

**NATIONAL COMPANY LAW APPELLATE TRIBUNAL,
PRINCIPAL BENCH, NEW DELHI**

Company Appeal (AT) (Insolvency) No. 456 of 2025

[Arising out of Order dated 21.01.2025 passed by the Adjudicating Authority (National Company Law Tribunal), Mumbai Bench Court-III in C.P. No. (IB) 303/MB/C-III/2022]

IN THE MATTER OF:

Max Publicity & Communication Pvt. Ltd.

...Appellant

Versus

Enviro Home Solutions Pvt. Ltd.

...Respondent

Present:

For Appellant: **Mr. Neeraj Malhotra, Sr. Advocate with Mr. Lakshmeesh S. Kamath, Mr. Rajesh Khandelwal, Ms. Samriti Ahuja, Ms. Aditi Prakash, Mr. Nimish Kumar, Mr. Rohit Patil, Advocates.**

For Respondents: **Mr. Abhijeet Sinha, Sr. Advocate for Amicus Curiae.**

J U D G M E N T
(15th May, 2025)

Ashok Bhushan, J.

This Appeal by the Appellant has been filed challenging the directions in paragraphs 53 to 66 of the order dated 21.01.2025 passed by the Adjudicating Authority (National Company Law Tribunal), Mumbai Bench, Court-III in C.P. No. (IB) 303/MB/C-III/2022. An application under Section 9 was filed by the Respondent-‘Enviro Home Solutions Private Limited’ claiming debt and default by the Appellant who was arrayed as Respondent in the Company Petition. The Adjudicating Authority by the impugned order

although rejected the Section 9 application filed by the Respondent herein, however, while rejecting Section 9 application issued direction to forward the copy of the order to the Central Government through Ministry of Corporate Affairs and various other Central Authorities. Appellant aggrieved by the observations and certain directions contained in the impugned order has come up in this Appeal.

2. We have heard Shri Neeraj Malhotra, Learned Senior Counsel for the Appellant and Shri Abhijeet Sinha, Learned Senior Counsel who assisted the Court as Amicus Curiae.

3. While hearing the Appeal on 20.03.2025, we passed following order:-

“20.03.2025: *Shri Malhotra appearing for the Appellant submits that Adjudicating Authority while rejecting Section 9 application has issued directions in paragraph 65 and 66 which are as follows:-*

“65. It was also submitted that when the Corporate Debtor stopped receiving any further payment from VEDA, the Corporate Debtor on 31.03.2022 reversed entire sales transaction of Rs.387,67,30,440/- and Rs. 14,45,53,775/-. If sale was reversed the Corporate Debtor should also return the entire payment received from Veda. However, these contentions are left open for the appropriate authorities including ROC, Income Tax Department, EOW, SFIO to investigate and unearth the larger conspiracy behind the entire transactions relating to CSR obligations of Veda.

66. Registry shall forward the Copy of this Order to following statutory authorities for taking

appropriate steps under Companies Act, Income Tax Act and any applicable statutes:

- i. Central Government through Ministry of Corporate Affairs;*
- ii. Registrar of Companies Mumbai;*
- iii. Income Tax Authorities through Nodal Office;*
- iv. Concerned GST Authorities.”*

2. Counsel for the Appellant submits that Adjudicating Authority has no jurisdiction to forward the copy to the authorities for any investigation which power is not vested with the Adjudicating Authority while rejecting Section 9 application.

3. We have requested Shri Abhijeet Sinha, Ld. Sr. Counsel to assist the court on the above legal issue. Let copy of the appeal be also given to Shri Abhijeet Sinha. Both may make their submissions on the legal issues as noted above.

4. List on 28.03.2025.

5. We however, make it clear that the order of the Adjudicating Authority dated 25.01.2025 may not be read as recording any finding of fraud.”

4. Counsel for both the parties have made their submissions and have filed compilation of judgments relied by them.

5. Shri Neeraj Malhotra, Learned Senior Counsel for the Appellant submits that the Adjudicating Authority while dismissing the application under Section 9 had no jurisdiction to direct for any investigation against the Appellant who was arrayed as Respondent No.1 in the Section 9 application. It is submitted that any fraud or forgery cannot be determined

