 October 2018 pursuant to which investigation was sought to be undertaken against the group companies hereinbelow.

21. Insofar as AIRL is concerned, the recommendation read as follows:-

“Government of India
Ministry of Corporate Affairs
Office of the Registrar of Companies
NCT of Delhi & Haryana
4th Floor, IFCI Tower, Nehru Place,
New Delhi – 110019
Email: roc.delhi@mca.gov.in



Phone: 011-26235703/ Fax: 26235702
No. ROC/TS/PP/19532
DATED: 24.08.2012

To
The Regional Director (NR),
Ministry of Corporate Affairs,
PDIL Bhawan,
NOIDA.

Sub:- Complaint against AJ Chemist Infra Realty Limited and calling of further information under Section 234(2) and 234(3A) of the Companies Act, 1956- in the matter of report under section 234(6) of the Companies Act, 1956.

Respected Sir,

This is in reference to Directorate's letter no. TS/D/R/234(1)/2012/36/2387 dated 29.5.2012 and in continuation to this office letter no. COMP/16544 dated 18.5.2012 in the captioned matter. I have to report as under:

1. The company, Alchemist Infra Realty Limited, is incorporated with this office vide CIN U74120DL200BPLC17678 on 02.04.2008.
2. This office has received reference from Reserve Bank of India vide letter no. DNBS/2386/MI/20.02007-2010-11 dated 12.01.2012 with the subject "Raising of Deposits from Public" stating that a letter has been received from Shri D. Raja, Hon'ble Member of Parliament raising issues with regard to various companies and companies mentioned at S. no. 9 and 12, namely Alchemist Infra Realty Limited and Basil International Limited are registered with the ROC, Delhi. These companies are not NBFC registered with RBI and this are being sent for appropriate action at the end of this office (ROC Delhi). A similar letter from RBI dated 09.01.2012 was also enclosed to the above referred letter received on the same date (copies of both are letters are enclosed as *Annexure A-1 and A-2 respectively*).
3. However, it is was seen that the enclosures as mentioned in the said letter i.e. the complaint received from the Hon'ble Member of the Parliament with enclosures thereto was not found enclosed to either of the said letters received from



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RBI Accordingly, the same were called from RBI vide this office letter no. COMP/13545 dated 10.02.2012. The RBI sent the said enclosures vide letter dated DNBS.ND.No. 2857/10.01.007-MI-2007/2011-12 dated 13.02.2012 (Copy enclosed as collectively marked as *Annexure-A-3*).

4. On perusal of the complaint received from the Hon'ble MP, which was originally addressed to Hon'ble Governor, RBI with the subject "Raising of Deposits from Public", That in total 13 companies have been named which are inviting deposits from public by issues of brochures and offering various schemes like " Allotment of Residential Plots, Debentures" etc. Only 2 companies registered with this office namely *Alchemist Realty infra Limited and Basil international Limited* were referred by RBI to this office being registered with this office. The copies of the brochures issued by these two companies were also found enclosed to the reference received Hon'ble MP.
5. This office had already submitted a detailed report with regard to Basil International Limited and its Group/Associated companies vide this office report dated 26.08.2011. The ministry had ordered for investigation u/s 235 of the Companies Act, 1956 (The Act) to be conducted by SFIO into the affairs of the Basil International Limited. Vamshi Chemicals Limited. Nixcil Pharmaceuticals Specialties Limited. Appellne Cosmetics & Toiletries Limited and Basil Express Limited on the basis report dated 26.08.2011 submitted by this office.
6. Thus only the matter with regard to Alchemist Infra Realty Limited (hereinafter referred to the company) was examined. Out of the above two cases referred by RBI.
7. OTHER REFERNCES/COMPLAINTS AGAINST THE COMPANY: In addition to the reference received from RBI, this office has received the following complaints/references/RTI Applications with regard to the captioned company and in certain RTI applications there was a mentioned of other Group Companies. RTI applications were replied as per the facts on record :-
 - a. Complaints from Shri Sanat Kumar Chaterjee dated 27.11.2010. received through RBI vide letter dated 28.12.2010, which was taken up with the company



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vide this office letter dated 18.1.2011 (copy collectively enclosed as *Annexure-A-4*).

- b. Various RTI Applications received from Shri Chandan Kumar, enclosing therewith certain blank agreement format. Certificate of property, non-transfer of deposits receipts, pre-serialized application forms format of special Power of Attorney etc. circulated by the company. (Copies collectively enclosed marked as *Annexure-A-5*).
- c. RTI application from Sardar Atikurahman Arif, Balia, U.P. enclosing therewith the documents as stated in (b) above and also photo-copy of pamphlet offering immovable property and calling of deposits from the public signed by Dr. B. M. Mahajan, Director of the captioned company and also the brochures indicating the name of the group companies, group head office, group chairman, blanked duly serialized application forms and group chairman, blanked duly serialized application forms and either documents (Copy collectively marked as *Annexure-A-6*).
- d. RTI application from Mumtaj Ahmed enclosing similar documents. (Copy collectively marked as *Annexure-A-7*).
- e. RTI application from Rajesh Prajapati, Gorakhpur and Shri BK Singh enclosing similar documents. (Copy collectively marked as *Annexure-A-8*).
- f. RTI application received in the Ministry and forwarded to this office U/s. 6(3) of the RTI Act, 2005, as received from Shri Nand Lal Mourya, Village Puranpur, enclosing therewith the above said documents. (Copy collectively marked as *Annexure-A-9*).
- g. Recently this office has received a copy of the reference on from Shri Rajeshwar Prasad Singh received through to the Prime Minister Office (Copy collectively marked as *Annexure-A-10*).
- h. Complaint from Shri Chandan Kumar, addressed to the Hon'ble Secretary, MCA and copy to this



office. (Copy collectively marked as *Annexure-A-11*).

