



\$~26

* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
+ **W.P.(CRL) 641/2019, CRL.M.A. 4575/2019, CRL.M.A. 13026/2019**
SUNAIR HOTELS LTD. & ORSPetitioners

Through: Mr. Gurpreet Singh, Mr. Jatin Sethi
and Mr. Mohit Walia, Advocates.

versus

MINISTRY OF CORPORATE AFFAIRS & ANR.Respondents
Through: Mr. Piyush Kumar (Sr. Prosecutor)
and Mr. Vibhav Singh, Advocates for
SFIO.
Mr. Rakesh Kumar, CGSC with
Mr. Sunil, Advocate for SFIO (UOI).

CORAM:
HON'BLE MR. JUSTICE SANJEEV NARULA

ORDER
12.02.2025

%

1. The Petitioners have preferred the present writ petition under Article 226 of the Constitution of India seeking quashing of the investigation report dated 31st October, 2016¹ submitted by the Serious Fraud Investigation Office² to the Ministry of Corporate Affairs³, on the grounds of the impugned report being unreasonable, unjustified, perverse and arbitrary. The Petitioners contend that the report is arbitrary, perverse, and suffers from non-application of mind, having been prepared with a pre-conceived notion, without due consideration of the factual matrix.

2. Briefly, the Petitioners urge as follows:

¹ "Impugned report"

² "SFIO"



2.1. Petitioner No. 1 - Sunair Hotels Ltd.⁴, is a closely held public company incorporated under the Companies Act, 1956, with 44 shareholders. Petitioner Nos. 2 (Mr. S.P. Gupta), 3 (Mr. Kaveen Gupta) and 4 (Mr. Vipul Gupta) are its Directors. The Petitioners have been falsely implicated by the SFIO in disregard of the factual and legal history of the case.

2.2 The SFIO failed to consider crucial background facts, despite these having been submitted both in writing and orally. Specifically, prior inspections into the affairs of Sunair Hotels Ltd. had already been conducted by the erstwhile Department of Corporate Affairs⁵ (now Ministry of Corporate Affairs). Pursuant to those inspections, appropriate legal actions were initiated, and the alleged offences were either dropped, compounded, or quashed with judicial approval. Had the SFIO taken these facts into consideration, they would have arrived at the rightful conclusion that the affairs of the Petitioner company had already been investigated.

2.3 The MCA and VLS had, on multiple occasions, sought permission from courts and tribunals to conduct fresh investigations into the affairs of the Petitioner company. However, such requests were consistently denied. Therefore, the SFIO investigation is an attempt to indirectly achieve what the MCA and VLS failed to accomplish through judicial channels, rendering the impugned report legally untenable.

2.4 As a Central Government agency, the SFIO bears an added duty of diligence and objectivity, particularly when its findings form the basis for potential prosecution. The SFIO, by failing to examine past investigations

³ “MCA”

⁴ “SHL/Petitioner company”



and actions already taken, has acted arbitrarily, thereby violating the Petitioners' fundamental rights under Articles 14, 19, and 21 of the Constitution. The SFIO deliberately disregarded the chequered history of the case to further the malicious agenda of VLS.

2.5 The SFIO emphasise that MCA had conducted inspection into the affairs of the Petitioner company culminating in the inspection reports dated 15th September, 1999 and 21st November, 2001. These reports pertain to the FY 1994-95, 1995-1996, 1996-1997 and 1997-1998. As such the affairs of the Petitioner company till 1998 have already been investigated and the appropriate action thereto was initiated. Pertinently, the prosecutions initiated by the MCA against the Petitioner company were compounded by the Company Law Board, which decision was upheld by the High Court and Supreme Court in appeal.

2.6 The SFIO, in its impugned investigation report, has placed undue reliance on contentions raised by VLS in relation to private disputes between VLS and the Petitioner company, while disregarding the fact that these disputes have already been adjudicated by competent judicial and administrative forums. The impugned report fails to consider past judicial orders, administrative decisions, and punitive actions previously initiated by the MCA concerning the affairs of the Petitioner company. By omitting such critical aspects, the SFIO report lacks fairness and objectivity.