by the Adjudicating Authority while exercising jurisdiction under Section 9. It is submitted that no opportunity was given to the Appellant who was Respondent No.1 in the application to have its say on various adverse observations made against the Appellant in the impugned order. The order passed by the Adjudicating Authority forwarding the copy of the order to different statutory authorities is in violation of principle of natural justice. It is submitted that for directing investigation into an affairs of the company, there are specific provisions in the Companies Act, 2013 and direction in the impugned order not in consonance with the Scheme of the Companies Act, 2013. It is submitted that even for directing investigation under Section 213 of the Companies Act, 2013, a reasonable opportunity of being heard is to be afforded to the company against whom investigation is sought to be directed whereas in the present case, no opportunity was given to the Appellant, hence, direction for investigation as is contained in paragraphs 64, 65 & 66 are beyond the jurisdiction of Adjudicating Authority. Adjudicating Authority although decided to reject Section 9 application but while rejecting issued various directions which was beyond the jurisdiction of Adjudicating Authority exercising jurisdiction under Section 9 of the IBC. Under Section 9, Adjudicating Authority was to consider as to whether application filed under Section 9 is in accordance with the provisions of the IBC and Operational Creditor has been able to prove debt and default. Any further directions or observations are beyond the scope of Section 9 application. Counsel for the Appellant in support of his submissions has placed reliance on various judgments of this Tribunal and the Hon'ble Supreme Court which we shall notice hereinafter.

6. Shri Abhijeet Sinha, Learned Amicus Curiae submits that the Adjudicating Authority while deciding an application under Section 9 is also exercising the jurisdiction of NCLT under the Companies Act, 2013 and even if Section 9 application is rejected by the impugned order, Adjudicating Authority was fully entitled to forward the copy of the order to the other statutory authorities including the Central Government through Ministry of Corporate Affairs for looking into the facts and taking such proceeding as permissible under law. It is submitted that the Adjudicating Authority by impugned order has not issued any direction for investigation within the meaning of the Companies Act, 2013 and order has been forwarded and it has been left open for the appropriate authorities for taking appropriate steps under the Companies Act and other statutes. It is submitted that the NCLT also possess inherent power as conferred by Rule 11 of the NCLT Rules, 2016 in exercise of which power Adjudicating Authority can forward the copy of relevant appropriate authorities in facts of particular case. It is submitted that the submission of the Appellant is not correct that the Adjudicating Authority itself has directed for any investigation. It is submitted that when Adjudicating Authority is functioning as a Tribunal under the Companies Act, 2013 if it satisfies that facts of particular case require to be looked into and for taking appropriate steps by statutory authorities, it is not precluded from forwarding the copies. It is submitted that the direction issued by the Adjudicating Authority while forwarding the copies to various statutory authorities cannot be said to be without jurisdiction as contended by the Appellant.

7. Counsel for both the parties have relied on various judgments of this Tribunal and the Hon'ble Supreme Court which we shall notice hereinafter.

8. Before we proceed to look into the judgments relied by Counsel for the parties, it is relevant to notice paragraphs 63 to 67 of the impugned order where certain observations have been made and copy of the order is forwarded to the statutory authorities, which is to the following effect:-

“63. Having considered the conduct of Corporate Debtor in issuing the Letter of Intent on 11.08.2021 and Issuing Purchase Order 13.08.2021 Confirming the receipt of goods and invoices of the Operational Creditor based on which making sales to Veda and receiving payments till December, 2021, it is inconceivable that the Corporate Debtor was innocent and unaware of the sham transactions and fraud being played on Government of India, in the name of Corporate Social Responsibility (CSR) obligations. We are of the considered view that Corporate Debtor was partner to this fraud being played on Gol and the principle of "in pari delicto" would apply. As per the Corporate Debtor's own averment, it has entered into an illegal contract with Veda and made false sales to Veda for illegal purpose.

64. Therefore, much bigger scam is apprehended and which needs investigation into the affairs of Suumaya, Veda, Corporate Debtor and all vendors involved in this CSR scam.

65. It was also submitted that when the Corporate Debtor stopped receiving any further payment from

VEDA, the Corporate Debtor on 31.03.2022 reversed entire sales transaction of Rs.387,67,30,440/. and Rs. 14,45,53,775/-. If sale was reversed the Corporate Debtor should also return the entire payment received from Veda. However, these contentions are left open for the appropriate authorities including ROC, Income Tax Department, EOW, SFIO to investigate and unearth the larger conspiracy behind the entire transactions relating to CSR obligations of Veda.