- i. Kindly also find enclosed herewith the material down loaded from the internet indicating the manner in which the public fund are raised and also indicating the fact that agents have been engaged by the company for collecting funds from public. This material collectively enclosed marked as *Annexure-A-11*).
8. This office has issued order u/s 234(I) of the Companies Act. 1956 vide this office of COMP/4759 dated 27.03.2012 ((Copy collectively marked as *Annexure-A-12*).
9. The Company asked for four weeks time to give the reply vide request letter no. AIRL/ROC/2012/01 dated 09.04.2012 (Copy collectively marked as *Annexure-A-13*).
10. This office issued order u/s 234(3A) of the Act, asking the company to file the reply within 7 days vide this office letter dated 18.04.2012. (Copy collectively marked as *Annexure-A-14*).
11. The company failed to file its reply and accordingly this office has referred the matter to the Directorate vide this office letter NO.COMP/16544 dated 18.05.2012, seeking sanction for filling of prosecution U/s. 234(4) of the Act. (Copy collectively marked as *Annexure -A-15*) and simultaneously another order u/s 234 (3A) of the Act was issued to the company vide this office letter dated 16.05.2012 (Copy collectively marked as *Annexure-A-16*).
12. The Company again asked for one week time to the reply vide its letter dated 22.05.2012 (Copy collectively marked as *Annexure-A-17*).
13. The Directorate vide letter dated 29.05.2012, directed this office to issue a final order u/s 234(3A) to the company and its directors for furnishing their reply within 15 days and to thereafter send factual report to the Directorate (Copy collectively marked as *Annexure-A-18*).



14. Accordingly this office has issued final order u/s. 234(3A) of the Act vide order dated 12.06.2012 (Copy collectively marked as *Annexure-A-19*).
15. The company furnished its part reply vide letter dated 26.06.2012 (Copy collectively marked as *Annexure-A-20*) and the company promised to furnish the reply on the remaining Paras within two weeks from thereof.
16. On examination of the partial reply of the company, it was felt that the reply of the company was incomplete/evasive on various vital points and it was also felt necessary that further information/explanation and record is required from the company. There were also preliminary doubts on the signatures and names of the directors shown to have signed the reply. Thus accordingly order u/s. 234 (3A) of the Act was issued to the company vide order dated 06.07.2012 (copy collectively marked as *Annexure-A-21*).
17. In response to the said order, the company again filed very short reply vide letter dated 11.07.2012 prima-facie in a attempt to clarify the primarily doubts and confirmed the name of the directors who has signed the reply and further promised to submit the reply on or before 20.07.2012 (copy collectively marked as *annexureA-27*).
18. However, again the company vide letter dated 23.07.2012 submitted that it is not in a position to file the reply *due to computer break down and requested for one month time to file the reply*. The company also informed this by e-mail dated 24.07.2012. This office informed the company in reply to the said e-mail that the company had already taken extensions at multiple times and further time cannot be granted. The company has already been contravened the provisions of section 234(1) and 234(3A) of the Act. Any further delay s in the matter at the risk of the company. (Copy of the letter and e-mail exchanged are enclosed collectively marked as *Annexure A-23*).
19. In any case, even the one month time sought by the company vide letter dated 23.07.2012 is also over. Thus, the company and its officers in default has contravened the provisions of section 234(1) and 234(3A) of the Act and are liable for prosecutions u/s 234(4) of the Act. The Directorate is therefore request to give sanction for filing



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of prosecution u/s 234(4) of the Act against the company and its officers in default.

20. Nature and quantum of deposits raised by the company: On examination of the partial reply of the company, Balance sheets and other documents filed by the company and records maintained by this office, it is respectively submitted that as under:-

a. Amount raised by the company & total resources of funds: The amount raised by the Company from public and total sources of funds as per balances disclosed under the various heads as per the Balance Sheet as 31.03.2010 and 31.03.2011 are as under:-

Main Head	Sub-Head	31.03.2010 (Rs. in crores)	31.03.2011 (Rs. in crores)
Current Liabilities	Advanced against land	83.97	203.11
Current Liabilities	Advanced against development charges	365.44	884.58
Sub-Total Public funds raised		449.41	1087.69
Loans	Secured & Unsecured	0	0
Capital		0.42	0.42
Reserves & Surplus	Accumulative Profits	2.95	6.18
Current Liabilities	Sundry Creditor, other liabilities & provisions	1.98	8.18
Grand Total		454.76	1102.45

b. The utilization of funds so received are as under:-

Main Head	Sub-Head	31.03.2010 (Rs. in crores)	31.03.2011 (Rs. in crores)
Current Assets	Advanced receivable in cash and kind	283.79	806.61



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Current Assets	Cash & bank balances	160.37	242.53
Other current assets		10.11	44.24
Fixed assets		0.21	0.44
Investments		0.25	7.86
Misc. Exp. Not yet written off		0.03	0.77
Grand Total		454.76	1102.45

- c. Thus in nut shell the company has raised funds for public amounting to Rs. 449.41 crores as at 31.03.2010 which has swelled to a level of Rs. 1087.69 cores as at 31.03.2011.
- d. This office had raised a specific query on the nature and manner of funds raised by the company in order issued u/s. 234(1) of the Act vide para No. 14 of the order. However, the company has replied that it is real estate company engaged in the business of purchase and outright sale and purchase of developed land. However, no specific comments were given in reply to para No. 14 as it is stated the same is being complied and shall be submitted which has yet been submitted despite of issued multiple notice u/s. 234(3A) of the Act.
- e. It is pertinent to mention here that the company has very meager land as stock in trade as per details given in reply to para 13 of the reply with value of closing stock as at 31.03.2011 only at RS. 43.19 crores. It is unimaginable that against this land the company has collected Rs. 203.11 crores as advances against land and a sky rocketing amount of Rs. 884.58 crores as “*advances against development charges*” as at 31.03.2011.