2.7 Besides, the specific findings recorded in the SFIO's report are erroneous and do not establish any act of 'fraud' on the part of the Petitioners. The essential element of fraudulent intent is entirely absent from the report, making its conclusions legally unsustainable. The report also

⁵ "DCA"



suffers from material discrepancies, which remain unaddressed. The SFIO appears to have based its findings on statements made by only 14 shareholders out of a total of 362. These statements were not recorded on oath, thereby diminishing their credibility. The selective reliance on an insignificant minority of shareholders, renders the findings unreliable.

2.8 One of the key findings of the impugned report is that the directors of the Petitioner company engaged in a criminal conspiracy with the directors of Bansal Estate Pvt. Ltd. and Trans Asia Consultant Pvt. Ltd. to derive wrongful gains at the expense of genuine shareholders. This finding is perverse and baseless since the shares of the Petitioner company were transferred to independent shareholders of Bansal Estate Pvt. Ltd. and later to Trans Asia Consultant Pvt. Ltd. Further, at the time of such transfer the directors of the Petitioner company already had majority control over the Petitioner company. The entire transfer of shares from Bansal Estate Pvt. Ltd. to Trans Asia Consultant Pvt. Ltd. was an independent transaction between two corporate entities and the Petitioner company or its directors had no role to play in such transfer but merely approving the same, as mandated by law.

2.9 Lastly, the prime responsibility of SFIO under the mandate of Section 212(c) of the Companies Act, 2013⁶ was to investigate the affairs of the Petitioner company, which would have an adverse impact on the interests of the general public. However, the impugned report fails to demonstrate any element of ‘public interest’. The only assertion made in this regard is that shares were allegedly issued under fake names and that loans were secured from public sector banks by pledging duplicate shares. However, no



monetary harm was caused to the public since the loan taken by the Petitioner company was duly repaid.

3. The Court has considered the submissions of the Petitioners, and finds them unconvincing.

4. It is imperative to note that earlier the Petitioner company had filed a writ petition before this Court [W.P.(C) 3444/2016], challenging the very foundation to the investigation conducted by SFIO. In the said writ petition, the Petitioners challenged the order dated 29th February, 2016, passed by the MCA, exercising its powers under Section 212(1)(c) of the Companies Act to direct an investigation into the affairs of the company in public interest. After a detailed examination of the factual and legal aspects, the Court, in its judgment dated 26th April, 2017, categorically rejected the challenge and upheld the MCA's decision to order an investigation.

5. Even though the SFIO report dated 31st October, 2016, which is the subject matter of challenge in the present petition, was not explicitly challenged in W.P.(C) 3444/2016, the Court nonetheless had the opportunity to examine its contents as the report had already been prepared by that time. In this regard, the Court, while dismissing the writ petition, made the following observations:

*“66. Before I part with this order, I consider it necessary to refer to the report dated 31.10.2016, submitted by the SFIO. **A bare reading of the said report would show that the affairs of the Petitioner Company have been conducted in a manner prejudicial to the public interest, in addition to that of the shareholders.**”*

67. In view of the findings of the SFIO, I am satisfied that the recommendation contained therein, warranting prosecution for the offences punishable under the relevant provisions of the 1956 Act, 2013 Act and the IPC, cannot be said to be without any justification.

68. The present writ petition is accordingly dismissed without any

⁶ “Companies Act”



order as to costs. All pending applications also stand disposed of.”

6. The aforementioned observations clearly hold that the Court *prima facie* examined the impugned report and came to the conclusion that the affairs of the Petitioner company had been conducted in a manner prejudicial to public interest. Thus, in light of the findings of the SFIO, the Court was satisfied that the recommendations of the MCA in directing an investigation into the affairs of the Petitioner company was valid and the recommendations in the impugned report warranted prosecution for the offences under the relevant provisions of the Companies Act and Indian Penal Code, 1860⁷.

