

\$-

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

HON'BLE MR. JUSTICE PURUSHAINDRA KUMAR KAURAV

+ **CRL.M.C.1937/2014**

Between:-

SERIOUS FRAUD INVESTIGATION OFFICE
THROUGH PRAVEEN
MINISTRY OF CORPORATE AFFAIRS
GOVERNMENT OF INDIA
2nd FLOOR, PARYAVARAN BHAWAN,
CGO COMPLEX. LODHI ROAD
NEW DELHI-110003

.....Petitioner

Through: Mr.Harish Vaidyanathan
Shankar, CGSC, Mr.Srish Kumar Mishra,
Mr.Sagar Mehlawat and Mr.Alexander
Mathai Paikaday, Advocates.

Versus

M/S SHONKH TECHNOLOGIES LIMITED
71-A, BASEMENT, SANT NAGAR,
EAST OF KAILASH,
NEW DELHI-65

.....Respondent No.1

SH. RAVI KRISHNAMOORTHY, DIRECTOR
C-302,ADARSH NIWAS.KANAKPURA,
MAIN ROAD.J.P.NAGAR, 6TH PHASE,
BANGLORE 560078.

.....Respondent No.2

SH.M.S.UDAY KUMAR.DIRECTOR
26TH CROSS,BSK II STAGE
BANGALORE 560070.

.....Respondent No.3

SH.C.V.RAO,DIRECTOR
H.NO.31ST MAIN ROAD,
DOLLARS COLONY.J.P.NAGAR,
4TH PHASE,BANGALORE-560078.

.....Respondent No.4

SH.B.R.BADRINATH.DIRECTOR
LAXMI COMPLEX,2ND FLOOR

10TH MAIN 27TH CROSS,4TH BLOCK
JAYANAGAR,BANGALORE-560011.Respondent No.5

SHRI DAVINDER KUMAR JAIN,
ADDL DIRECTOR & CHAIRMAN
M/S SHONK TECHNOLOGIES
S/O SHRI SATYA PAL JAIN
D 19 NIZAMUDIN EAST
NEW DELHIRespondent No. 6

SHRI BINAY KUMAR, DIRECTOR
188,KAILASH HILLS
NEW DELHIRespondent No. 7

SHRI DWARKANATH CHENNUR
COMPANY SECRETARY
21/2 GROUND
EAT STREET
BASAVANAGUDI
BANGALORERespondent No. 8

Through: Mr.Sidharth Luthra, Sr. Advocate,
alongwith Mr.Samarjit Pattnaik, Mr.Vikas
Gogne,Mr.Puneet Relan and Mr.Asif
Ahmed, Advocates for Respondent No.1.

+

CRL.M.C. 1945/2014

Between:-

SERIOUS FRAUD INVESTIGATION OFFICE
THROUGH PRAVEEN
MINISTRY OF CORPORATE AFFAIRS
GOVERNMENT OF INDIA
2ND FLOOR, PARYAVARAN BHAWAN,
CGO COMPLEX, LODHI ROAD,
NEW DELHI -110 003Petitioner

Through: Mr.Harish Vaidyananthan
Shankar, CGSC, Mr.Srish Kumar Mishra,
Mr.Sagar Mehlawat and Mr.Alexander
Mathai Paikaday, Advocates.

Versus

M/S SHONKH TECHNOLOGIES LIMITED
71-A, BASEMENT, SANT NAGAR,
EAST OF KAILASH, NEW DELHI-65.Respondent No. 1

SH. RAVI KRISHNAMOORTHY, DIRECTOR
C-302, ADARSH NIWAS, KANAKPURA,
MAIN ROAD, J.P. NAGAR, 6TH PHASE,
BANGLORE 560078Respondent No. 2

SH. C. V. RAO, DIRECTOR
H. NO. 31ST MAIN ROAD,
DOLLARS COLONY, J.P. NAGAR,
4TH PHASE, BANGALORE-560078.Respondent No. 3

SH. DEVENDER KUMAR JAIN, ADDL. DIRECTOR
& CHAIRMAN,
M/S SHONK TECHNOLOGIES LTD.
S/O SH. SATYA PAL JAIN,
D-19, NIZAMUDDIN EAST,
NEW DELHIRespondent No. 4

SH. SHIV NARAIN MALIK, DIRECTOR
S/O SH. J. R. D. MALIK
HOUSE NO. 277, SECTOR-21
FARIDABAD 121001 HARYANA.Respondent No. 5

SHRI VIVEK NAGPAL, DIRECTOR
S/O SHRI ML NAGPAL
H-27/1 SAINIK FARMS
NEW DELHI 110 062Respondent No. 6

SH. DWARKANATH CHENNUR
COMPANY SECRETARY,
21/2, GROUND FLOOR, E. A. T. STREET,
BASAVANAGUDI
BANGALORE-560004Respondent No. 7

SHRI S. SUBRAMANIAN,
COMPANY SECRETARY
SRIRAM ROAD, II BLOCK,
TYAGARAJA NAGAR,
BANGALORE- 560028Respondent No. 8

Through: Mr.Sidharth Luthra, Sr. Advocate,
alongwith Mr.Samarjit Pattnaik, Mr.Vikas
Gogne,Mr.Puneet Relan and Mr.Asif
Ahmed, Advocates for Respondent No.1.
Mr.Vibhor Garg and Mr.Atul Sinha,
Advocates for R-6.

+

CRL.M.C. 1946/2014 & CRL.M.A. 16618/2015

Between:-

SERIOUS FRAUD INVESTIGATION OFFICE
THROUGH PRAVEEN
MINISTRY OF CORPORATE AFFAIRS
GOVERNMENT OF INDIA
2ND FLOOR, PARYAVARAN BHAWAN,
CGO COMPLEX, LODHI ROAD,
NEW DELHI -110 003

....Petitioner

Through: Mr.Harish Vaidyanathan
Shankar, CGSC, Mr.Srish Kumar Mishra,
Mr.Sagar Mehlawat and Mr.Alexander
Mathai Paikaday, Advocates.

Versus

M/S SHONKH TECHNOLOGIES LIMITED
71-A, BASEMENT, SANT NAGAR,
EAST OF KAILASH, NEW DELHI-65Respondent No. 1

SH.VIVEK NAGPAL,DIRECTOR
S/O SH.M.L.NAGPAL
H-27/1,SAINIK FARMS.
NEW DELHI-110062Respondent No. 2

SH.MAHESH MALHOTRA,DIRECTOR
S/O SH.B.L.MALHOTRA,
H.NO.394,NITI KHAND-III,
INDIRAPURAM,GHAZIABAD (UP)Respondent No. 3

SH.GOPAL SHARMA,DIRECTOR
S/O SH.MANOHAR LAL SHARMA
E-56.KALKAJI,NEW DELHIRespondent No. 4

Through: Mr.Sidharth Luthra, Sr. Advocate,
alongwith Mr.Samarjit Pattnaik, Mr.Vikas

Gogne, Mr.Puneet Relan and Mr.Asif Ahmed, Advocates for Respondent No.1.
Mr.Vibhor Garg and Mr.Atul Sinha, Advocates for R-2.