21. The modus operandi of the company in collecting of public funds: On examination of the Balance Sheets, partial reply



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submitted by the company, complaints and references received, the following modus operandi of the company is identified in raising such public deposits.

- a. The company is circulating brochures, application forms, copies of agreements etc. apparently through agents for the purpose of raising deposits from the public. In the said literature/brochures, the company has given details of the group companies and is offering immovable property with support for development thereof by itself or is associates over for tenure of 3 years, 4 years, 6 years, 9 years, 12 years, and 16 years.
- b. On receipt of such amount a "Certificate of Property" is issued to the depositor, wherein, it is certified that the certificate holder is granted a proportionate undivided shares in land merely an area of 905.016 kanal at Behanta, Tilla, Tehshli, Kholarash, Distt. Shivpuri, M.P.
- c. It is requested to see a copy of certificate attached to the complaint and as also copy as annexed to the order u/s 234(3A) dated 06.07.12 issued to the company (Refer *Annexure A-21*)
- d. It is important to note that as per the stock in trade of land given by the company as per reply No. 13 to its reply dated 26.06.2012; the company was never having any land at the above address. Only land shown is MP Land only 52.60 Hectares (Balance as at 31.03.2010 Rs. 1284793/- an Rs. 19934514/-) against which the company has collected huge amount of Rs.1097 69 .Crores.
- e. It is also a very surprising fact that the area of land remains the same for Rs.3 lacs accepted on 27.04.2010 and also for Rs.1.10, 000 in 28.01.2010 as per certificate of property, allotment numbers RC00143964 and RC00259531 (copies enclosed marked as *Annexure A-24*).
- f. The high scale of aggressively raising public deposits is evident from the fact that the pre-numbered applications forms are being circulated. One such pre-application numbered form with



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Serial No.01072306 has been enclosed to the reference received through RBI as enclosed to the letter from the Hon'ble MP.

- g. The allegations that the company has printed and circulated huge number of such lecture and applications forms and has engaged agents finds its support from the fact that the company has incurred a sum of Rs.5 crores as an advertisement and publicity during 2009-10 and Rs.11.61 lacs during 2010-11. From the details given by the company, it is seen that the company is entered into agreement for publicity with Tontra. Entertainment Private Limited. whereas the company has no business of sale of products and services which required such a large scale of advertisement and publicity. Further, the company has incurred an expenditure of Rs 72.34 lacs on printing of stationery. The company is having gross business income only of Rs.15.34 crores during 2009-10 and Rs. 18.23 crores during 2010-11, Apparently, such huge expenditure on account of printing and advertisement is for printing of above stated brochures etc. and huge publicity on this above for collection of public funds.
- h. The grave mis-match of development charges received and advance against land amounting to over Rs.1087.69 crores as at 31.03.2009. In comparison the actual land holding by the company "Rs. 43 crores", sale of land Rs.18.28 crores is clearly indicating that the company not having any land assets and the company has simply collected public funds on false promises, given fictitious certificate on the basis of non-existing land and shall not in a position to deliver the said property to the depositors. The company has made false promises and there is every possibility that alternatively the public is shall not get due returns on maturity.
- i. The company was confronted with a direct query to either confirm or deny the above manner and the copies of "*certificates of property*" and other material attached to the complaint were enclosed to the order issued under Section 234(3A) dated



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06.07.2012 (refer *Annexure A-21*). The company has failed to submit reply to the same as reported above.

22. Diversion of funds by the company: The Company has diverted such said funds received from the public by way of granting advances (Balance as at 31.03.2011 is Rs. 806.61 crores). List of such parties to whom such advances received have been given not provided by the Company despite of repeated order issued u/s 234(3A) of the Act.
23. The company is having cash and bank balances to RS. 242.54 crores as at 31.03.2011, out of which Rs. 215.65 crores are stated to be in fixed deposits with banks. However, despite of specific query raised by this office vide para No. 11 of the order dated 27.03.2012, the company has given only a list naming the banks where FDRs are stated to be kept has been given. No copy of the FDRs receipt has been given. This also requires to be verified.
24. Directors of the Company: The following are the past and present directors of the captioned company:
- Shri Brij Mohan Mahajan from 02.04.2008 and still continuing.
 - Shri Sunil Kanti Kar from 02.04.2008 and still continuing.
 - Shri Narayan Madhav Kumar from 20.02.2009 and still continuing.
 - Shri Balvir Singh from 02.04.2008 to 09.02.2009.
 - Shri Chandra Shekhar Chauhan from 04.02.2009 to 20.02.2009.
25. Directorship in other company: Kindly find enclosed herewith report indicating the companies in which the directors of the company are interested as directors. In addition to this, Directors of this company remained directors in the following group companies (Copies of Register of directors is enclosed collectively marked as *Annexure a-25*:

Name of the Director	Name of the other Group Company	From	To
Shri Brij Mohan	Alchemist Holdings Limited	19.11.2004	08.03.2008



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Mahajan	Alchemist Capital Limited	03.04.2004	20.03.2009
Shri Sunil Kanti	Alchemist Holdings Limited	06.12.2004	20.03.2009
	Alchemist Capital Limited	03.04.2004	16.02.2009
Shri Narayan Madhav Kumar	Alchemist Holdings Limited	20.01.2009	19.02.2009
Shri Balvir Singh	Alchemist Holdings Limited	02.01.2005	Continuing
	Alchemist Capital Limited	05.06.2009	Continuing
Shri Chandra Shekhar Chauhan	Alchemist Holdings Limited	19.02.2009	Continuing