7. Furthermore, when the Petitioner company assailed the above judgment dated 26th April, 2017, before the Division Bench of the Court in LPA No. 390/2017, the Court once again examined the impugned investigation report dated 31st October, 2016 and made the following observations:

“65. The SFIO’s report of 31st October 2016 is on the record. It details the various allegations levelled against Sunair, the charge sheet filed by the police with respect to allegations of forgery, conspiracy and fabrication of record and states that the funds of Sunair were siphoned off, “by transferring them through various shell/dummy companies of Delhi & Kolkata on the basis of large-scale bogus transactions, fabricating documents and fabrication of books of accounts.” The report also indicts the statutory auditors for having dishonestly and fraudulently falsified the Annual Financial Statements of Sunair with false records of shareholders. The promoters of Sunair and family members, the report suggested, “rotated Rs 1 crore 21 times to get the majority shares of SHL (Sunair) fictitiously held by approx. 350 shareholders “through other intermediary companies. According to the SFIO report identities from the general public were personated to allot the shares of Sunair in fictitious names; these shares were later transferred to Trans Asia Consultants P Ltd via Bindal Estate Pvt. Ltd. Further “Loans were secured from Axis Bank Ltd, which accepts deposits from general public, after using duplicate certificates or share certificates divided from the shares lying as seized property with the

⁷ “IPC”



Income Tax Department. Thus, these loans were secured fraudulently.” The report was given shape after going through a mass of 40,000 pages of materials, by a four-member SFIO team.

66. *For the above reasons, i.e the materials which were on the record of the Central Government when it did issue the impugned order under Section 212 of the Companies Act – and given the report of the SFIO (which is, of course post such order) this court is of the opinion that there is no infirmity with the impugned judgment. The appeal is, therefore, dismissed.”*

8. In light of these findings by both a co-ordinate bench and a Division Bench of this Court, it is evident that the impugned SFIO report has already been subjected to judicial scrutiny and has been upheld. The present writ petition, which seeks to relitigate the same issues under the garb of a fresh challenge, is therefore misconceived and an abuse of process of law.

9. Nonetheless, since the Petitioners have advanced specific arguments challenging the SFIO’s findings, the Court has considered them on merits. While the Petitioners contend that the SFIO disregarded relevant documents and failed to consider the chequered litigation history, such contentions, even if taken at face value, do not justify quashing the impugned report. The appropriate stage for the Petitioners to challenge the findings of the report and place their additional evidence, is during trial, where they will have ample opportunity to establish their defence.

10. The test before this Court is not to reappreciate evidence or sit in appeal over the SFIO’s findings. The primary consideration is whether the allegations made in the report, when read holistically, disclose a cognizable offence under the Companies Act and other applicable statutes. The impugned SFIO report meticulously details multiple financial irregularities, fraudulent misrepresentations, and corporate misconduct—all of which warranted prosecution under relevant provisions of the Companies Act and IPC. The relevant portions of the impugned investigation report are as



follows:

“17. It is clear from the investigation that SHL has issued duplicate shares to related parties, without any evidence that the said shares were destroyed or defaced or mutilated or torn or surrendered to the company. SHL had issued such duplicate shares in contravention of Section 84(2) of Companies Act, 1956. It is revealed in the investigation that SHL had issued such duplicate shares with mala fide intention to avail loan from Axis Bank Limited by pledging these duplicate share certificates.

Thereby, S/Shri SP Gupta, Vipul Gupta and Kaveen Gupta, the then Directors of SHL, who were instrumental in issuance of duplicate certificates in contravention to section 84(2) of Companies Act 1956 and liable for punishment u/s 84(3) of the same Act read with section 420 of IPC.