66. Registry shall forward the Copy of this Order to following statutory authorities for taking appropriate steps under Companies Act, Income Tax Act and any applicable statutes:

- i. Central Government through Ministry of Corporate Affairs;*
- ii. Registrar of Companies Mumbai*
- iii. Income Tax Authorities through Nodal Office,*
- iv. Concerned GST Authorities*

67. In result the Company Petition No. 303 of 2022 is dismissed.”

9. Counsel for the Appellant has submitted that the Adjudicating Authority has issued direction for investigation without giving an opportunity to the Appellant which directions are without jurisdiction. When we notice the observations and directions contained in the above paragraphs, it is clear that the Adjudicating Authority itself has not issued any direction for investigation which is clear from following observations in paragraph 65 *“these contentions are left open for the appropriate authorities*

including ROC, Income Tax Department, EOW, SFIO to investigate and unearth the larger conspiracy behind the entire transactions relating to CSR obligations of Veda”. Further, in paragraph 66, the Adjudicating Authority observed “Registry shall forward the Copy of this Order to following statutory authorities for taking appropriate steps under Companies Act, Income Tax Act and any applicable statutes”. The above observations and directions cannot be read as any direction for investigation. We, thus, clarify that the above directions as quoted in above paragraphs 65 & 66 cannot be read as any direction to statutory authorities to investigate.

10. We need to notice the provisions of the Companies Act, 2013 where Tribunal may investigate into company’s affairs. Section 213 of the Companies Act, 2013 is as follows:-

“213. Investigation into company’s affairs in other cases.- The Tribunal may,—

(a) on an application made by—

(i) not less than one hundred members or members holding not less than one-tenth of the total voting power, in the case of a company having a share capital; or

(ii) not less than one-fifth of the persons on the company’s register of members, in the case of a company having no share capital, and supported by such evidence as may be necessary for the purpose of showing that the applicants have good reasons for seeking an order for conducting an investigation into the affairs of the company; or

(b) on an application made to it by any other person or otherwise, if it is satisfied that there are circumstances suggesting that—

(i) the business of the company is being conducted with intent to defraud its creditors, members or any other person or otherwise for a fraudulent or unlawful purpose, or in a manner oppressive to any of its members or that the company was formed for any fraudulent or unlawful purpose;

(ii) persons concerned in the formation of the company or the management of its affairs have in connection therewith been guilty of fraud, misfeasance or other misconduct towards the company or towards any of its members; or

(iii) the members of the company have not been given all the information with respect to its affairs which they might reasonably expect, including information relating to the calculation of the commission payable to a managing or other director, or the manager, of the company, order, after giving a reasonable opportunity of being heard to the parties concerned, that the affairs of the company ought to be investigated by an inspector or inspectors appointed by the Central Government and where such an order is passed, the Central Government shall appoint one or more competent persons as inspectors to investigate into the affairs of the company in respect of such matters and to report thereupon to it in such manner as the Central Government may direct:

Provided that if after investigation it is proved that—

- (i) *the business of the company is being conducted with intent to defraud its creditors, members or any other persons or otherwise for a fraudulent or unlawful purpose, or that the company was formed for any fraudulent or unlawful purpose; or*
- (ii) *any person concerned in the formation of the company or the management of its affairs have in connection therewith been guilty of fraud, then, every officer of the company who is in default and the person or persons concerned in the formation of the company or the management of its affairs shall be punishable for fraud in the manner as provided in section 447.”*

11. When we look into Section 213 (b), it provides “*on an application made to it by any other person or otherwise, if it is satisfied that there are circumstances suggesting that.....*”. Thus, the use of expression ‘or otherwise’ gives ample power to the Tribunal to issue any direction. However, for issuing direction for investigation under Section 213, there is one condition which also need to be fulfilled i.e. “*after giving a reasonable opportunity of being heard to the parties concerned*”. Present is not a case where any investigation could have been ordered by the Tribunal under Section 213 since pre-condition for issuing any direction for investigation is giving a reasonable opportunity of being heard to the parties concerned. Thus, the above is another reason to hold that the observations and directions contained in paragraphs 65 and 66 cannot be held to be an order of investigation.

12. Now, we come to consider the judgments relied by Counsel for the parties.

13. Counsel for the Appellant has referred to the judgment of the Hon'ble Supreme Court in **“Mobilox Innovations Private Limited vs. Kirusa Software Private Limited- (2018) 1 SCC 353”**. In the above case, the Hon'ble Supreme Court had occasion to consider the scheme under Section 8 & 9 of the IBC. Counsel for the Appellant has relied on paragraph 33 of the judgment where Hon'ble Supreme Court while considering the Scheme under Section 9 has made following observations:-