+

CRL.M.C. 1947/2014 & CRL.M.A. 16482/2015

Between:-

SERIOUS FRAUD INVESTIGATION OFFICE
THROUGH PRAVEEN
MINISTRY OF CORPORATE AFFAIRS
GOVERNMENT OF INDIA
2ND FLOOR, PARYAVARAN BHAWAN,
CGO COMPLEX, LODHI ROAD,
NEW DELHI-110 003

.....Petitioner

Through: Mr.Harish Vaidyanathan
Shankar, CGSC, Mr.Srish Kumar Mishra,
Mr.Sagar Mehlawat and Mr.Alexander
Mathai Paikaday, Advocates.

Versus

M/s SHONKH TECHNOLOGIES LIMITED
71-A, BASEMENT, SANT NAGAR,
EAST OF KAILASH, NEW DELHI-65

.....Respondent No. 1

SH.SHIV NARAIN MALIK,DIRECTOR
S/O SH.J.R.D.MALIK
HOUSE NO.277,SECTOR-21
FARIDABAD 121001 HARYANA

.....Respondent No. 2

SH.DWARKANATH CHENNUR
COMPANY SECRETARY,
21/2,GROUND FLOOR,E.A.T.STREET,
BASAVANAGUDI
BANGALORE-560004

.....Respondent No. 3

Through Mr.Sidharth Luthra, Sr. Advocate,
alongwith Mr.Samarjit Pattnaik, Mr.Vikas
Gogne,Mr.Puneet Relan and Mr.Asif
Ahmed, Advocates for Respondent No.1.

+

CRL.M.C. 1948/2014 & CRL.M.A. 16619/2015

Between:-

SERIOUS FRAUD INVESTIGATION OFFICE
THROUGH PRAVEEN
MINISTRY OF CORPORATE AFFAIRS
GOVERNMENT OF INDIA
2ND FLOOR, PARYAVARAN BHAWAN,
CGO COMPLEX, LODHI ROAD,
NEW DELHI-110 003

.....Petitioner

Through: Mr.Harish Vaidyanathan
Shankar, CGSC, Mr.Srish Kumar Mishra,
Mr.Sagar Mehlawat and Mr.Alexander
Mathai Paikaday, Advocates.

Versus

M/S SHONKH TECHNOLOGIES LIMITED
71-A, BASEMENT, SANT NAGAR,
EAST OF KAILASH, NEW DELHI-65

....Respondent No. 1

SH.C.V.RAO,DIRECTOR
H.NO.3, 1ST MAIN ROAD,
DOLLARS COLONY,J.P.NAGAR,
4TH PHASE,BANGALORE-560078

....Respondent No. 2

SH.VIVEK NAGPAL,DIRECTOR
S/O SH.M.L.NAGPAL
H-27/1,SAINIK FARMS,
NEW DELHI-110062

....Respondent No. 3

SH.MAHESH MALHOTRA,DIRECTOR
S/O SH.B.L.MALHOTRA,
H.NO.394,NITI KHAND-III,
INDIRAPURAM,GHAZIABAD(UP)

.....Respondent No. 4

SH.GOPAL SHARMA,DIRECTOR
S/O SH.MANOHAR LAL SHARMA
E-56.KALKAJI,NEW DELHI.

....Respondent No. 5

SHRI DEEPAK
DIRECTOR
R/o B-47, VIKALP APARTMENTS

DELHI-110 092

....Respondent No. 6

Through Mr.Sidharth Luthra, Sr. Advocate,
alongwith Mr.Samarjit Pattnaik, Mr.Vikas
Gogne,Mr.Puneet Relan and Mr.Asif
Ahmed, Advocates for Respondent No.1.
Mr.Vibhor Garg and Mr.Atul Sinha,
Advocates for R-3.

+

CRL.M.C. 1949/2014 & CRL.M.A. 16481/2015

Between:-

SERIOUS FRAUD INVESTIGATION OFFICE
THROUGH PRAVEEN
MINISTRY OF CORPORATE AFFAIRS
GOVERNMENT OF INDIA
2ND FLOOR, PARYAVARAN BHAWAN,
CGO COMPLEX, LODHI ROAD,
NEW DELHI -110 003

....Petitioner

Through: Mr.Harish Vaidyanathan
Shankar, CGSC, Mr.Srish Kumar Mishra,
Mr.Sagar Mehlawat and Mr.Alexander
Mathai Paikaday, Advocates.

Versus

M/S SHONKH TECHNOLOGIES LIMITED
71-A, BASEMENT, SANT NAGAR,
EAST OF KAILASH, NEW DELHI-65.

....Respondent No. 1

SH. RAVI KRISHNAMOORTHY, DIRECTOR
C-302,ADARSH NIWAS KANAKPURA
MAIN ROAD,J.P.NAGAR,6TH PHASE,
BANGALORE 560078

....Respondent No. 2

SH.C.V.RAO,DIRECTOR
H.NO.31ST MAIN ROAD,
DOLLARS COLONY,J.P.NAGAR,
4TH PHASE,BANGALORE-560078.

....Respondent No. 3

SH.VIVEK NAGPAL,DIRECTOR
S/O SH.M.L.NAGPAL
H-27/1,SAINIK FARMS,
NEW DELHI-110062

....Respondent No. 4

SH.DEEPAK,DIRECTOR
B-47,VIKALP APARTMENTS,
DELHI-110092.

....Respondent No. 5

Through: Mr.Sidharth Luthra, Sr. Advocate,
alongwith Mr.Samarjit Pattnaik, Mr.Vikas
Gogne,Mr.Puneet Relan and Mr.Asif
Ahmed, Advocates for Respondent No.1.
Mr.Vibhor Garg and Mr.Atul Sinha,
Advocates for R-4.

+

CRL.M.C. 1950/2014 & CRL.M.A. 16479/2015

Between:-

SERIOUS FRAUD INVESTIGATION OFFICE
THROUGH PRAVEEN
MINISTRY OF CORPORATE AFFAIRS
GOVERNMENT OF INDIA
2ND FLOOR, PARYAVARAN BHAWAN,
CGO COMPLEX, LODHI

....Petitioner

Through: Mr.Harish Vaidyananthan
Shankar, CGSC, Mr.Srish Kumar Mishra,
Mr.Sagar Mehlawat and Mr.Alexander
Mathai Paikaday, Advocates.

Versus

M/S SHONKH TECHNOLOGIES LIMITED
71-A, BASEMENT, SANT NAGAR,
EAST OF KAILASH, NEW DELHI-65Respondent No. 1

SH. VIVEK NAGPAL, DIRECTOR
S/O SH. M L NAGPAL
R/O H-27/1, SAINIK FARMS
NEW DELHI-62

....Respondent No. 2

SH. MAHESH MALHOTRA, DIRECTOR
S/O SH. B L MALHOTRA
R/O H NO. 394 NITI KHAND-III
INDIRAPURUM, GHAZIABAD, UPRespondent No. 3

SH. GOPAL SHARMA, DIRECTOR
S/O SH. MANOHAR LAL SHARMA

R/O E-56, KALKAJI, NEW DELHIRespondent No. 4
Through: Mr.Sidharth Luthra, Sr. Advocate,
alongwith Mr.Samarjit Pattnaik, Mr.Vikas
Gogne,Mr.Puneet Relan and Mr.Asif
Ahmed, Advocates for Respondent No.1.
Mr.Vibhor Garg and Mr.Atul Sinha,
Advocates for R-2.