18. Perusal of the records in FIR no. 99/2002 PS Connaught Place received from the Deputy Commissioner of Delhi Police, [Annexure 29 (Volume-IV(V) - Page 154)] reveals that SHL had issued shares to ICL vide certificate Nos. 10088, 10089, 10090, 10108, 10109, 10110, 10087, 10104, 10105, 10106, 10107, 10100, 10101, 10102, 10103, 10111, 10086, 10096, 10097, 10098, 10099, 10092, 10093, 10094, 10095, 10085, 10084, 10091, totalling 47,20,000 shares were allotted on 15.09.98. The same were seized by the Income Tax Department on 20.11.2000 and subsequently were taken into police possession during the year 2004. As such, these shares were seized property of the Income Tax Department and hence became seized assets in the custody of the Income Tax Department. Subsequently, these were taken into police possession during the year 2004 and thus became case property. It is observed from the shareholders' register as on 30.9.2000, obtained from SHL that above mentioned 47,20,000 shares of SHL standing in the name of ICL were further transferred to Columbia Trading Company Limited (CTCL) (3,00,000 shares), Monica Impex Pvt. Ltd (MIPL) (9,00,000 shares), Monica Promoters Pvt. Ltd. (MPPL) (9,00,000 shares), Easy Sales Promotions Pvt. Ltd (8,20,000 shares), JMS Promoters Pvt. Ltd (JMSPPL) (9,00,000 shares) & Promica Trading Co. Limited (9,00,000 shares) in the year 1998/1999. As part of amalgamation order of the Kolkata High Court dated 3-3-1999, all these 47,20,000 shares were further transferred to Columbia Trading Company Limited (CTCL) during 1999.

SHL had issued additional shares worth Rs.10.75 Crore between July 1997 and Sept 1998. VLSFL was not informed about the issue of these additional shares and as such challenged the allotment of these additional shares before the CLB and the Hon'ble High Court of Delhi. The Hon'ble Court ordered SHL to allot 25,94,824 shares to VLSFL in proportion to the shareholding held by them prior to issue of these shares.

19. In order to comply with the directions of the High Court, 47,20,000 shares of SHL held by CTCL, were divided into two parts (21,25,176 and



25,94,824) with issuance of fresh share certificates of 21,25,176 shares remaining with CTCL and 25,94,824 shares were allotted to VLS Finance Limited (Distinctive Nos.61750001-64344824).

A combined reading of the documents were received from the Axis Bank Limited and the minutes of SHL dated 02nd Sept 2010 reveals that SHL had pledged 21,25,176 shares held by the CTCL bearing Certificate No.10113 (Distinctive Nos.64344825-66470000) with the Axis Bank.

The Investigating Officer of Economic Offences Wing (EOW) of Delhi Police sent a letter dated 07.12.2012 to the Axis Bank requesting them to provide the details of shares pledged by SHL as mentioned in the list containing share certificate Nos. 10088, 10089, 10090,10108, 10109, 10110, 10087, 10104, 10105, 10106, 10107, 10100, 10101, 10102, 10103. 10111, 10086, 10096, 10097, 10098, 10099, 10092, 10093, 10094, 10095. 10085, 10084, 10091 totalling 47,20,000. The Axis Bank in its reply to the EOW, Delhi Police informed that the above certificates were not pledged with them because SHL had issued fresh duplicate certificates in place of shares seized by Income Tax Department.

From above details, it is clear that SHL has issued 21,25,176 (Distinctive Nos.64344825-66470000) & 25,94,824 (Distinctive Nos.61750001-64344824) shares of SHL to CTCL & VLSFL respectively in lieu of 47,20,000 shares of SHL bearing share certificates no.10084-10111 seized by the Income Tax Department, which further became the case property in case no. FIR 99/2002. **During the course of statement recorded on 25.10.2016, Mr. S.P. Gupta, vide answer to question no.42 has agreed that 25.9 lakh shares of SHL which were given VLS Finance Limited were appropriated from Columbia Trading Company Limited (CTCL) during 2001.**