“33.If the application made under sub-section (2) is incomplete, the adjudicating authority, under the proviso to sub-section (5), may give a notice to the applicant to rectify defects within 7 days of the receipt of the notice from the adjudicating authority to make the application complete. Once this is done, and the adjudicating authority finds that either there is no repayment of the unpaid operational debt after the invoice [Section 9(5)(i)(b)] or the invoice or notice of payment to the corporate debtor has been delivered by the operational creditor [Section 9(5)(i)(c)], or that no notice of dispute has been received by the operational creditor from the corporate debtor or that there is no record of such dispute in the information utility [Section 9(5)(i)(d)], or that there is no disciplinary proceeding pending against any resolution professional proposed by the operational creditor [Section 9(5)(i)(e)], it shall admit the application within 14 days of the receipt of the application, after which the corporate

insolvency resolution process gets triggered. On the other hand, the adjudicating authority shall, within 14 days of the receipt of an application by the operational creditor, reject such application if the application is incomplete and has not been completed within the period of 7 days granted by the proviso [Section 9(5)(ii)(a)]. It may also reject the application where there has been repayment of the operational debt [Section 9(5)(ii)(b)], or the creditor has not delivered the invoice or notice for payment to the corporate debtor [Section 9(5)(ii)(c)]. It may also reject the application if the notice of dispute has been received by the operational creditor or there is a record of dispute in the information utility [Section 9(5)(ii)(d)]. Section 9(5)(ii)(d) refers to the notice of an existing dispute that has so been received, as it must be read with Section 8(2)(a). Also, if any disciplinary proceeding is pending against any proposed resolution professional, the application may be rejected [Section 9(5)(ii)(e)].”

14. The application under Section 9 has already been rejected which was filed by the Operational Creditor against the Appellant. No issue pertaining to Section 9 has been raised in this Appeal nor needs any consideration. The above judgment of the Hon’ble Supreme Court dealt with the statutory scheme under Sections 8 & 9 in which judgment the issues which are sought to be raised in the Appeal were not under consideration, hence, the said judgment does not give any support to the submission which has been raised in this Appeal by the Appellant.

15. Another judgment relied by the Counsel for the Appellant is **“Company Appeal (AT) (Insolvency) No.409 of 2019- Indo Alusys**

Industries Limited vs. SMW Metal Private Limited” which was again an order of this Tribunal affirming the order of the Adjudicating Authority which had rejected Section 9 application on the ground of pre-existing dispute.

16. Another judgment is relied by the Counsel for the Appellant is **“Allahabad Bank vs. Poonam Resorts Limited- 2020 SCC OnLine NCLAT 1068”**. Counsel for the Appellant has relied on paragraph 8 of the judgment where this Tribunal noticing the judgment of the Hon’ble Supreme Court in **“Innoventive Industries Limited vs. ICICI Bank- (2018) 1 SCC 407”** has made following observations:-

“8. The dictum of law propounded by the Hon'ble Apex Court is loud and clear. The Adjudicating Authority cannot travel beyond the letter of law and the dictum of the Hon'ble Apex Court. The satisfaction in regard to occurrence of default has to be drawn by the Adjudicating Authority either from the records of the information utility or other evidence provided by the ‘Financial Creditor’. The Adjudicating Authority cannot direct a forensic audit and engage in a long drawn pre-admission exercise which will have the effect of defeating the object of the ‘I&B Code’. If the ‘Financial Creditor’ fails to provide evidence as required, the Adjudicating Authority shall be at liberty to take an appropriate decision. If the application is incomplete, it can return the same to the ‘Financial Creditor’ for rectifying the defect. This has to be done within 7 days of the receipt of notice from the Adjudicating Authority. However, the ‘I&B Code’ does not envisage a pre-

admission enquiry in regard to proof of default by directing a forensic audit of the accounts of the 'Financial Creditor', 'Corporate Debtor' or any 'financial institution'. Viewed thus, the impugned order cannot be supported. Application under Section 75 of the 'I&B Code' on behalf of the 'Corporate Debtors' cannot be permitted to frustrate the provisions of the 'I&B Code' when the matter is at the stage of admission. Section 75 is a penal provision which postulates an enquiry and recording of finding in respect of culpability of the Applicant regarding commission of an offence. The same cannot be allowed to thwart the initiation of 'Corporate Insolvency Resolution Process' unless in a given case forgery or falsification of documents is patent and prima facie established."

17. In the above case, this Tribunal observed that the 'I&B Code' does not envisage a pre-admission enquiry in regard to proof of default by directing a forensic audit of the accounts of the 'Financial Creditor', 'Corporate Debtor' or any 'financial institution'. In the above case, Adjudicating Authority has passed an order on objection raised by the Corporate Debtor that Financial Creditor has initiated proceeding fraudulently. Adjudicating Authority appointed PWC as Forensic Auditor to examine allegations raised by the Corporate Debtor and submit an Independent Report which order was set aside while allowing the appeal. This issue which was raised in the above appeal have no applicability in the facts of the present case.