+

CRL.M.C. 1951/2014 & CRL.M.A. 16617/2015

Between:-

SERIOUS FRAUD INVESTIGATION OFFICE
THROUGH PRAVEEN
MINISTRY OF CORPORATE AFFAIRS
GOVERNMENT OF INDIA
2ND FLOOR, PARYAVARAN BHAWAN,
CGO COMPLEX, LODHI ROAD,
NEW DELHI-110 003Petitioner
Through: Mr.Harish Vaidyanathan
Shankar, CGSC, Mr.Srish Kumar Mishra,
Mr.Sagar Mehlawat and Mr.Alexander
Mathai Paikaday, Advocates.

Versus

M/s SHONKH TECHNOLOGIES LIMITED
71-A, BASEMENT, SANT NAGAR,
EAST OF KAILASH, NEW DELHI-65Respondent No. 1

SH.VIVEK NAGPAL,DIRECTOR
S/O SH.M.L.NAGPAL
H-27/1,SAINIK FARMS,
NEW DELHI-110062Respondent No. 2

SH.MAHESH MALHOTRA,DIRECTOR
S/O SH.B.L.MALHOTRA,
H.NO.394,NITI KHAND-III,
INDIRAPURAM,GHAZIABAD(UP).Respondent No. 3

SH.GOPAL SHARMA,DIRECTOR
S/O SH.MANO HAR LAL SHARMA
E-56.KALKAJKNEW DELHI.Respondent No. 4

Through: Mr.Sidharth Luthra, Sr. Advocate,
alongwith Mr.Samarjit Pattnaik, Mr.Vikas
Gogne, Mr.Puneet Relan, Advocates for
Respondent No.1.

Mr.Vibhor Garg and Mr.Atul Sinha,
Advocates for R-2.

+

CRL.M.C. 1952/2014

Between:-

SERIOUS FRAUD INVESTIGATION OFFICE
THROUGH PRAVEEN
MINISTRY OF CORPORATE AFFAIRS
GOVERNMENT OF INDIA
2ND FLOOR, PARYAVARAN BHAWAN,
CGO COMPLEX, LODHI ROAD,
NEW DELHI-110 003

....Petitioner

Through: Mr.Harish Vaidyanathan
Shankar, CGSC, Mr.Srish Kumar Mishra,
Mr.Sagar Mehlawat and Mr.Alexander
Mathai Paikaday, Advocates.

Versus

M/S SHONKH TECHNOLOGIES LIMITED
71-A, BASEMENT, SANT NAGAR,
EAST OF KAILASH, NEW DELHI-65.Respondent No. 1

SH.SHIV NARAIN MALIK,DIRECTOR
S/O SH.J.R.D.MALIK
HOUSE NO. 277,SECTOR-21
FARIDABAD 121001 HARYANARespondent No. 2

SH.DWARKANATH CHENNUR
COMPANY SECRETARY,
21/2,GROUND FLOOR,E.A.T.STREET
BASAVANAGUDI
BANGALORE-560004.Respondent No. 3

Through: Mr.Sidharth Luthra, Sr. Advocate,
alongwith Mr.Samarjit Pattnaik, Mr.Vikas
Gogne, Mr.Puneet Relan, Advocates for
Respondent No.1.

+

CRL.M.C. 1953/2014

Between:-

SERIOUS FRAUD INVESTIGATION OFFICE
THROUGH PRAVEEN
MINISTRY OF CORPORATE AFFAIRS
GOVERNMENT OF INDIA
2ND FLOOR, PARYAVARAN BHAWAN,
CGO COMPLEX, LODHI ROAD,
NEW DELHI-110 003.

....Petitioner

Through: Mr.Harish Vaidyananthan
Shankar, CGSC, Mr.Srish Kumar Mishra,
Mr.Sagar Mehlawat and Mr.Alexander
Mathai Paikaday, Advocates.

Versus

M/s SHONKH TECHNOLOGIES LIMITED
71-A, BASEMENT, SANT NAGAR,
EAST OF KAILASH, NEW DELHI-65.Respondent No. 1

SH.SHIV NARAIN MALIK,DIRECTOR
S/O SH.J.R.D.MALIK
HOUSE NO.277,SECTOR-21
FARIDABAD 121001 HARYANA.Respondent No. 2

Through: Mr.Sidharth Luthra, Sr. Advocate,
alongwith Mr.Samarjit Pattnaik, Mr.Vikas
Gogne, Mr.Puneet Relan, Advocates for
Respondent No.1.

+

CRL.M.C. 1954/2014 & CRL.M.A. 16616/2015

Between:-

SERIOUS FRAUD INVESTIGATION OFFICE
THROUGH PRAVEEN
MINISTRY OF CORPORATE AFFAIRS
GOVERNMENT OF INDIA
2ND FLOOR, PARYAVARAN BHAWAN,
CGO COMPLEX, LODHI ROAD,
NEW DELHI - 110 003

.....Petitioner

Through: Mr.Harish Vaidyananthan
Shankar, CGSC, Mr.Srish Kumar Mishra,

Mr.Sagar Mehlawat and Mr.Alexander
Mathai Paikaday, Advocates.

Versus

M/S SHONKH TECHNOLOGIES LIMITED
71-A, BASEMENT, SANT NAGAR,
EAST OF KAILASH, NEW DELHI-65Respondent No. 1

SH.ANIL KUMAR BHANDARI
S/O SH.N.M.BHANDARI
CHARTERED ACCOUNTANT
PARTNER M/S U.C.BHANDARI & COMPANY
HOUSE NO. 17, 4TH FLOOR,
SHAH SULTAN ALI AKSAR ROAD,
BANGALORE-560085Respondent No. 2
Through: Mr.Sidharth Luthra, Sr. Advocate,
alongwith Mr.Samarjit Pattnaik, Mr.Vikas
Gogne, Mr.Puneet Relan, Advocates for
Respondent No.1.

+

CRL.M.C. 1955/2014

Between:-

SERIOUS FRAUD INVESTIGATION OFFICE
THROUGH PRAVEEN
MINISTRY OF CORPORATE AFFAIRS
GOVERNMENT OF INDIA
2ND FLOOR, PARYAVARAN BHAWAN,
CGO COMPLEX, LODHI ROAD,
NEW DELHI - 110 003Petitioner

Through: Mr.Harish Vaidyanathan
Shankar, CGSC, Mr.Srish Kumar Mishra,
Mr.Sagar Mehlawat and Mr.Alexander
Mathai Paikaday, Advocates.

Versus

M/s SHONKH TECHNOLOGIES LIMITED
71-A, BASEMENT, SANT NAGAR,
EAST OF KAILASH, NEW DELHI-65Respondent No. 1

SH.VIVEK NAGPAL,DIRECTOR

S/O SH.M.L.NAGPAL
H-27/1,SAINIK FARMS,
NEW DELHI- 110062.

.....Respondent No. 2

SH.MAHESH MALHOTRA,DIRECTOR
S/O SH.B.L.MALHOTRA,
H.NO.394,NITI KHAND-III,
INDIRAPURAM,GHAZIABAD(UP)

...Respondent No. 3

SH.GOPAL SHARMA,DIRECTOR
S/O SH.MANO HAR LAL SHARMA
E-56.KALKAJI,NEW DELHI.