20. Thus, it is revealed during investigation that Directors Sh. S.P. Gupta, Sh. Vipul Gupta, Sh. Kaveen Gupta have illegally falsified the records by cancelling and splitting the shares seized by the Income Department and issuing fresh shares to CTCL and VLSFL. Further, SHL has pledged 21,25,176 shares of bearing distinctive nos. 64344825-66470000 of Columbia Trading Company Limited (CTL), fraudulently with the Axis Bank for securing loan and hence have committed offences under Section 628 of the Companies Act, 1956 read with 420 of the Indian Penal Code, 1860.

xx.....xx.....xx

28. SFIO has perused the complaint received from VLS Finance Limited in which Delhi Police has filed a Charge Sheet in FIR 99/2002 (PS: Connaught Place, New Delhi) before the ACMM, Tis Hazari Courts, Delhi u/s 420/406/409/468/471/477A/120B of IPC, PS Connaught Place, New Delhi. Investigation by Delhi Police has revealed the following as per Charge Sheet:

► That after obtaining loans and security deposit from the financial institutions, S/Shri SP Gupta, his sons Vipul Gupta & Kaveen Gupta, Vinod



Kumar Bindal & Sanjiv Kumar Bindal, CA (Statutory Auditor), Pradeep Kumar Dhingra, Financial Controller, SHL (the accused persons Jetc. have hatched a deep rooted conspiracy.

➤ *Thus, the motive of the said conspiracy was to siphon off the funds of the company and to use such funds for the purpose of purchasing the additional equity shares of the SHL, so as to increase their share holding in the company.*

➤ *That in furtherance of the said conspiracy, the accused persons have in connivance and conspired with each other, siphoned off funds of the SHL by transferring them through various shell/ dummy companies of Delhi & Kolkata on the basis of large scale bogus transactions, fabricating documents and fabrication of books of accounts.*

➤ *Thus, the funds which were siphoned off from SHL were ploughed back into SHL for subscribing the additional equity shares through S.P. Gupta, his family members and group companies on the basis of large scale manipulations and fabrication of books of accounts etc.*

➤ *Thus, each and every member of the said criminal conspiracy has wilfully and knowingly committed several acts of wilful omissions and commissions for the purpose of achieving the goals of the conspiracy.*

The summoning of the accused was challenged in the High Court of Delhi and the matter had gone up to the Hon'ble Supreme Court. The Hon'ble Supreme Court vide order dated 05.02.2016 has directed the trial court to commence its proceedings (Copy of the order enclosed as Annexure 12)

Since the issue is subjudice, no finding has been recorded by SFIO ir.respect of these transactions.

29. *From the perusal of Documents submitted by SHL, it is clear that Sh. S.K. Bindal has signed the Annual Financial Statements of SHL during the years 1995 and subsequent years till date. It is the duty of the Auditor to plan and perform. an audit with professional skepticism recognizing that circumstances may exist that can cause the financial statements to be materially misstated. Further, he is expected to exercise professional judgment while planning and performing an audit of financial statements.*

Sh. S.K. Bindal, Statutory auditor of SHL, colluded with the Directors of SHL and did not use professional skepticism to ensure disclosure of true and fair state of affairs and proceeded to audit the financial statements without verifying the primary records pertaining to shareholding, transfer of shares etc. The auditors receive remuneration for their service from the funds of the company and thus, company is the paymaster and the auditors are its servant.