18. Another judgment which has been relied by the Appellant is **"Lagadapati Ramesh vs. Ramanathan Bhuvaneshwari- 2019 SCC**

OnLine NCLAT 1153". In the above case, Resolution Professional has filed an application under Section 66 r/w Sections 69 and 70 of the IBC seeking to attach personal assets. Adjudicating Authority taking into consideration the provisions of Section 213 of the Companies Act, 2013 has issued direction that inquiry required to be conducted by the SFIO. In paragraph 8 of the order, following was observed:-

"8. The Adjudicating Authority taking into consideration the submissions made by counsel for the parties, in exercise of powers conferred under Section 213 of the Companies Act, 2013, made following observations and given following directions:

"18. As stated supra, the learned RP has made several allegations of fraudulent transactions basing Forensic Audit report. Similarly, the Respondents also have raised several objections and strongly denied the allegations made by the learned RP. However, in order to adjudicate the issue by this Tribunal, it is necessary to refer to matter to SFIO, to test the veracity of allegations and counter allegations made by the parties. The Central Government established SFIO to investigate frauds relating to Company. As per Section 212, the Central Government is empowered to cause to investigate into the affairs of the Company by SFIO, basing on the receipt of report of Registrar or inspector u/s 208 in public interest or on request from any department of the Central Government or a State Government. Section 213 also empowers the Tribunal to order investigation, if it is of the opinion that the

business of the Company is being conducted with intent to defraud its Creditor, members, or any other person etc. Therefore, we are of the prima facie view that findings given in Forensic Audit Report only prima established the fraudulent transactions in question. Therefore, it is necessary to conduct further investigation by SFIO in the affairs of Company basing on the findings given in Forensic Audit Report, after affording proper opportunity to concern opposite parties to defend them. Hence, we are inclined to refer the matter to SFIO for further investigation by invoking powers conferred U/s 212/213 of the Companies Act, 2013 and thereafter, aggrieved party can take appropriate legal course of action.

19. In the result by exercising powers conferred on this Adjudicating Authority, which being NCLT, U/s 213 of Companies Act, 2013, I.A. No. 446/2018 in C.P(IB) No. 122/BB/2017 is disposed with following directions:

- 1) Learned Resolution Professional is directed to forward all material documents, which is connected to the present case including the Forensic Audit Report dated 14.12.2018, the Central Government, within a period of three weeks from the receipt of the copy of the order.*
- 2) Learned Resolution Professional is also directed to furnish all the documents forwarded to the Central Government, to all parties/ other side duly following principles of natural justice.*

- 3) *The Central Government is directed to refer the matter to the SFIO for further investigation into the Affairs of the Corporate Debtor, Bank of Maharashtra and other related Companies including Director of Companies of Corporate Debtor & related Companies and officials of Bank of Maharashtra basing on the Report of Forensic Audit Report, as expeditiously as possible.*
- 4) *Bank of Maharashtra is also directed to extend full assistance to the SFIO to complete the investigation as expeditiously as possible.*
- 5) *The parties are at liberty to take appropriate legal course of action basing on the ultimate findings given by the SFIO in the case.*
- 6) *The prayer as sought for in the application stand disposed of in the light of above directions.*
- 7) *No order as to costs.”*

19. The said order was challenged by filing an Appeal. It was contended that the provisions of Section 212 of the Companies Act, 2013 can only be invoked by Central Government and not by the Adjudicating Authority (NCLT). This Tribunal in the above context held that the investigation under Section 212 can be made only on the receipt of a report received of the Registrar or Inspector under Section 208 of the Companies Act, 2013. In paragraphs 31 and 32, following was held:-

“31. From bare perusal of Section 212 of the Companies Act, 2013, it will be evident that such investigation into affairs of company can be made only on receipt of a report of the Registrar or Inspector under Section 208 of the Companies Act, 2013 or on intimation of a special resolution passed by a company that its affairs are required to be investigated; or in the public interest; or on request from any Department of the Central Government or a State Government.

32. Section 212 does not empower the National Company Law Tribunal or the Adjudicating Authority to refer the matter to the Central Government for investigation by the ‘Serious Fraud Investigation Office’ even if it notices the affairs of the Company of defrauding the creditors and others.”

20. This Tribunal has also held that the procedure laid down under Section 213 can be exercised by the Adjudicating Authority. In paragraphs 40, 41, 42 & 43, following was held:-

“40. In view of the aforesaid position of law also, the procedure laid down under Section 213 of the Companies Act, 2013 can be exercised by the Tribunal/ Adjudicating Authority, as held above.