....Respondent No. 4

Through: Mr.Sidharth Luthra, Sr. Advocate,
alongwith Mr.Samarjit Pattnaik, Mr.Vikas
Gogne, Mr.Puneet Relan, Advocates for
Respondent No.1.

+

CRL.M.C. 1956/2014 & CRL.M.A. 16483/2015

Between:-

SERIOUS FRAUD INVESTIGATION OFFICE
THROUGH PRAVEEN
MINISTRY OF CORPORATE AFFAIRS
GOVERNMENT OF INDIA
2ND FLOOR, PARYAVARAN BHAWAN,
CGO COMPLEX, LODHI ROAD,
NEW DELHI - 110 003

....Petitioner

Through: Mr.Harish Vaidyanathan
Shankar, CGSC, Mr.Srish Kumar Mishra,
Mr.Sagar Mehlawat and Mr.Alexander
Mathai Paikaday, Advocates.

Versus

M/s SHONKH TECHNOLOGIES LIMITED
71-A, BASEMENT, SANT NAGAR,
EAST OF KAILASH, NEW DELHI-65

.....Respondent No. 1

SH. VIVEK NAGPAL, DIRECTOR
S/O SH. M.L. NAGPAL
H-27/1, SAINIK FARMS,
NEW DELHI-110062

....Respondent No. 2

SH. MAHESH MALHOTRA, DIRECTOR
S/O SH.B.L. MALHOTRA
H.NO. 394, NITI KHAND-III
INDIRAPURAM, GHAZIABAD (UP)Respondent No. 3

SH. GOPAL SHARMA, DIRECTOR
S/O SH. MANOHAR LAL SHARMA
E-56. KALKAJI, NEW DELHIRespondent No. 4
Through: Mr.Sidharth Luthra, Sr. Advocate,
alongwith Mr.Samarjit Pattnaik, Mr.Vikas
Gogne, Mr.Puneet Relan, Advocates for
Respondent No.1.
Mr.Vibhor Garg and Mr. Atul Sinha,
Advocates for R-2.

+

CRL.M.C. 1957/2014

Between:-

SERIOUS FRAUD INVESTIGATION OFFICE
THROUGH PRAVEEN
MINISTRY OF CORPORATE AFFAIRS
GOVERNMENT OF INDIA
2ND FLOOR, PARYAVARAN BHAWAN,
CGO COMPLEX, LODHI ROAD,
NEW DELHI - 110 003Petitioner

Through: Mr.Harish Vaidyanathan
Shankar, CGSC, Mr.Srish Kumar Mishra,
Mr.Sagar Mehlawat and Mr.Alexander
Mathai Paikaday, Advocates.

Versus

M/S SHONKH TECHNOLOGIES LIMITED
71-A, BASEMENT, SANT NAGAR,
EAST OF KAILASH, NEW DELHI-65Respondent No. 1

SH. RAVI KRISHNAMOORTHY, DIRECTOR
C-302,ADARSH NIWAS.KANAKPURA,
MAIN ROAD.J.P.NAGAR, 6TH PHASE,
BANGLORE 560078.Respondent No.2

SH.C.V.RAO, DIRECTOR
H.NO.31ST MAIN ROAD,

DOLLARS COLONY.J.P.NAGAR,
4TH PHASE,BANGALORE-560078.Respondent No.3

SH.B.R.BADRINATH.DIRECTOR
LAXMI COMPLEX,2ND FLOOR
10TH MAIN 27TH CROSS,4TH BLOCK
JAYANAGAR,BANGALORE-560011.Respondent No.4

SH.M.S.UDAY KUMAR.DIRECTOR
26TH CROSS,BSK II STAGE
BANGALORE 560070.Respondent No.5
Through: Mr.Sidharth Luthra, Sr. Advocate,
alongwith Mr.Samarjit Pattnaik, Mr.Vikas
Gogne, Mr.Puneet Relan, Advocates for
Respondent No.1.

+

CRL.M.C. 1958/2014 & CRL.M.A. 16485/2015

Between:-

SERIOUS FRAUD INVESTIGATION OFFICE
THROUGH PRAVEEN
MINISTRY OF CORPORATE AFFAIRS
GOVERNMENT OF INDIA
2ND FLOOR, PARYAVARAN BHAWAN,
CGO COMPLEX, LODHI ROAD,
NEW DELHI -110 003Petitioner

Through: Mr.Harish Vaidyananthan
Shankar, CGSC, Mr.Srish Kumar Mishra,
Mr.Sagar Mehlawat and Mr.Alexander
Mathai Paikaday, Advocates.

Versus

M/S SHONKH TECHNOLOGIES LIMITED
71-A, BASEMENT, SANT NAGAR,
EAST OF KAILASH, NEW DELHI-65.Respondent No. 1

SH.VIVEK NAGPAL,DIRECTOR
S/O SH.M.L.NAGPAL
H-27/1,SAINIK FARMS,
NEW DELHI- 110062.Respondent No. 2

SH.MAHESH MALHOTRA,DIRECTOR
S/O SH.B.L.MALHOTRA,
H.NO.394,NITI KHAND-III,
INDIRAPURAM, GHAZIABAD(UP) ...Respondent No. 3

SH.GOPAL SHARMA,DIRECTOR
S/O SH.MANO HAR LAL SHARMA
E-56.KALKAJI,NEW DELHI.Respondent No. 4
s

Through: Mr.Sidharth Luthra, Sr. Advocate,
alongwith Mr.Samarjit Pattnaik, Mr.Vikas
Gogne, Mr.Puneet Relan, Advocates for
Respondent No.1.
Mr.Vibhor Garg and Mr. Atul Sinha,
Advocates for R-2.

% Pronounced on : 19.01.2023

J U D G M E N T

1. In this batch of 15 petitions filed under Sections 482 and 483 of the Code of Criminal Procedure, 1973 (hereinafter referred to as 'Cr.P.C.') read with Section 227 of the Constitution of India, common order dated 08.01.2014, passed by the Court of learned Additional Sessions Judge - 02, Central, Delhi, affirming order dated 25.09.2012, passed by learned ACMM (Special Acts), Central, Delhi, dismissing an application for condonation of delay in filing the complaint by the petitioner agency, is under challenge. Since the issue involved in all the cases is similar, therefore, the same are being decided by this common order.

2. Brief facts of the case are as under:-

(i) The Union of India through the Department of Company Affairs, Ministry of Finance Corporate Affairs (hereinafter referred to as 'MCA') approached Company Law Board,

Principal Bench, New Delhi (hereinafter referred to as 'CLB') in Company Petition No. 35/2003 and 37/2003 against respondent No.1 M/s Shonkh Technologies International Ltd. & Ors. and M/s Shonkh Technologies Ltd. (hereinafter referred to as 'companies') with the prayer to seek CLB's directions to investigate into the affairs of the respondent companies under Section 237(b) of the Companies Act, 1956 (hereinafter referred to as 'Companies Act').

