

Court No. 9

WPA 12368 of 2024

17.05.2024
(AD 38)
(S. Banerjee)

Meghalaya Agrovat Pvt. Ltd. & Anr.
Vs.
Union of India & Ors.

CAN 1 of 2024

Mr. Abhrajit Mitra, Sr. Advocate
Mr. D. N. Sharma
Mr. Somopriyo Chowdhury
Mr. Zahid Abdul

... for the petitioners

Mr. Vipul Kumar Kundalia
Mr. Siddhartha Lahiri
Ms. Isabella Pal
Mr. Soumava Ghosh
Ms. Swagata Roy

... for the respondent nos. 1 to 3

Mr. Nirmalya Dasgupta
Ms. Patrali Ganguly

... for the respondent no. 9

Let the affidavit of service filed in court today be kept with the record.

Heard learned counsel for the parties.

The petitioner, being a sister concern of the borrower company against which a proceeding has been initiated under Section 212 of the Companies Act, has preferred the present writ petition.

On the issue of *locus standi*, learned senior counsel for the petitioners contends that since the petitioners' name finds place in the report filed in

connection with the investigation, the petitioners' rights are also affected.

It is contended that the very genesis of the investigation is vitiated for non-compliance of Sections 206 and 207 of the Companies Act 2013.

Learned senior counsel for the petitioners hands over a copy of the investigation report. In the said report submitted in connection with the investigation conducted by the Serious Fraud Investigation Office ('SFIO', for short), in Clause 1.2 at page 65 thereof, it is mentioned that the Regional Director (ER) directed the ROC, West Bengal to examine the complaint matter and the statutory findings made by the company, namely Amrit Feeds Limited ('AFL', for short). Based on RD(ER) direction, the ROC, West Bengal examined the matter and submitted a report to the RD. In Clause 1.3 appearing in the same page, i.e., page 65, it is stated that the Ministry of Corporate Affairs, Government of India in exercise of its powers under Section 212(1)(a) of the Companies Act, 2013 assigned the investigation into the affair of AFL to the SFIO vide order no. 3/540/2017/CL-I (ER) dated December 10, 2018. By placing reliance on the said statement, it is contended that Section 212(1)(a) of the 2013 Act contemplates the formation of opinion by the Central Government under the said sub-Section on receipt of a report of the ROC

(Registrar of Companies) or Inspector under Section 208 of the said Act.

Learned senior counsel for the petitioner meticulously takes the court through the provisions of Sections 206, 207 and 208 of the Act and submits that a report under Section 208 of the Act is a culmination of an enquiry initiated by the ROC.

Since it is an admitted position that a report was sought from the ROC and that the investigation was assigned under Section 212(1)(a), the compliance of all the rigours stipulated in Section 206 were mandatory. The respondent authorities having flouted the said provisions and having not given any notice to the petitioner and/or AFL at any point of time, it is argued that the entire investigation is vitiated.

Learned senior counsel also places reliance on Section 219 of the Act which envisages the power of Inspector to conduct investigation into the affairs of related companies and contends that the powers under the said provision were exercised since the name of the petitioner company is also depicted in the report filed after the investigation.

As such, it is argued that the report be directed to be placed before this court and/or the investigation

itself and the order directing such investigation dated December 10, 2018 be set aside.

In view of the urgency made out by the petitioner, CAN 1 of 2024 is allowed and the writ petition is taken up for hearing.

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Learned counsel for the respondent authorities argues that the investigation report misquoted the Section under which the investigation was ordered. It is pointed out that in the parent order dated December 10, 2028, the investigation was directed under Section 212(1), sub-Section (c) and not sub-Section (a) of the Companies Act.

Since the said order itself has been misquoted in the report at page 65 thereof, it can very well be construed that the mention of Clause (a) of Section 212(1) in the report was a misnomer and an error.

It is argued that since the investigation was directed under Section 212(1)(c) in public interest, the regards of Section 206 to 208 do not apply in the present case at all.

Learned counsel appearing for the respondent no. 9, the ex-Directors of AFL, in addition to adopting the argument of the petitioner points out that in Clause 4 of

the order dated December 10, 2018, the Inspector was directed to complete investigation and submit report to the Central Government within a period of six months from the date of issue of the order.

Learned counsel places reliance on Section 212(3) of the Companies Act which stipulates that a report under the said provision has to be submitted within such period as may be specified in the order. The said report, it is argued, was filed much after the stipulated time and as such, the report cannot form the valid basis of further proceedings.

Upon considering the arguments of all the parties, it is evident that the Legislature in its wisdom has delineated separate sources which can trigger an investigation under Section 212(1) of the Companies Act, 2013. Sub-Section (1) of Section 212 provides that where the Central Government is of the opinion that it is necessary to investigate into the affair of a company by the SFIO in the circumstances as enumerated thereunder, the Central Government may, by order, assign the investigation into the affairs of the company to the SFIO and its Director may designate such number of inspectors as he may consider necessary for the purpose of such investigation. Among the separate circumstances in which such opinion may be formed, Clause (a) envisages the receipt of a report of the

Registrar or Inspector under Section 208 whereas Clause (c) stipulates that such opinion may be formed in the public interest.

If the intention of the Legislature was that all circumstances where such opinion shall be formed and an investigation be directed is to be circumscribed by Section 208 or the receipt of a report under Section 208, there would not be any necessity of separately providing for Clause (a) as opposed to other clauses, i.e., Clauses (b), (c) and (d).