41. Further, after the investigation by the Inspector, if case is made out and the Central Government feels that the matter also requires investigation by the ‘Serious Fraud Investigation Office’ under Section 212 of the Companies Act, 2013, it is open to the Central Government to decide whether in such case the matter may be referred to the ‘Serious Fraud Investigation

Office’ or not. This will depend on the gravity of charges as may be found during the investigation by the Inspector.

42. *In view of the aforesaid position of law, we are of the view that the Adjudicating Authority was not competent to straight away direct any investigation to be conducted by the ‘Serious Fraud Investigation Office’. However, the Adjudicating Authority (Tribunal) being competent to pass order under Section 213 of the Companies Act, 2013, it was always open to the Adjudicating Authority/Tribunal to give a notice with regard to the aforesaid charges to the Promoters and others, including the Appellants herein and after following the procedure as laid down in Section 213, if prima facie case was made out, it could refer the matter to the Central Government for investigation by the Inspector or Inspectors and on such investigation, if any, actionable material is made out and if the Central Government feels that the matter requires investigation through the ‘Serious Fraud Investigation’, it can proceed in accordance with the provisions as discussed above. Impugned order shows parties have been heard on the charges claimed by the ‘Resolution Professional’.*

43. *We, accordingly, modify the impugned order dated 16th April, 2019 and refer the matter to the Central Government for investigation through any Inspector or Inspectors.”*

21. The order was modified and direction was made to refer the matter to the Central Government for investigation through any Inspector or Inspectors.

22. Another judgment which has been relied by the Appellant is **“Mr. M. Srinivas vs. Smt. Ramanathan Bhuvaneshwari & Ors.- Company Appeal (AT) (Insolvency) No.498 of 2019”** decided on 24.07.2019 on which judgment Shri Abhijeet Sinha has also placed reliance where this Tribunal after referring to Section 213 of the Companies Act, 2013 has held that the NCLT has inherent power under Rule 11 of the NCLT Rules, 2016 and it was always open to the NCLT after giving a reasonable opportunity of being heard to the parties concerned refer the matter to the Central Government for investigation. In paragraphs 15 and 16, following was held:-

“15. Section 213 of the Companies Act, 2013 relates to ‘investigation into company’s affairs in other cases’ and reads as follows:

“213. Investigation into company’s affairs in other cases

The Tribunal may,—

(a) on an application made by—

- (i) not less than one hundred members or members holding not less than one-tenth of the total voting power, in the case of a company having a share capital; or*
- (ii) not less than one-fifth of the persons on the company’s register of members, in the case of a company having no share capital, and supported by such evidence as may be necessary for the purpose of showing that the applicants have good reasons for seeking an order for conducting an investigation into the affairs of the company; or*

- (iii) *on an application made to it by any other person or otherwise, if it is satisfied that there are circumstances suggesting that—*
- (i) *the business of the company is being conducted with intent to defraud its creditors, members or any other person or otherwise for a fraudulent or unlawful purpose, or in a manner oppressive to any of its members or that the company was formed for any fraudulent or unlawful purpose;*
 - (ii) *persons concerned in the formation of the company or the management of its affairs have in connection therewith been guilty of fraud, misfeasance or other misconduct towards the company or towards any of its members; or*
 - (iii) *the members of the company have not been given all the information with respect to its affairs which they might reasonably expect, including information relating to the calculation of the commission payable to a managing or other director, or the manager, of the company, order, after giving a reasonable opportunity of being heard to the parties concerned, that the affairs of the company ought to be investigated by an inspector or inspectors appointed by the Central Government and where such an order is passed, the Central Government shall appoint one or more competent persons as inspectors to*

investigate into the affairs of the company in respect of such matters and to report thereupon to it in such manner as the Central Government may direct:

Provided that if after investigation it is proved that—

- (i) the business of the company is being conducted with intent to defraud its creditors, members or any other persons or otherwise for a fraudulent or unlawful purpose, or that the company was formed for any fraudulent or unlawful purpose; or*
- (ii) any person concerned in the formation of the company or the management of its affairs have in connection therewith been guilty of fraud, then, every officer of the company who is in default and the person or persons concerned in the formation of the company or the management of its affairs shall be punishable for fraud in the manner as provided in section 447.”*

16. From Clause (b) of Section 213 of the Companies Act, 2013, it is clear that on an application made to it ‘by any other person’ or ‘otherwise’, if Tribunal/Adjudicating Authority is satisfied that there are circumstances suggesting that the business of the company is being conducted with intent to defraud its creditors, members or any other person or otherwise for a fraudulent or unlawful purpose or in a manner oppressive to any of its members, or that the company was formed for any fraudulent or unlawful purpose and that the person concerned in the formation of the company or the management of its affairs have in

connection therewith been guilty of fraud, misfeasance or other misconduct towards the company or towards any of its members or the members of the company have not given all the information with respect to its affairs which they might reasonably expect, and that the affairs of the company ought to be investigated, after giving a reasonable opportunity of being heard to the parties concerned, the Tribunal/Adjudicating Authority has power to refer the matter to the Central government for investigation into the affairs of the company.”