(ii) The CLB on 20.04.2006 passed a detailed order assigning reason to believe that there was a likelihood of the existence of malpractices envisaged in clauses (i) to (iii) of Section 237(b) of the Companies Act. The CLB further noted that to prove *prima facie* case of 'intent to fraud' on the general public and on the other body corporate and for conducting the business of the company otherwise for a fraudulent and unlawful purpose, it was necessary to direct for investigation under Section 237(b) of the Companies Act. Accordingly, MCA was directed to carry out the investigation so that the truth can come out with respect to the nature and *modus operandi* of the objectionable transactions as noted in the said order.

(iii) On 16.05.2006 as per directions of the CLB, the MCA appointed 5 officers of Serious Fraud Investigation Office, New Delhi (hereinafter referred to as 'SFIO') as Inspectors, to investigate into the affairs of the companies and others.

(iv) The Inspectors so appointed, were directed to conduct investigation into the affairs of the companies and to submit a report to the Central Government on financial irregularities and contraventions/violations of the provisions of the Companies

Act. Six months time was stipulated in the said order to complete the said exercise from the date of issuance of the said order.

(v) On 26.11.2007, SFIO submitted the report to MCA. On 03.06.2008, MCA conveyed SFIO that on a perusal of the report submitted by SFIO, it was found that there were violations of various provisions of the Companies Act and SFIO was requested to file prosecution for violation of the provisions of the Companies Act. On 01.12.2008, a complaint under Section 200 of the Cr.P.C. read with Section 621(1A) of the Companies Act was filed by SFIO against respondent company and others. The SFIO also filed an application under Section 473 of the Cr.P.C. for condonation of delay in filing the complaint, mainly on the ground that the time taken for obtaining sanction/permission i.e. between 26.11.2007 to 03.06.2008 be excluded for computing the limitation under the provisions of Section 469 read with Section 470(3) of the Cr.P.C.

(vi) *Vide* order dated 25.09.2012, the learned ACMM rejected the application for condonation of delay, consequent thereto, the complaint was found to be barred by limitation, accordingly, the same was also dismissed.

(vii) The petitioner/SFIO, filed revision before the revisional court which has also been dismissed in terms of the impugned order and therefore, the SFIO is in the present petitions.

3. Learned counsel appearing on behalf of the petitioner made the following broad submissions :-

(i) Under the Companies Act (pre-2013 Amendment Act), the SFIO was working as a wing of the Central Government created by an executive resolution as a multi-disciplinary organisation which was investigating the criminality/corporate frauds in violation of the Companies Act by the companies and its Officers or Directors, as per mandate of Sections 235, 237 and 239 of the Companies Act. SFIO conducts the investigation in terms of the provision of Sections 235 and 237 of the Companies Act and submits its report to MCA under Section 241 of the Companies Act. If the Central Government, after perusal of the report and on due consideration, finds that any person is guilty of any offence for which he is criminally liable, the MCA may after taking such legal advice, take steps for prosecution of such persons under Section 242 of the Companies Act. As per Section 242 of the Companies Act read with Section 621 of the Companies Act, the Central Government can authorise a person to file a complaint against the company or its defaulting officers.

(ii) The power of investigation are spelled out in Section 237 of the Companies Act and the power of prosecution is spelled out in Section 242 read with Section 621 of the Companies Act. It is mandatory for the SFIO to first receive instructions from the Central Government and then only to file a complaint; however the SFIO is not authorised to file any complaint without there being any specific approval in that respect, when the matter relates to investigation under Sections 234 to 237 of the Companies Act.

(iii) Both the courts have wrongly concluded that there was no requirement of obtaining sanction whereas, reading of

Section 242 of the Companies Act, clearly shows that on the report of SFIO under Section 241 of the Companies Act, if the Central Government considers that the body corporate etc. under investigation may be guilty of any offence, the Central Government may, after taking such legal advice, as it deems fit, prosecute such person for the offence.

(iv) Section 621 of the Companies Act, states that no court shall take cognizance of any offence against the act which is alleged to have been committed by any company or any other officer thereof, except for the complaint in writing:-

- (i) of the Registrar, or
- (ii) of a shareholder of the company, or
- (iii) of a person authorised by the Central Government.

(v) Learned counsel appearing on behalf of the petitioner/SFIO, therefore, submits that the power of SFIO emanates from the power of the Central Government to authorise a person and such power cannot be equated with the power of the Registrar or of a shareholder of a company who do not require any sanction from the Central Government to file a complaint. The case in hand is not with respect to sanction or direction but the same relates to the compliance of a statutory provision.

(vi) Without prejudice to his submissions as recorded hereinabove, he further states that it is well settled legal position that in the case of this nature, delay ought to have been condoned considering the gravity of the allegations against the respondent companies.

4. Learned counsel appearing on behalf of the petitioner further distinguished the decisions relied upon by the courts below and it has been submitted that the cases relied upon do not relate to filing of a complaint by SFIO or any person authorised by the Central Government but they relate to the power of the Registrar of Companies (hereinafter referred to as 'ROC') to file a complaint. It is for this reason, he states that the power to file complaint by the ROC will have no bearing under the facts of the present case. In addition, he has relied upon the decision of the Hon'ble Supreme Court in the case of *Rohtas Industries v. S.D.Agarwal and Others*¹ to state that the power conferred by the Central Government under Sections 235 and 237(b) of the Companies Act are discretionary powers, whereas, the Central Government has power to appoint one or more competent persons as Inspectors to investigate the affairs of the company and to report thereon, in such a manner as the Central Government may direct the company by special resolution or the court by order declaring that the affair of the company ought to be investigated by Inspectors appointed by the Central Government.

5. On the strength of the said authority, the learned counsel appearing on behalf of the petitioner/SFIO states that the report submitted by the Inspectors, does not bind anybody. The Government is not required to act on the basis of that report. To further elaborate his arguments on the decision of the Central Government, he states that the word used in Section 242 of the Companies Act is 'may' and therefore, the Central Government in all cases, where the reports are submitted under Section 241 of the Companies Act, need not to direct for prosecution, if it is accepted. To read it otherwise, would amount

¹ (1969) 1 SCC 325

to reading the word 'may' as 'shall', which is against the settled principle of law. He, has cited the decisions of the Hon'ble Supreme Court in the case of *Province of Bombay v. Khushaldar S. Advani and Others*² (para 92), *Dharmadeo Rai v. Ramngina Rai*³ (para 5) & *Sub-Committee on Judicial Accountability v. Union of India & Ors.*⁴ (para 150).

6. Learned senior counsel appearing on behalf of the respondents, opposed the submissions and has made the following broad arguments:-

- (i) The second revision is barred by Section 397 (3) of the Cr.P.C. and hence, under the garb of Section 482 of the Cr.P.C., after dismissal of the first Criminal Revision Petition, under Section 397 of the Cr.P.C., the present petition is not maintainable. Reliance is placed on the decision of the Hon'ble Supreme Court in the matters of *Jagir Singh vs Ranbir Singh And Anr*⁵ and *Deepti @ Arati Rai vs Akhil Rai & Ors*⁶.
- (ii) Section 242 of the Companies Act does not envisage obtaining of a prior sanction for filing of a complaint before the Magistrate. The decision of the Central Government under Section 242 of the Companies Act, is entirely an administrative process and cannot be equated with the status of a prior sanction or permission. While placing on record a copy of the Gazette Notification dated 06.05.2005, issued by MCA, it is

² (1950) SCC 551

³ (1972) 1 SCC 460

⁴ (1991) 4 SCC 699

⁵ (1979) 1 SCC 560

⁶ (1995) 5 SCC 751

pointed out that in exercise of power conferred by sub-Section 1 of Section 621 of the Companies Act, the Central Government had already authorised officers for filing and conducting prosecution under the Companies Act and one of the officers so authorized was *Giriraj Singh*, who filed the present complaint. Therefore, when there was already an authority for him to file the complaint by virtue of Gazette Notification, it cannot be heard from SFIO that for lack of permission, SFIO could not have filed the complaint before 03.06.2008.