26. Amount raised by the Group Companies: Out of the above the following group companies have also raised large scale public money by way of Preference Shares and possibility of contraventions of sections 67(3) r/w 73 of the Act and similar modus operandi of engaging agents etc cannot be ruled out:

a. Alchemist Capital Limited had raised Rs. 1652124900/- (165.22 Crores) consisting of 165212430 Preference Shares of Rs.10/-each upto 30.10.2008 all during the period when Shri Brij Mohan Mahajan and Shri Sunil Kanti Ker and Shri Balvir Singh, all directors of the Captioned company were the Directors on the Board of his company. In some form 2's for Preference shares, the attachments for list of allottees run up to 1369 Pages and 1439 Pages (SRNA14413447 and AI49393326)

b. Alchemist Holdings Limited had raised Rs.4440728000/-(Rs.444.67 crores) i.e. 444672800 Preference Shares of Rs.10/- Each up 21.11.2009 all during the period When Shri Brij Mohan Mahajan director of the Captioned company was the Director on the Board of this company and Shri Sunil Kar remained up to 08.03.2008 and Shri Balvir Singh is still the director on the Board of this company in so form 2's for Preference shares, the attachments for list of allottees run up to 1250 Pages (A18949164) , 1240 pages (A29827540) , 1374 pages (A36828242) and 1625 Pages (A49718067)

27. Shareholding pattern of the company; List of Shareholders as taken from the latest Annual return Filed for 2011 is attached (Annexure A- 26)



In view of above, it is respectfully submitted that the larger interest is involved in the captioned company. The observation given hereinabove indicate the possibility of a larger well planned, collusive financial impropriety, financial and accounting irregularities, tapping of retail capital market in the garb of various schemes, advance against development charges, issue of shares etc are without following the statutory requirement of the Companies Act. 1956. SEBI Rules & Regulations etc. which can harm the interest of thousands of small depositors in addition to possible loss of government revenue (stamp duty etc.) and the affairs of the company are being managed in manner prejudicial interests of its creditors, depositors, other stakeholders and against the public interest.

It is. therefore, respectfully submitted that the Ministry may consider investigation u/s 225 of the Act into the affairs of the captioned company.

This is being submitted for your kind perusal and further necessary action.

Thanking You

Yours faithfully

(Manmohan Juneja)
Registrar of Companies
NCT of Delhi & Haryana

Encl: As above.”

22. The group of companies formed part of the subsequent communication which is extracted hereunder:-

“No. ROC/DEL/INV/2018/

Date:23-10-2018

To

The Regional Director,
Northern Region,
Ministry of Corporate Affairs,
New Delhi.



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Sub: - Presentation in the matter of Alchemist Group of Companies - regarding.

Sir,

I am to refer to the Directorate's letter No. Comp/ROC/D/2018/Alchemist Group/8427 dated 18-10-2018 and e-mail dated 22-10-2018 on the subject noted above and to state that this office have been received and forwarded numerous complaints in the matter of Alchemist Group of companies. Mainly complaints have been received in the matter of M/s Alchemist Township India Limited, Alchemist Infra Realty Limited and Alchemist Holding Limited. In view of such complaints, this office has recommended inspection of some companies and thereafter investigation of whole group.

It is submitted that this office is still receiving or being forwarded complaints against the companies of Alchemist Group. As directed, a detailed examination in respect of companies under jurisdiction of this office has been made and submitted as under:

1. Alchemist Township India Limited

This office is continuously receiving complaint against the company. As per Balance Sheet as at 31-03-2017, the Company had collected approx. Rs. 1340 crores from its customers and given as advances of Rs. 1270 crores. These Loans and Advances have been given to *Land Owning companies, Collaborators, Joint Venture partners, Project of for purchase of Land and consolidation of Land*. It is observed from the complaints received against the company that the Company launched Housing Scheme and collected money from public during the years 2013-14 and thereafter but failed to make its commitments. The Company also collected funds of Rs. 50 Crores by way of Long term Borrowings. A detailed Sheet in the matter of the company has been prepared and enclosed herewith as **Annexure-A**.

Looking to the above facts, it is stated that the Company had collected huge money from public and diverted to *Land Owning companies, Collaborators, Joint Venture partners and its Associate Companies*. Even it failed to recover the amount given to its debtors. Therefore, a detailed investigation under Section 210 of the Companies Act, 2013 is required not only in case of this company but also in the matter of it holding company namely Alchemist Infra Ventures Limited and other



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Group/Associate companies/Land Owning companies/Joint Venture Partners.

2. Alchemist Limited

On going through the latest filed Balance Sheet as at 31-03-2017, it is observed that the Company have negative Net worth of Rs. 82 crores but it had shown Long term Borrowings of Rs. 735 Crores which was mainly used in Non-current Investments of Rs. 171 crores and Trade Receivables of Rs. 470 Crores (there was no recovery from such receivables during the year 2016-17. A detailed Sheet in the matter of the company has been prepared and enclosed herewith as **Annexure-B**.

This company appears to be a conduit between companies of Alchemist Group. The Company has done huge transactions with its related or associate companies. Only inquiry or inspection of this company will not serve any purpose, therefore it is proposed that a detailed Investigation under Section 210 of the Companies Act, 2013 is required not only in case of this company but also in the matter of Group/Associate companies with whom this company had made transactions.

3. Alchemist Holding Limited

A detailed report vide this Office letter dated 05-01-2015 was sent to the Directorate for investigation under Section 212 of the Companies Act, 2013 in the matter of Alchemist Holding Limited and its Group/Associate Companies. On examination of the latest filed Balance sheet of the Company, it is observed that the Company had collected 268 crores from public by way of issuance Preference Shares and failed to make payment on redemption. The company majorly diverted funds by way of giving loan to companies/ subsidiaries/ associates a sum of Rs. 223.20 Crores as interest free unsecured loan and made investments in Associate Companies amounting to Rs. 51.01 Crores. This fact is pointed out by the Statutory Auditors in their Report. It is an example of syphoning of funds by the Company. A detailed Sheet in the matter of the company has been prepared and enclosed herewith as **Annexure-C**. In view of above facts, it is proposed that a detailed Investigation under Section 210 of the Companies Act, 2013 is required not only in case of this company but also in the matter of Group/Associate companies to whom funds have been diverted.