23. Another judgment relied by the Counsel for the Appellant is **“Neeta Shrinivas Zanvar and Anr. Vs. Nagarjuna Agro Chemicals Private Limited and Ors.- 2021 SCC OnLine NCLAT 135”** where the order passed by the NCLT directing the Registrar of Companies to investigate into the affairs of the company was challenged. After Adjudicating Authority has issued direction which was under challenged, it was held that direction issued by the NCLT to Registrar of Companies to investigate violates the provisions of Sections 212 and 213. In paragraphs 32 and 33, following was held:-

“32. *In the light of the above discussion, we are of the considered opinion that the Learned NCLT erred in directing the Registrar of Companies to investigate into affairs of Respondent No. 1 Company, as the said Directions violate the statutory provision of Section 210(2) and Section 213 of the Companies Act, 2013.*

33. *In the circumstances as stated above, we believe that the Appeal deserves to be partly allowed and*

impugned Order regarding the investigation into the affairs of the Respondent No. 1 Company by the Registrar of Companies deserve to be set aside.”

24. Counsel for the Appellant has also relied upon the judgment of this Tribunal in **“Subhash N Dawar vs. Nanjing Maohj Information & Anr.- Company Appeal (AT) (Ins.) No.796 of 2024”** where this Tribunal in paragraph 10 has observed following:-

“10. Adjudicating Authority has observed in the Impugned order that “As regards the various Bills of Entries attached by the Respondent, it appears that in order to evade the Customs Duty on the goods imported certain malpractices were adopted by the Corporate Debtor”. This itself prove that if in any matter Adjudicating Authority feels that there are issues like different invoices, different claims and counter claims, malpractices etc. such matter cannot be admitted under IBC. Adjudicating Authority has admittedly stated in the judgement that some malpractices were adopted by the Corporate Debtor and in spite of such observations, admitted the petition contrary to the judgement of Innovative. Adjudicating Authority acknowledges the submissions of malpractices regarding evasion of customs duty, under invoicing etc., which suggests a need for an inquiry rather than admission under the Insolvency and Bankruptcy Code (IBC) contrary to the established law that any such matters require inquiry and investigation and cannot be entertained under IBC.”

25. This Tribunal held that issue pertaining to evade the custom duty on the goods imported certain malpractices by corporate debtor cannot be examined under the IBC. In paragraphs 49, this Tribunal has held:-

“49. Any issues related to alleged malpractices and customs duty evasion could be investigated separately through the appropriate legal channels and we are not passing any orders onto that issue.”

26. Counsel for the Appellant has also relied on the judgment of the Hon’ble Supreme Court in **“Glas Trust Co. LLC vs. Byju Raveendran and Others- 2024 SCC OnLine SC 3032”**. In the above judgment, the Hon’ble Supreme Court had occasion to consider the statutory scheme under Section 12A r/w Regulation 30A and has held that when procedure for withdrawal of CIRP is provided by statutory scheme Appellate Tribunal ought not to have inherent power to withdraw the proceedings in the Appellate Tribunal. The above judgment was on its own fact and was considering the Scheme under Section 12A r/w Regulation 30A which issues are not attracted in the present case.

27. Now we look into the judgments which have been relied by the Counsel for the Amicus Curiae. Counsel for the Amicus Curiae has also relied on judgment of this Tribunal in **“Lagadapati Ramesh”** (supra) as well as **“M. Srinivas”** (supra) to support his submission that the Adjudicating Authority can refer or forward the order passed by the Central Government for investigation. From the scheme under Section 213 as noticed above, it is clear that the Adjudicating Authority while exercising

jurisdiction of the NCLT can also issue direction for investigation but said direction has to be in accordance with the statutory scheme i.e. after giving a reasonable opportunity of being heard to the parties against whom investigation is ordered.

28. Present is not a case, as observed above, where Adjudicating Authority has directed any investigation under Section 213 rather has forwarded the copy of the order to the Central Government Ministry of Corporate Affairs for taking such steps as may be necessary. We have already held that direction issued by the Adjudicating Authority in paragraphs 65 and 66 cannot be read to mean any direction to Ministry of Corporate Affairs or any other statutory authorities to carry out the investigation.