30. *The Statutory auditors had dishonestly and fraudulently falsified the Annual Financial Statements of SHL with false records of shareholders and thus made himself liable to be punished for the offence punishable under section 628 and section 211, 227,233 of the Companies Act, 1956.*



31. *The investigation carried out by SFIO has revealed that Sh. S.P. Gupta, CMD of SHL along with Sh. Kaveen Gupta, and Sh. Vipul Gupta, Directors of SHL have been engaging in fraudulent activities with regards to allotment, transfer of shares of SHL to gain and keep control over the SHL since 1994. It was revealed from the investigation that during the year 1995, the above persons rotated Rs.1 crore 21 times to get the majority shareholdings in the name of their family members. In the year 1997, the shares of SHL fictitiously held by appx. 350 shareholders were transferred to Trans Asia Consultants Private Limited through Bansal Estates Private Limited through conspiracy. The Directors of SHL indulged in personation for inducing the company to allot shares in fictitious names in violation of section 68A of the Companies Act 1956. The above persons have also conspired to issue duplicate shares in lieu of pledged shares and issuance of fresh shares in lieu of seized shares. Therefore, at every step there is a manipulation regarding shareholding with the intention to gain and keep control of SHL.*

32. *Public Interest: From the foregoing paragraphs, it is clear that identities from general public were personated to allot shares of SHL fictitious names. Subsequently, these shares held by fictitious shareholders were transferred to another company Trans Asia Consultants Pvt. Ltd. Via Bindal Estate Private Ltd. These persons from the general public had no knowledge about purchase or sale of shares purportedly owned by them. The Directors of Trans Asia Consultant Pvt. Ltd has very smartly got these shares transferred to themselves and thus became ultimate beneficiaries.*

Loans were secured from Axis Bank Ltd., which accepts deposits from general public, after using duplicate certificates or share certificates divided from the shares lying as seized property with the Income Tax Department. Thus, these loans were secured fraudulently

33. *The records collected during investigation were voluminous and ran into about 40,000 pages which were difficult to be perused and scrutinised within such a short span of time. However, the investigation team made best efforts to look into various aspects of the functioning company. It shall be the privilege of the investigation team of SPIO to consider other relevant information if it comes into its knowledge and may submit supplementary report before the Hon'ble Court.*

In the backdrop of these developments it is necessary to proceed against SHL and the officers in default and co-conspirators and serve public interest by bringing to book persons who indulge in fraudulent activities."

[sic]

11. The SFIO's investigation reveals a systematic pattern of financial fraud, including the issuance of duplicate shares, falsification of records, and



siphoning of company funds through shell entities. The report further notes that shares seized by the Income Tax Department were later fraudulently pledged with Axis Bank to secure loans, raising significant concerns of financial impropriety and public interest ramifications. Given that the investigation spanned approximately 40,000 pages of documentation, the findings are neither speculative nor conjectural but rather the outcome of a detailed forensic examination. The investigation further establishes that Petitioners No. 2, 3, and 4 engaged in fraudulent allotment and transfer of shares to consolidate and maintain control over the Petitioner company. The report highlights that they rotated INR 1 crore across 21 transactions through different entities to artificially secure a majority shareholding under the names of their family members. Additionally, elements of share duplication and impersonation of public identities have been flagged, allegedly done to retain control of the company and secure loans in its name. These findings, as recorded in the impugned SFIO report, *prima facie* disclose offences under the relevant provisions of the Companies Act and IPC, warranting prosecution.

12. The grounds for quashing the investigation report are in the nature of defences to the compliant case pending against them. The Petitioners will have every opportunity to challenge the report's findings during trial, where their contentions regarding the alleged misappreciation of facts can be duly tested. At this stage, however, the invocation of writ jurisdiction to preemptively quash the SFIO's findings is both legally untenable and premature. Moreover, the impugned report does not stand in isolation. It was considered at length by a coordinate bench of this Court in W.P.(C) 3444/2016, where the Court upheld the MCA's decision to direct an SFIO



probe, concluding that the company's affairs had been conducted in a manner prejudicial to public interest. The Division Bench in LPA No. 390/2017 reaffirmed these findings, further noting that the SFIO had uncovered evidence of large-scale financial manipulations, involving the rotation of funds through fictitious shareholders and intermediary companies.

13. For the foregoing reasons, the present petition is dismissed along with pending application(s).

SANJEEV NARULA, J

FEBRUARY 12, 2025

nk