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4. Alchemist Infra Realty Limited

This office has received more than 140 complaints in the matter of the company, specifically regarding non-payment of deposits. The Ministry ordered for investigation into the affairs of the Company vide its letter No. 4/59/2012-CL.II dated 05-11-2012 on recommendation of this office but the company filed Writ Petition (WP(C) 8065/2012) before the High Court of Delhi and which is still pending. A further report with proposal of Inspection under Section 206(5) of the Companies Act, 2013 was also submitted to the Directorate vide this office letter dated 22-12-2015 and followed by reminders 05-10-2016 and 09-10-2018.

5. Alchemist Realty Limited

On examination of latest filed Balance Sheet as at 31-03-2017 of the Company, it is observed that the Company had shown funds of from public by issuance Shares and Loans from Banks (Net worth Rs. 24 Crores + Long Term Borrowings Rs. 305 Crores), which were later on diverted as advances etc. (including to subsidiary companies) and not recovered, so far as per terms & conditions. No significant recovery has been found in matter of Trade Receivables. It is also an example of diversion of funds, therefore it is proposed that a detailed Investigation under Section 210 of the Companies Act, 2013 is required not only in case of this company but also in the matter of Group/Associate companies. A detailed Sheet in the matter of the company has been prepared and enclosed herewith as **Annexure-D.**

6. Alchemist Life Sciences Limited

On examination of Balance Sheet as at 31-03-2017, it is observed that the Company has collected funds from Related Parties for Rs. 51 Crores, which was ultimately converted into losses resultant Negative Net worth. It shows mis-utilisation of funds of the company. The matter is required to be investigated. A detailed Sheet in the matter of the company has been prepared and enclosed herewith as **Annexure-E.**

7. NetedgeTechnosoft Private Limited

On going through the Balance Sheet as at 31-03-2018, it is observed that the Company had shown Long Term



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Borrowings of Rs. 44 crores, which was used in Non-current Investment of Rs. 26 Crores and Long-Term Loans & Advances of Rs. 12.50 Crores. The Company was having major investments in its Group companies namely Alchemist Limited and alchemist Capital Limited. Now, the Company is writing off its investment year by year. It is an example of diversion of funds which require to be investigated in whole with Group companies. A detailed Sheet in the matter of the company has been prepared and enclosed herewith as **Annexure-F.**

8. Optimum Constructors and Developers Limited

The company is a small sized company and having assets & liabilities less than Rs. 2.00 crores but funds in the company have been majorly invested by Group/Associate companies. A detailed Sheet in the matter of the company has been prepared and enclosed herewith as **Annexure-G.**

The above-mentioned companies of Alchemist Group are found under jurisdiction of this office. There is possibility of more companies under jurisdiction of this office but it is observed that the said Group have companies in Punjab, Chandigarh and Pondicherry.

Summarily, it is observed that above companies of Alchemist Group have collected the following funds and make diversion:

S. no.	Name of the Company	Mode of funds collection	Amount (Rs.) in crores	Ways by funds diverted	Amount (Rs.) in crores.
1.	Alchemist Township India Limited	Advances from customers	1340	Advances given to Land Owning companies, Collaborators, joint venture Partners	1270
		Long Term Borrowings	50		
2.	Alchemist Limited	Net worth	82	Non-current investments	171
		Long Term Borrowings	735	Trade Receivables	470
3.	Alchemist Holding Limited	Issuance of Preference shares failed to make	268	Loans to Companies/ Subsidiaries/ Associate Cos.	223



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		redemption		Investment in Associate Co.	51
4.	Alchemist Realty Limited	Net Worth	24	Long Term Loans & advances	61
		Long term Borrowings	305	Trade Receivables (Old)	152
5.	Alchemist Life Sciences Limited	Long-Term Borrowing from Related Parties	51	Negative Net Worth	50
6.	NetedgeTechosoft Private Limited	Long Term Borrowings	44	Non-current investments	26
				Loans and advances	12

Note 1. *Alchemist Infra Realty Limited is not included in above list as it has already been order for investigation by the Ministry.*

2. *Figures in above table has been taken from last filed Financial Statements of the Companies.*

In view of above facts, it is stated that inquiry/inspection of one or two companies will not serve any purpose because this Group has diverted funds in many companies and irrecoverable Trade Receivables, which require macro level examination and investigation. Therefore, looking to the size of funds collection & diversion and involvement of companies under jurisdiction of other ROCs, Investigation under Section 210 of the Companies Act, 2013 is proposed for all companies of Alchemist Group (except Alchemist Infra Realty Limited, in which investigation has already been ordered).

The matter is submitted for kind perusal and necessary instructions.”

23. Mr. Chaudhari, learned senior counsel appearing for the writ petitioners, assailing the initiation of investigation firstly contending that since the provisions of the 1956 Act came to be repealed only on



13 January 2019, the respondents could have at best initiated action only in accordance with the provisions contained in Sections 234 and 235 of the erstwhile enactment. It was submitted that the judgment and orders rendered in the earlier round of litigation in any case additionally restrained the respondents from opening any investigation under Section 212 of the 2013 Act. It was the submission of Mr. Chaudhari that as would be evident from the report of the RoC as well as the disclosures which were sought from AIRL in that respect, the investigation against all companies in the group had commenced prior to Section 212 having come into force.

24. One may pause here and note that Section 212 of the 2013 Act came into force with effect from 01 April 2014 in terms of a Notification dated 26 March 2014. According to Mr. Chaudhri, since an investigation into all companies of the group had been initiated prior to the enforcement of Section 212, the investigation could have only been proceeded with in accordance with the provisions contained in the 1956 Act. This, according to Mr. Chaudhri would clearly flow from the provisions made in sub-section (16) of Section 212 of the 2013 Act.