29. Counsel for the Amicus Curiae has referred to the judgment of the Hon'ble Supreme Court in ***“Chief Election Commissioner of India vs. M.R. Vijaybhaskar and Ors.- (2021) 9 SCC 770”***. In the above judgment, the Hon'ble Supreme Court had observed that freedom of speech and expression extends to reporting the proceedings of judicial institutions as well and Courts are entrusted to perform crucial functions under the law. In paragraph 28, following was observed:-

“28. Freedom of speech and expression extends to reporting the proceedings of judicial institutions as well. Courts are entrusted to perform crucial functions under the law. Their work has a direct impact, not only on the rights of citizens, but also the extent to which the citizens can exact accountability from the executive whose duty it is to enforce the law. Citizens are

entitled to ensure that courts remain true to their remit to be a check on arbitrary exercises of power. The ability of citizens to do so bears a direct correlation to the seamless availability of information about what happens in a court during the course of proceedings. Therein lies the importance of freedom of the media to comment on and write about proceedings. This principle was recognised in the Madrid Principles on the Relationship between the Media and Judicial Independence. The first principle is formulated thus:

“1. Freedom of expression (including freedom of the media) constitutes one of the essential foundations of every society which claims to be democratic. It is the function and right of the media to gather and convey information to the public and to comment on the administration of justice, including cases before, during and after trial, without violating the presumption of innocence.”

This principle is recognised within Indian jurisprudence, where the media has full freedom to report on ongoing litigation before the courts, within certain limitations, bearing on the need to ensure that justice between parties is not derailed.”

30. The above observations were made by the Hon’ble Supreme Court in reference to Article 19(1)(a) of the Constitution where it was held that the Court proceedings except in-camera proceedings including right to know the observations/remarks made by judges during course of hearing, not forming part of judgment or binding decision, which the media is free to report. The above observations are made by the Hon’ble Supreme Court in different

context which does not throw any light on the issue which has come up for consideration. Similarly, in paragraph 21 of ***“State of Rajasthan and Ors. Vs. Ramesh Chandra Mundra and Ors.- (2020) 20 SCC 163”*** has been relied in which Hon’ble Supreme Court was considering the proviso to Article 229(2) of the Constitution of India which have no bearing in the issue involved in the present case.

31. Counsel for the Amicus Curiae has relied on the judgment of the Hon’ble Supreme Court in ***“State Bank of India and Others vs. Consortium of Murari Lal Jalan and Florian Fritsch and Anr- 2024 SCC OnLine SC 3187”*** to support his submission that NCLT could exercise its inherent power under Rule 11 where extraordinary circumstances warranting such power to be exercised even if a procedure is prescribed to achieve the end.

32. After having noticed the relevant precedents relied by the Counsel for the parties, we arrive on following conclusion:-

- (i) The Adjudicating Authority while exercising jurisdiction under Section 9 of the IBC also exercise jurisdiction of NCLT under the Companies Act, 2013.
- (ii) Adjudicating Authority in exercise of powers under Section 213 of the Companies Act, 2013 can direct for investigation but the said investigation can be directed after complying the pre-condition i.e. affording a reasonable opportunity to the parties concerned. The order passed by the Adjudicating Authority in

paragraphs 65 and 66 cannot be held to be an order directing any investigation.

- (iii) NCLT can also exercise inherent jurisdiction under Rule 11 in a case where NCLT is of the view that copy of the order need to be forwarded to the relevant statutory authorities, it can forward the copy for doing needful. The direction under Section 212 to carry out any investigation of company's affairs by SFIO can be made only in accordance with the statutory provisions of Section 212 and Adjudicating Authority while exercising jurisdiction under the Companies Act 2013 cannot issue any direction to SFIO for carrying out investigation.

33. In view of our discussions and conclusions, we dispose of the Appeal in following manner:-

- (i) The observations and directions made in paragraphs 65 and 66 are not to be treated any direction for carrying out any investigation by the statutory authorities referred to therein.
- (ii) There was no occasion to make any observation or referring the matter to EoW or SFIO to investigate and reference of EoW and SFIO in paragraph 65 stands deleted. The direction in paragraph 66 to forward the copy of the order to statutory authorities for taking appropriate steps under the Companies Act, 2013 are upheld.

34. We have clarified that the above direction in no manner be read any kind of direction to fetter the discretion of appropriate authority to take steps as per law. The Appeal is disposed of accordingly.

[Justice Ashok Bhushan]
Chairperson

[Barun Mitra]
Member (Technical)

[Arun Baroka]
Member (Technical)

New Delhi
Anjali