Superfluity cannot be imputed to the intention of the Legislature. As such, it is clear from the scheme of Section 212(1) itself that the legislature intended to enumerate separate circumstances under which the Government may form an opinion under Section 212 (1), one of them being receipt of a report of the Registrar or Inspector under Section 208.

In the present case, the genesis of the investigation was the parent order dated December 10, 2018 annexed at page 63 of the writ petition. In the same, in no uncertain terms, it was mentioned that the Central Government was empowered under Section 212(1)(c) of the Companies Act to investigate into the affairs of a company in public interest by the SFIO and, accordingly, the Regional Director (Eastern Region)

Ministry of Corporate Affairs, Kolkata had submitted a report with the Central Government. In Clause 3 thereof, it is further reiterated that in exercise of powers conferred under Clause (c) of Section 212(1) of the Act, the investigation was being directed.

Hence, there cannot be any manner of doubt that the investigation was directed not under clause (a), but under clause (c) of Section 212(1) of the Companies Act, 2013. The misquoting of the said section in the report filed after investigation cannot be an appropriate aid in interpreting the parent order, which was the genesis of the investigation itself. In fact, the error in the report insofar as quotation of Section is concerned, is evident since in clause 1.3 at page 65 of the report, the investigating agency clearly refers to the parent order dated December 10, 2018 but misquotes the investigation to be directed under clause (a) whereas the parent order itself says that the direction was under clause (c) of Section 212(1).

The next question which arises is whether the provisions of Section 206 are at all relevant in the context of the investigation directed under Section 212(1)(c). In view of the above discussions, it is clear that the report sought from the ROC was not under Section 208.

For a report of the ROC or an Inspector to come within the ambit of Section 208 of the Companies Act, the same has to be necessarily a culmination of a proceeding initiated under Section 206. Sub-Section (1) of Section 206 provides that where on scrutiny of any document filed by any company received by him, the Registrar is of the opinion that any further information or explanation is required, he may initiate such proceeding as contemplated thereunder. Thus, the *sine qua non* of initiation of an enquiry under Section 206, which ultimately culminates in a report under Section 208, is the opinion-formation by the Registrar. As opposed to the same, in the present case, the Registrar (ROC) was a mere instrumentality of the Regional Director (Easter Region) who had directed the Registrar to conduct an investigation/enquiry, upon which the Registrar submitted a report. Hence, the Registrar having not himself/herself formed the opinion to initiate such enquiry, the provisions of Section 206 and consequentially Section 208 are not attracted in the present case at all.

Section 212(1)(c), where the opinion formation of the Central Government is in public interest, does not contain any fetter or prior requirement of receipt of a report of the ROC under Section 208 and hence, the rigours of Section 206 do not apply at all. Thus, the very

premise of challenge to the said order dated December 10, 2018 is untenable in the eye of law.

Insofar as the argument raised by the proforma respondent no. 9 with regard to the timeline stipulated in Section 212(3) of the 2013 Act is concerned, the same does not stand on firm ground. The scheme of Section 212 is initiation of investigation at the behest of the Central Government upon formation of an opinion that it is necessary to so investigate into the affairs of a company by the SFIO. In furtherance thereof, sub-Section (3) provides that where such investigation has been assigned to the SFIO, it shall conduct the investigation in the manner and follow the procedure provided in the Chapter and submit its report to the Central Government within such period as may be specified in the order.

However, conspicuously, there is no sanction provided in the event such report is not filed within the said period within the four corners of the Companies Act. Hence, it cannot be deduced that the report itself is vitiated in the event it is filed beyond such period as specified in the order.

Also, the language in which sub-Section (3) of Section 212 is couched clearly shows that it is not mandatory for the report to be filed within the said

period. The expression “shall” precedes the phrase “conduct the investigation”. Only after a punctuation mark (;), the rider requiring the submission of the report comes in sub-Section (3) of Section 212, which is not preceded by “shall”. That apart, the provision of filing the report in time is not couched in a negative language to indicate that if it is not filed within such period, it will not be accepted or will be vitiated *per se*.

Moreover, it does not lie in the mouth of the accused person to argue that the report ought to have been filed within the time specified in the order. At best, it is the Central Government, which is the initiator of the investigation, which could have hauled up SFIO for having filed the report late.

In view of the above discussions, the argument of the proforma respondent no. 9 regarding the report having been filed later than the period stipulated in the order is found to be specious and unacceptable.

In view of the above observations, I do not find any scope of interference with the impugned order dated December 10, 2018 or the report filed pursuant to the investigation conducted in view of the direction contained therein.

As such, there is no scope of interference in the present writ petition. Accordingly, WPA 12368 of 2024 is dismissed on contest without any order as to costs.

However, it is made clear that nothing in this order shall prejudice the rights of the petitioners in any criminal proceeding, if initiated against the said entities. Such criminal proceeding, if initiated, shall be conducted without being prejudiced in any manner by any of the observations made herein. It will be open to the petitioners to ask for a copy of the report, since it incriminates the petitioners as well, before the concerned forum where such criminal proceeding is prosecuted.

Urgent photostat certified copies, if applied for, be issued to the parties on compliance of requisite formalities.

(Sabyasachi Bhattacharyya, J.)