25. Taking us through the orders that were passed in the original writ petitions as well as the LPA, it was contended by Mr. Chaudhari that the respondents were clearly bound by the orders passed in the course of those proceedings to resort to the provisions of Sections 234 and 235 of the 1956 Act alone. This submission was addressed by Mr. Chaudhri without prejudice to his principal contention that since the 1956 Act remained in force till 30 January 2019, when Section 465 came to be enforced and led to the ultimate repeal of the said



enactment, the respondents stand deprived of the jurisdiction to commence any investigation under the umbrella of the 2013 enactment.

26. Mr. Kirtiman Singh, learned counsel appearing for the SFIO, while controverting the aforesaid submissions firstly drew our attention to the report of the RoC dated 27 March 2012 to submit that a plain reading of that report would indicate that the investigation at that stage stood initiated only against AIRL. This position, according to Mr. Singh, is further fortified from a reading of the recommendation of the RoC dated 24 August 2012, which too was restricted to the “captioned company” namely, AIRL.

27. According to Mr. Singh, the aforesaid position is also manifest from a reading of the ultimate order which the Union Government framed on 05 November 2012 and where the investigation was specifically confined to AIRL. According to Mr. Singh, it would therefore be wholly incorrect for the petitioners to contend that the investigation initiated prior to the submission of the commencement of proceedings on 06 December 2018 could be recognized as being one aimed against the Alchemist Group of Companies as a whole.

28. Mr. Singh also took us in detail through the order of 06 December 2018, and which according to him, represented the first instance when an investigation in terms of Section 212 came to be commenced against the group companies. Mr. Singh also submitted that SFIO ultimately accepting the verdict handed down by this Court in favour of AIRL rectified the initiation of proceedings against that company by issuing the Corrigendum on 06 November 2019. Mr. Singh submitted that the Corrigendum was an acknowledgment of the



judgments handed down by this Court and which bound the SFIO insofar as AIRL was concerned to continue the investigation only in accordance with the 1956 Act.

29. Mr. Singh further submitted that while the 1956 Act may have come to be repealed only on 30 January 2019 and consequent to the enforcement of Section 465, the SFIO stood empowered to commence an investigation pursuant to a direction of the Union Government, the moment Sections 211 and 212 of the 2013 Act became a part of the Statute.

30. Learned counsel further invited our attention to the findings returned by the learned Judge while dismissing the contempt petition and which had categorically held that the group companies other than AIRL could not derive any benefit from the directions passed in the LPA which restrained the respondents from taking any action otherwise than in accordance with the 1956 Act. According to Mr. Singh, the aforesaid decision clearly binds the petitioners and must be read as having conclusively held that no entity forming part of the Alchemist Group except for AIRL could assert being covered by the 1956 Act.

31. Mr. Singh then submitted that as per the admission of the petitioners themselves some of the companies came to be incorporated only after investigation had commenced in 2012. He drew our attention to a Table which forms part of the written submissions filed by the petitioners themselves to drive home his contention that at least those companies cannot possibly assert being liable to be investigated only under Section 235 of the 1956 Act.

32. The Table which forms part of the written submissions tendered



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by the petitioners is extracted hereinbelow:-

“S.no.	Name of Petitioner Company	Date of Incorporation
1	Alchemist Healthcare Limited	January 29, 2016
2	Alchemist Life Sciences Limited	August 14, 2002
3	Alchemist Township India Limited	July 04, 2006
4	Alchemist Limited	July 05, 1988
5	Alchemist Holdings Limited	December 22, 1995
6	Alchemist Realty Limited	March 03, 1983
7	NetedgeTechnosoft Private Limited	January 29, 2016
8	Alchemist Capital Limited	December 13, 2000
9	Alchemist Hotels & Resorts Limited	May 06, 2008

33. Having noticed the submissions addressed by learned counsels for respective sides, we propose to firstly deal with the legal challenge as canvassed for our consideration by Mr. Chaudhri and which turned upon the commencement of certain provisions of the 2013 Act and the enforcement of Section 465 itself. Section 1(3) of the 2013 Act stipulates that the said Section as well as the remaining provisions of the 2013 Act would come into force on such dates as the Union Government may appoint by way of publication of a notification of the Official Gazette. Section 1(3) further empowered the Union Government to prescribe different dates from which various provisions of the 2013 Act may come into force.

34. Admittedly, Sections 211 and 212 came to be enforced with effect from 01 April 2014 consequent to a notification which came to be published on 26 March 2014. Section 465 and which contemplated the repeal of the 1956 Act, however, came to be enforced only on 30



January 2019 consequent to the promulgation of a notification of the same date. It was in the aforesaid context that Mr. Chaudhri had argued that till 30 January 2019, the provisions in relation to investigation under the 1956 Act continued to operate and thus deprived the respondents of taking any action under Section 212 of the 2013 Act. We find ourselves unable to sustain that submission for the following reasons.

35. It becomes pertinent to note that Sections 234 and 235 as existing in the erstwhile statute, essentially related to the powers of the RoC and the Union Government to undertake an investigation into the affairs of a company. Sections 234 and 235 are reproduced hereinbelow:-

“ 234. Power of Registrar to call for information or explanation.—(1) Where, on perusing any document which a company is required to submit to him under this Act, the Registrar is of opinion that any information or explanation is necessary⁷⁵⁹ [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.

(2) On receipt by the company of an order under sub-section (1), it shall be the duty of the company, and of all persons who are officers of the company to furnish such information or explanation to the best of their power.

(3) On receipt of a copy of an order under sub-section (1), it shall also be the duty of every person who has been an officer of the company to furnish such information or explanation to the best of his power.

[(3-A) If no information or explanation is furnished within the time specified or if the information or explanation furnished is, in the opinion of the Registrar, inadequate, the Registrar may by another written order call on the company to produce before him for his inspection such books and papers as he considers necessary within such time as he may specify in the order; and it shall be the duty of the company, and of all persons who are officers of the company, to produce such books and papers.]