- (iii) Unlike other statutes like Section 19 of the Prevention of Corruption Act and Section 132 (6) of the Central Goods and Services Tax Act, 2017, there is no such provision in the Companies Act, which prohibits courts from taking cognizance of offence in the Companies Act without necessary prior sanction. There is no embargo on the Magistrate to take cognizance without a prior sanction and therefore, exclusion of the period in obtaining so called sanction, is not permissible as per Section 470(3) of the Cr.P.C.
- (iv) In the present case, for all practical purposes, the limitation under Section 469(1)(3) of the Cr.P.C. had commenced on the first day when offence came to the knowledge of the SFIO which is on 20.04.2006, i.e. the day when Central Government filed the petition before the CLB, alleging commission of offence under the Companies Act. The limitation had expired in the year 2006 itself whereas, complaint in the present case has

been filed on 01.12.2008. Without prejudice to the said arguments, it is also submitted that even if the knowledge of the offence is taken to be 16.05.2006, i.e. when the Central Government in exercise of its power under Section 237(b) appointed officers of SFIO to conduct investigation into the affairs of the Respondent No.1 company, even then, also the complaint is barred by time because the limitation period of six months expired on 15.11.2006.

(v) In any case, even if the date on which report was submitted by SFIO i.e. 26.11.2007 is considered to be the date of knowledge of offence in question, in that case also, six months period expired on 25.05.2008 and in such an event, from whichever date the limitation is counted, the same had already expired much before the date of filing of the complaint. According to him, there were no reasons for condoning the delay in the application filed by the SFIO and for that reason, the same has rightly been rejected by the learned ACMM and the said order has been affirmed by the Revisional Court.

(vi) Learned senior counsel has supported his submission that the sanction is not required for prosecution of offences under the Companies Act by citing decisions in the cases of *L.B. Singh, Dr. v. Registrar of Companies NCT of Delhi & Haryana*,⁷ *Jiyuan Li v. Registrar of Companies*,⁸ *S. Govind Rajan v. M.O. Roy*,⁹ *Govind*

⁷ 2009(111) DRJ 204

⁸ 2012 SCC OnLine Del 1299

⁹ 2014 SCC OnLine Mad 10240

*Rajan v. M.O. Roy*¹⁰, *Gujarat Tea Processors & Packers Ltd. V. State of Gujarat*¹¹, *M. M. Wagh v. State of Maharashtra*¹², *Rakesh Kumar Jain v. State*¹³, *Pritam Singh v. State of Punjab*¹⁴, *R.P. Sharma v. State*¹⁵ and *Mohit Kumar Mookherjee v. Registrar*¹⁶.

(vii) With respect to the date of commencement of limitation period under Section 469(1)(b) of the Cr.P.C., he has placed reliance on a decisions of the Hon'ble Supreme Court in the case of *Anil Kumar Gupta v. Union of India*,¹⁷ *Surinder Mohan Vikal v. A.L. Chopra*,¹⁸ and *Rajiv Kumar v. Registrar of Companies NCT of Delhi*¹⁹. For the purposes of drawing distinction between sanction and direction, he placed reliance on decision of the Hon'ble Supreme Court in the case of *Rameshwar Bhartia v. State of Assam*²⁰.

7. I have heard Shri Harish Vaidyanathan, learned CGSC appearing on behalf of SFIO and Shri Siddharth Luthra, learned senior counsel assisted by Shri Samarjit Pattanik, appearing on behalf of the respondents and perused the record.

8. It is true that the object of introduction of Section 397(3) of the Cr.P.C. is to prevent a second revision so as to avoid frivolous litigation. However, at the same time, the doors of the High Court to a

¹⁰ 2014 SCC OnLine Mad 13061

¹¹ 2010 SCC OnLine Guj 5107

¹² 1990 SCC OnLine Guj 5107

¹³ (2007) 7 SCC 656

¹⁴ 1981 SCC OnLine P&H 5

¹⁵ 1990 SCC OnLine Del 179

¹⁶ MANU/WB/0455/1981

¹⁷ 2022 SCC OnLine SC 1534

¹⁸ (1978) 2 SCC 403

¹⁹ (2009) 151 Comp Cas 434 (Delhi)

²⁰ (1952) 2 SCC 203

litigant, who has lost before the Sessions Judge, are not completely closed and in special cases, the bar under Section 397(3) of the Cr.P.C. can be lifted.

9. The power of the High Court to entertain a petition under Section 482 of the Cr.P.C. is not subject to the prohibition under Section 397(3) of the Cr.P.C. and is capable of being invoked in appropriate cases. This view is supported by the decision of the Hon'ble Supreme Court in the case of *Shakuntala Devi and Ors. (supra)*. Even the decisions relied upon by the learned senior counsel for the respondents affirms the said legal position and therefore, it is held that there does not exist an absolute bar in entertaining petition under Section 482 of the Cr.P.C. against the order passed by the Sessions Judge in exercise of its revisional jurisdiction. The present petition is thus, maintainable.

10. A perusal of the order dated 25.09.2012, passed by the learned ACMM, indicates as under :-

- (i) The learned ACMM decided an application of the complainant for condonation of delay in filing the complaint.
- (ii) He assumed that SFIO is a wing of the Central Government and investigation of the accused companies was ordered on 16.05.2006.
- (iii) The knowledge of the offence was acquired by the complainant on 26.11.2007.
- (iv) It is not mandatory for the complainant SFIO to seek any sanction from the Central Government to file the present complaint.
- (v) No reason for condonation of delay has been explained.

(vi) Three decisions, namely, *Dr.L.B.Singh (supra)*, *Jiyuan Li. (supra)* and *Rajiv Kumar & Ors. (supra)* have been relied upon to substantiate the view taken by learned ACMM in rejecting the application for condonation of delay.

11. The impugned order dated 08.01.2014 passed by the learned Revisional Court takes into consideration the following aspects:-

(i) The date of knowledge of the offence to the Central Government was 16.05.2006 (order of directing investigation) or at best 26.11.2007 (date of submission of report).

(ii) The object of Criminal Law in putting a bar of limitation on prosecution was to prevent the parties from filing cases after a delay and to prevent abuse of the process of court by filing vexatious and belated prosecutions.

(iii) There is no embargo under Section 242 of the Companies Act to seek approval from Central Government before the initiation of prosecution against accused companies.

12. The moot question that arises for consideration of this court is whether the period commencing from 26.11.2007 to 03.06.2008 i.e. the date on which the SFIO submitted its report to MCA and the date on which MCA conveyed SFIO to file a complaint respectively, is to be excluded for the purposes of counting limitation in terms of Section 468 of the Cr.P.C.