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(4) If the company, or any such person as is referred to in sub-section (2) or (3), 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 (3-A) refuses or neglects to produce any such books and papers],—

[(a) the company and each such person shall be punishable with fine which may extend to five [thousand] rupees and in the case of a continuing offence, with an additional fine which may extend to [five hundred] rupees for every day after the first during which the offence continues; and

(b) the Court trying the offence may, on the application of the Registrar and after notice to the company, make an order on the company for production before the Registrar of such books and papers as in the opinion of the Court, may reasonably be required by the Registrar for the purpose referred to in sub-section (1).]

[(5) On receipt of any writing containing the information or explanation referred to in sub-section (1), or of any book or paper produced whether in pursuance of an order of the Registrar under sub-section (3-A) or of an order of the Court under sub-section (4), the Registrar may annex that 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 any writing or any book or paper or copy or extract thereof so annexed shall be subject to the like provisions as to inspection, the taking of extracts and the furnishing of copies as that document is subject.]

[(6) If such information or explanation is not furnished within the specified time or if after perusal of such information or explanation or of the books and papers produced whether in pursuance of an order of the Registrar under sub-section (3-A) or of an order of the Court under sub-section (4), the Registrar is of 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.]

(7) If it is represented to the Registrar on materials 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



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therein; and the provisions of sub-sections (2), (3), 767 (3-A)], (4) and (6) of this section shall apply to such order.

If upon enquiry the Registrar is satisfied that any representation on which he took action under this sub-section was frivolous or vexatious, he shall disclose the identity of his informant to the company.

(8) The provisions of this section shall apply mutatis mutandis to document which a liquidator, or a foreign company within the meaning of Section 591, is required to file under this Act.”

“**235. Investigation of the affairs of a company.**—(1) The Central Government may, where a report has been made by the Registrar under sub-section (6) of Section 234, or under sub-section (7) of that section, read with sub-section (6) thereof, appoint one or more competent persons as inspectors to investigate the affairs of a company and to report thereon in such manner as the Central Government may direct.

(2) Where—

(a) in the case of a company having a share capital, an application has been received from not less than two hundred members or from members holding not less than one-tenth of the total voting power therein, and

(b) in the case of a company having no share capital, an application has been received from not less than one-fifth of the persons on the company's register of members, the [Tribunal] may, after giving the parties an opportunity of being heard by order, declare that the affairs of the company ought to be investigated by an inspector or inspectors, and on such a declaration being made, the Central Government shall appoint one or more competent persons as inspectors to investigate the affairs of the company and to report thereon in such manner as the Central Government may direct.]”

36. The powers conferred upon the Central Government to direct an investigation into the affairs of a company was predicated upon the submission of a report by the RoC in terms as contemplated under Section 234(6). On the receipt of such a report, the Union Government stood empowered to commence an investigation into the affairs of a company and to appoint Inspectors in connection therewith. The investigation under Section 212 of the 2013 Act, on the other hand, is not by the Union Government but by the SFIO. It becomes pertinent



to note that the SFIO itself came to be constituted pursuant to the provisions contained in Section 211. In fact, even before the said provision came to be engrafted and enforced, the SFIO appears to have been constituted pursuant to the resolution of the Union Government dated 02 July 2003. Section 211 is extracted hereunder:-

“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 sub-section (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 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.”

37. As is manifest from a conjoint reading of Sections 211 and 212, the power of investigation which was originally exercisable by the Union Government was ultimately and in terms of Sections 211 and 212 placed in the hands of the SFIO. The SFIO is envisaged to be a body duly constituted for the purposes of carrying out investigations into the affairs of companies. Regard must be had to the fact that while the erstwhile provisions empowered the Union to investigate into the affairs of a company through investigators, the new regime saw the constitution of the SFIO and an investigation being undertaken by it in accordance with Sections 212 and 213 of the 2013 Act. The Court thus finds itself unable to sustain the submission that an investigation initiated by the SFIO under Section 213 of the 2013 Act would stand eclipsed by Sections 234 and 235 of the 1956 Ac. In fact and as noticed hereinabove, the SFIO as an investigating arm of the Union was not even envisaged or contemplated under the 1956 Act. The continuance of Sections 234 and 235 till their ultimate repeal would thus be liable to be viewed as regulating the investigating power of the Union Government through Investigators only.

38. The Court notes that the power to commence an investigation by the Union Government which was otherwise dependent upon the receipt of a report from the RoC was also widened, as would be evident from a reading of Section 212 which is extracted hereunder:-

“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—



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(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 (2 of 1974), 327[offence covered under 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



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(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 (2 of 1974) or any other law for the time being in force on granting of bail.

(8) [If any officer not below the rank of 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 officer authorised under sub-section (8) shall, immediately after arrest of such person under such sub-section], 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 330[Special Court or 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 331[Special Court or Magistrate's court].

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



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(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.

[(14-A) Where the report under sub-section (11) or sub-section (12) states that fraud has taken place in a company and due to such fraud any director, key managerial personnel, other officer of the company or any other person or entity, has taken undue advantage or benefit, whether in the form of any asset, property or cash or in any other manner, the Central Government may file an application before the Tribunal for appropriate orders with regard to disgorgement of such asset, property or cash and also for holding such director, key managerial personnel, other officer or any other person liable personally without any limitation of liability.]

(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 (2 of 1974).

(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 (1 of 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



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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.”

39. As would be evident from a reading of the said provisions, the Union Government in terms of the 2013 Act is now empowered to commence an investigation into the affairs of a company either on the receipt of a report of a Registrar or on intimation of a special resolution passed by a company or in public interest. The SFIO is a specialized body which has come to be established for the purposes of investigating frauds relating to companies. SFIO as an independent investigating arm was not even contemplated under Sections 234 or 235 of the 1956 Act. As is evident from a reading of those provisions, the power to investigate as embodied in Section 235 was one liable to be exercised only by the Union Government itself albeit acting through Inspectors that it may have appointed. It would therefore be wholly incorrect to accept the submission that an investigation by the SFIO under Section 212 or 213 of the Act could not have commenced prior to 30 January 2019. Since the SFIO itself came to be constituted only pursuant to the provisions of Section 211, the investigation by that body was in no manner trammelled or eclipsed by the continued existence of Sections 234 and 235 of the 1956 Act.

40. That then takes the Court to evaluate the submission of Mr. Chaudhari that the investigation which had commenced prior to the enforcement of Section 212 was liable to be recognized as encompassing all the group companies. We find ourselves unable to sustain even this submission for reasons which follow.

41. A close reading of the report of 24 August 2012 as well as 05 November 2012 leads us to the irresistible conclusion that the



investigation stood confined to AIRL. This is evident from the unambiguous recitals appearing in the reports of the RoC as well as the ultimate order that was passed by the Union Government commencing investigation. A holistic reading of the aforesaid communications and reports leaves us in no doubt that the investigation stood confined to AIRL alone. We may note that a mere passing reference to some of the activities undertaken by the group companies or the offices which some of the Directors held in related entities does not convince us to hold that the investigation is liable to be understood as extending to the group entities also. Since the initiation of an investigation under Section 235 of the 1956 Act is to be strictly construed, we find ourselves unable to read the reports of the RoC as being indicative of an intent to either commence or undertake an investigation against all entities forming part of the Alchemist Group.

42. As noticed hereinabove, the ultimate order that came to be framed by the Union Government dated 05 November 2012 also stood confined to the “captioned company”. The aforesaid order had accepted a recommendation submitted by the RoC for investigation into the affairs of AIRL alone.

43. It also becomes pertinent to note that in terms of Section 239 of the 1956 Act, an Inspector appointed under Section 235 or 237 stood empowered to extend the investigation to related companies also. The aforesaid was subject, however, to the Inspector obtaining the prior approval of the Union Government. Section 239 read as under:-

“239. Power of inspectors to carry investigation into affairs of related companies or of managing agent or associate etc.—(1)



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If an inspector appointed under Section 235 or 237 to investigate the affairs of a company thinks it necessary for the purposes of his investigation to investigate also the affairs of—

(a) any other body corporate which is, or has at any relevant time been the company's subsidiary or holding company, or a subsidiary of its holding company, or a holding company of its subsidiary;

(b) any other body corporate which is, or has at any relevant time been managed by any person as managing director or as manager, who is, or was, at the relevant time, the managing director or the manager of the company, or

(c) any other body corporate which is, or has at any relevant time been, managed by the company or whose Board of Directors comprises of nominees of the company or is accustomed to act in accordance with the directions or instructions of—

(i) the company, or

(ii) any of the directors of the company, or

(iii) any company any of whose directorships is held by the employees or nominees of those having the control and management of the first mentioned company; or

[(d) any person who is or has at any relevant time been the company's managing director or manager,]

[the inspector shall, subject to the provisions of sub-section (2), have power so to do and shall report on the affairs of the other body corporate or of the managing director or manager, so far as he thinks that the results of his investigation thereof are relevant to the investigation of the affairs of the first-mentioned company.]

(2) In the case of any body corporate or person referred to in clause (b) (ii), (b) (iii), (c) or (d) of sub-section (1), the inspector shall not exercise his powers of investigating into, and reporting on, its or his affairs without first having obtained the prior approval of the Central Government thereto:

Provided that before according approval under this sub-section, the Central Government shall give the body corporate or person a reasonable opportunity to show cause why such approval should not be accorded.]”

44. However, and undisputedly no such power was exercised nor a decision taken by any of the Inspectors appointed by the Union Government to extend the investigation to any of the related companies.



45. The Court also finds itself unable to countenance the submission of Mr. Chaudhari and which rested on the judgments and orders which were rendered in the previous rounds of litigation as being liable to be read as extending to the group companies either.

46. We may note that the solitary petitioner in W.P(C) 7529/2012 and W.P(C) 8065/2012 was AIRL and hence the directions as ultimately framed by the Court cannot possibly be read as extending to the group companies. Any doubt that may have been harboured in this context in any case stood laid to rest in light of the judgment rendered on the contempt petition. While dismissing that petition, the Court noted that merely because those companies may have been arrayed as pro forma respondents, the same cannot be construed as a challenge laid by those entities to the initiation of an investigation under the 1956 Act.

47. The submission advanced in this respect is rendered further untenable when one bears in mind the indubitable fact that the investigation against the group companies commenced only once the order dated 06 December 2018 came to be issued and consequential orders coming to be framed by the SFIO on 14 December 2018.

48. It is the order of 06 December 2018 which for the first time appears to have extended the investigation to cover all the Group Companies of Alchemist. This would be further fortified when we take note of the report dated 25 October 2018 and which while dealing with AIRL had specifically taken note of the pendency of W.P.(C) 8065 of 2012, acknowledging the pending investigation which had been opened against that entity on 05 November 2012 and consequently excluding the said company from the ambit of that



investigation.

49. The investigation which commenced pursuant to the order of 14 December 2018 passed by the SFIO, was thereafter modified in terms of the corrigendum dated 06 November 2019, when AIRL was deleted from that investigation. The position which therefore emerges is that the investigation as envisaged under Section 235 had commenced only against AIRL and it is the said investigation alone which would fall within the safe harbour as constructed in terms of Section 212(16).

50. Since the investigation which commenced on 05 November 2012 cannot possibly be countenanced as extending to the other writ petitioners, we find ourselves unable to sustain the challenge as laid.

51. Accordingly, and for all the aforesaid reasons, the instant writ petition stands dismissed.

52. All pending applications shall stand disposed of accordingly.

YASHWANT VARMA, J.

DECEMBER 06, 2023/neha