13. The exclusion of the said period is sought on the strength of the provisions of Sections 469 & 470(3) of the Cr.P.C. Before proceeding further, it would be appropriate to refer certain provisions of the Cr.P.C. and of the Companies Act which are being reproduced as under:-

(i) Sections 468 to 470 of the Cr.P.C. are being reproduced as under:

468. Bar to taking cognizance after lapse of the period of limitation.

(1) Except as otherwise provided elsewhere in this Code, no Court shall take cognizance of an offence of the category specified in sub- section (2), after the expiry of the period of limitation.

(2) The period of limitation shall be-

(a) six months, if the offence is punishable with fine only

(b) one year, if the offence is punishable with imprisonment for a term not exceeding one year;

(c) three years, if the offence is punishable with imprisonment for term exceeding one year but not exceeding three years.

(3) 1 For the purposes of this section, the period of limitation in relation to offences which may be tried together, shall be determined with reference to the offence which is punishable with the more severe punishment or, as the case may be, the most severe punishment.]

469. Commencement of the period of limitation.

(1) The period of limitation, in relation to an offender, shall commence,-

(a) on the date of the offence; or

(b) where the commission of the offence was not known to the person aggrieved by the offence or to any police officer, the first day on which such offence comes to the knowledge of such person or to any police officer, whichever is earlier; or

(c) where it is not known by whom the offence was committed, the first day on which the identity of the offender is known to the person aggrieved by the offence or to the police officer making investigation into the offence, whichever is earlier.

(2) In computing the said period, the day from which such period is to be computed shall be excluded.

470. Exclusion of time in certain cases.

(1) In computing the period of limitation, the time during which any person has been prosecuting with

due diligence another prosecution, whether in a Court of first instance or in a Court of appeal or revision, against the offender, shall be excluded: Provided that no such exclusion shall be made unless the prosecution relates to the same facts' and is prosecuted in good faith in a Court which from defect of jurisdiction or other cause of a like nature, is unable to entertain it.

(2) Where the institution of the prosecution in respect of an offence has been stayed by an injunction or order, then, in computing the period of limitation, the period of the continuance of the injunction or order, the day on which it was issued or made, and the day on which it was withdrawn, shall be excluded.

(3) Where notice of prosecution for an offence has been given, or where, under any law for the time being in force, the previous consent or sanction of the Government or any other authority is required for the institution of any prosecution for an offence, then, in computing the period of limitation, the period of such notice or, as the case may be, the time required for obtaining such consent or sanction shall be excluded. Explanation.- In computing the time required for obtaining the consent or sanction of the Government or any other authority, the date on which the application was made for obtaining the consent or sanction and the date of receipt of the order of the Government or other authority shall both be excluded.

(4) In computing the period of limitation, the time during which the offender-

(a) has been absent from India or from any territory outside India which is under the administration of the Central Government, or

(b) has avoided arrest by absconding or concealing himself, shall be excluded.

14. Sections 242 and 621 of the Companies Act are also reproduced as under:-

242. Prosecution. - (1) If, from any report made under section 241, it appears to the Central Government that any person has, in relation to the company or in relation to any other body corporate, managing agent, secretaries and treasurers or associate of a managing agent or secretaries

and treasurers, whose affairs have been investigated by virtue of section 239, been guilty of any offence for which he is criminally liable, the Central Government may, after taking such legal advice as it thinks fit, prosecute such person for the offence; and it shall be the duty of all offices and other employees] and agents of the company, body corporate, managing agent, secretaries and treasurers, or associate, as the case may be (other than the accused in the proceedings), to give the Central Government all assistance in connection with the prosecution which they are reasonably able to give.

(2) Sub-section (6) of section 240 shall apply for the purposes of this section, as it applies for the purposes of that section.

621. Offences against Act to be cognizable only on complaint by Registrar, shareholder or Government. - (1) No court shall take cognizance of any offence against this Act (other than an offence with respect to which proceedings are instituted under section 545), which is alleged to have been committed by any company or any officer thereof, except on the complaint in writing of the Registrar, or of a shareholder of the company, or of a person authorised by the Central Government in that behalf:

Provided that nothing in this sub-section shall apply to a prosecution by a company of any of its officers.

[Provided further that the Court may take cognizance of offence relating to issue and transfer of securities and non-payment of dividend on a complaint in writing by a person authorized by the Securities Exchange Board of India.]

(1A) 3 Notwithstanding anything contained in the Code of Criminal Procedure, 1898 , (5 of 1898) 4 where the complainant under sub-section (1) is the Registrar or a person authorised by the Central Government, the personal attendance of the complainant before the Court trying the offence shall not be necessary unless the Court for reasons to be recorded in writing requires his personal attendance at the trial.]

(2) Sub-section (1) shall not apply to any action taken by the liquidator of a company in respect of any offence alleged to have been committed in respect of any of the matters included in Part VII (sections 425 to 560) or in

any other provision of this Act relating to the winding up of companies.

(3) A liquidator of a company shall not be deemed to be an officer of the company, within the meaning of sub-section (1).

15. Section 242 of the Companies Act prescribes that if from any report made under Section 241, it appears to the Central Government that any person has, in relation to the company or in relation to any other body corporate, whose affairs have been investigated by virtue of Section 239, being guilty of any offence for which he is criminally liable, the Central Government may, after taking such legal advice as it thinks fit, would prosecute such person for the offence and it shall be the duty of all officers and other employees and agents of the company, or body corporate, other than the accused in the proceedings, to give the Central Government all assistance in connection with the prosecution which they are reasonably able to give.

16. It is thus, seen that the Central Government is well within its power to prosecute such person for the offence in relation to the company or in relation to any other body corporate whose affairs have been investigated by virtue of Section 239. There is no hurdle for the Central Government to prosecute such person if it appears to the Central Government that such person is guilty for any offence for which he is criminally liable. It is the discretion of the Central Government to take legal advice as it thinks fit.

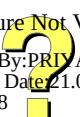
17. Section 621 of the Companies Act provides for the procedure as to how, the prosecution would be initiated. It is provided under Sub-Section 1 of Section 621, that no court shall take cognizance of any offence against the Companies Act which is alleged to have been committed by any company or any officer thereof, except on the

complaint in writing of the Registrar or of a shareholder of the company or of a person authorized by the Central Government in that behalf. It is, therefore, seen that the Registrar, shareholder of the Company or any other person, who has been authorized by the Central Government, can file a complaint in writing for commission of "any offence" against the Companies Act.

18. The Registrar or a shareholder of the company are independently empowered to file a complaint for any offence under the Companies Act in accordance with other provisions of the Companies Act. However, the Central Government whenever, finds it necessary has to proceed to file a complaint while authorizing any person in that behalf.

19. Neither Section 242 nor Section 621 of the Companies Act speak anything with respect to "previous sanction" or "consent". The word used in Section 470(3) of Cr.P.C. is "previous consent" or "sanction". In the instant case, it is seen that the Central Government itself is empowered to prosecute in accordance with Section 242 read with Section 621 of the Companies Act and it does not require any "previous sanction" or "consent" of any other authority and therefore, it is not open for the Central Government to claim exclusion of the period for counting limitation which remained pending with Government itself.

20. The SFIO has no role to play in terms of Sections 242 and 621 of the Companies Act unless, the SFIO is authorized by the Central Government, as a person authorized to file a complaint in writing. In the instant case, paragraph No.2 of the complaint clearly indicates that few officers of the SFIO were already authorised by the Central Government in exercise of power conferred by Sub Section 1 of



Section 621 of the Companies Act, *vide* notification dated 06.05.2005.

Paragraph 2 of the complaint is being reproduced as under:

That the Complainant further submits that the present complaint is being filed by him in pursuance of the authority conferred on him by the Central Govt. Notification G.S.R. 284(E) dated 6th May 2005 published in Gazette of India on 11-05-2005. Accordingly the complainant pursuant to the publication of the notification in the official gazette is authorized to file the present complaint under section 621(1) of the Companies Act, A- 1956. A copy of the official gazette is marked as ANNEXURE-1 to the complaint wherein the name of the complainant is appearing at Serial no. 10.

21. Notification dated 06.05.2005 is also reproduced as under:

**MINISTRY OF COMPANY AFFAIRS
NOTIFICATION**

New Delhi, the 6th May 2005

G.S.R. 284(E)- In exercise of the powers conferred by the sub-Section(1) of Section 621 of the Companies Act, 1956 (1 of 1956), the Central Government hereby authorise the following officers in the Serious Fraud Investigation Office (SFIO), Ministry of Company Affairs for the purposes of filing and conducting prosecution under the Companies Act, 1956

- | | |
|----------------------------|--------------------|
| 1. Shri B.S. Negi | Assistant Director |
| 2. Shri K.S. Nagar | Assistant Director |
| 3. Shri Mohan Singh | Assistant Director |
| 4. Shri Sandeep Agarwal | Assistant Director |
| 5. Shri M.O. Roy | Assistant Director |
| 6. Shri V.P. Verma | Assistant Director |
| 7. Shri Dinesh Kumar | Assistant Director |
| 8. Shri Sanjeev Kumar Gaur | Assistant Director |
| 9. Shri Rabi Barun | Assistant Director |
| 10. Shri Girraj Singh | Assistant Director |
| 11. Shri R.K. Bakshi | Assistant Director |
| 12. Shri G. Ram Mohan Roa | Assistant Director |
| 13. Shri Amit Mittal | Assistant Director |
| 14. Shri S.C. Sarsonia | Assistant Director |
| 15. Shri Pramod Beri | Assistant Director |

[F.No. 3/5/2004/CL.V]

JITESH KHOSLA. Jt. Secy.

22. It is therefore seen that the officer who has filed the complaint namely, *Shri Giriraj Singh, Assistant Director*, whose name is appearing at serial no.10 of the complaint was already authorized in terms of notification dated 06.05.2005, which is admitted position in terms of paragraph No.2 of the complaint. The commission of the offence came into the knowledge of the Central Government on 26.11.2007, i.e. the date on which SFIO submitted its report under Section 241 of the Companies Act. Therefore, the limitation for filing of the complaint commences from 26.11.2007.

23. As per mandate of Section 242 of the Companies Act, the application of mind on the said report and if necessary the legal opinion etc. was required to be completed, so as to ensure that within a period of six months the complaint is presented by authorized person on behalf of the Central Government before the competent court. The Central Government took around six months in taking decision dated 03.06.2008 to authorize SFIO to file the complaint. Firstly, since there was already a valid notification in favour of the officers to file a complaint on behalf of SFIO, there was no necessity to again authorize SFIO to file the complaint. If at all there was any requirement to formally convey the said officer to file the complaint, the same should have been done immediately, so as to ensure that the complaint is filed within a period of six months. Since the Central Government itself had taken about six months time to take a decision and then the SFIO took time to prepare the complaint to present it in the court, that cannot be a reason to exclude the period between 26.11.2007 to 03.06.2008. The SFIO who is only an authorized person can not claim exclusion of limitation, when it has no separate identity to file the complaint.

24. The Hon'ble Supreme Court in the decision of **Rakesh Kumar Jain** (*supra*) has considered the import of the word "consent" and "sanction" as appearing in Sub Section 3 of Section 470 of the Cr.P.C. in the context of the provision of Section 13(3) of the Official Secret Act, 1923. It has been held that under Sub Section 3 of Section 13 of the Official Secret Act, it is provided that cognizance of offence under the said Act can be taken only upon complaint which is

- (a) filed by order of the appropriate government;
- (b) filed under authority of the appropriate government;
- (c) by some officer empowered by the appropriate government.

It has been further held that "consent" or "sanction" envisaged under Section 470 of the Cr.P.C. cannot be equated with the "order" or "authority" for the purpose of finding the complaint as envisaged by Sub Section 3 of Section 13 of the Official Secret Act.

25. A similar view has been taken by the learned Single Judge of the High Court of Madras in the case of **Govind Rajan** (*supra*) and in paragraph No.10 of the said decision, wherein it has been held that to prosecute a person for offence under Section 629(A) of the Companies Act, neither any "consent" nor any "sanction" from the Central Government is required. It has further been held that it may be true that on the administrative side, permission is obtained from the Central Government to launch prosecution, but that permission cannot be equated to a "consent" or "sanction" to be obtained statutorily referred to under Sub Section 3 of Section 470 of the Cr.P.C.

26. It is therefore, in the considered opinion of this court that the period between 26.11.2007 to 03.06.2008 cannot be excluded for the purpose of counting limitation for filing of the complaint. Any other

interpretation would result in adding words in the legislation, which is not permissible in the interpretative process of the provisions.

27. The learned counsel appearing on behalf of the petitioner, however, is correct in his submission that the SFIO could not have filed the complaint unless the Central Government, after application of mind (taking legal opinion etc.), finds that any person in relation to the company or in relation to any other body corporate whose affairs has been investigated by virtue of sub Section 239, is guilty of any offence for which he is criminally liable. It is not for the SFIO to file the complaint. The same has to be filed by the Central Government. It is for the Central Government to timely take the decision and authorize the person concerned so that the complaint is filed within limitation.

28. It is imperative for the court, taking cognizance, to apply its judicial mind as to whether the prosecution has been launched within limitation statutorily prescribed for a particular offence. The administrative approval or permission to convey that in the instant case, the Central Government is convinced for commission of the offence, should have been taken immediately after receipt of the report and any delay on the part of the Central Government in taking the decision, cannot be construed to be in the benefit of the Central Government that too when, the same has not been explained at all. In appropriate case, under Section 473 of the Cr.P.C., the courts are empowered to take cognizance of an offence after the expiry of the period of limitation if it is satisfied on the facts and in the circumstances of the case that the delay has properly been explained or that it is necessary so to do in the interest of justice.

29. A perusal of the application for condonation of delay does not explain any reason or steps taken by the Central Government between 26.11.2007 to 03.06.2008. The only reason for condonation of delay

sought for is to exclude the period between 26.11.2007 to 03.06.2008, as without any sanction or consent the SFIO could not have filed the said complaint. Since this court has already held that no "previous consent" or "sanction" was necessitated in terms of Section 242 read with Section 621 of the Companies Act, therefore, the said period cannot be excluded, and even the period of limitation cannot be extended in the instant case.

30. In view of the afforesaid, the instant petitions along with pending applications, if any, stand dismissed.

(PURUSHAINDRA KUMAR KAURAV)
JUDGE

JANUARY 19, 2023
MJ

