

A SERIOUS FRAUD INVESTIGATION OFFICE AND OTHERS

v.

SAHARA HOUSING INVESTMENT CORPORATION LIMITED
AND OTHERS

B (Civil Appeal No. 4299 of 2022)

MAY 26, 2022

**[DR. DHANANJAYA Y CHANDRACHUD AND
BELA M. TRIVEDI, JJ.]**

C *Companies Act, 2013: ss.212 & 219 – Power to Investigate – Affairs of Company – Body Corporate – Writ petitions filed before High Court challenging the legality of the orders dated 31 October 2018 and 27 October 2020 of the Union Ministry of Corporate Affairs, authorising an investigation under provisions of ss.212 and 219 in respect of several corporate entities of the Sahara group –*

D *High Court, by its interim order stayed the operation, implementation and execution of the investigation orders on the grounds that directions issued for investigation by order dated 31 October 2018 was after the expiry of the stipulated time as per s.212(3); and order dated 27 October, 2020 authorising investigation into six other companies was prima facie contrary to s.219, as the six companies were neither subsidiaries nor holding companies of the companies which were to be investigated; and thirdly, orders did not furnish the reasons or circumstances which compelled the Central Government to form opinion – Aggrieved, Union government filed instant appeal – Issue limited to whether the High Court was justified*

E *in passing an interim direction staying the operation of the two orders – Held: High Court does have the power to pass wide-ranging directions in the exercise of its extraordinary jurisdiction – Companies Act 2013 does not contain any specific prescription of time and the reference to the completion of the investigation within a stipulated period is directory and not mandatory – Order of the Union Government dated 27 October 2020 contained factual averments which related to the invocation of the jurisdiction clause (c) of s.219, which allows an investigation into the affairs of any other body corporate whose Board of Directors comprises nominees*

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of a company or is accustomed to act in accordance with the directions or instructions of the company or any of its directors – On the basis of material placed on record, it cannot be said that the Union Government had not indicated reasons for the exercise of its jurisdiction under s.212 and s.,219 – At this stage, the Union Government was only ordering an investigation and it would be inappropriate to place a burden of recording elaborate reasons when the purpose of the investigation is to ensure that a full enquiry into the affairs of the companies is carried out – High Court was not justified in staying the investigation and in passing the consequential directions which have been passed in the impugned orders at the interlocutory stage – Interlocutory order.

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Allowing the appeals, the Court

HELD: 1.1 The order of the Union Government dated 27 October 2020 contains factual averments which relate to the invocation of the jurisdiction clause (c) of Section 219. Clause (c) of Section 219 allows an investigation into the affairs of any other body corporate whose Board of Directors comprises nominees of a company or is accustomed to act in accordance with the directions or instructions of the company or any of its directors. The order dated 27 October 2020 contains a specific invocation of the above provision, when it states thus: “AND whereas SFIO vide letter dated 24th Sept. 2020 sought permission under section 219 of the Companies Act, 2013 for investigation into the affairs of the following six companies that intertwined the activities of the companies under investigation” [Para 14][1070-C-E]

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1.2 It cannot be said that the Union Government had not indicated reasons for the exercise of its jurisdiction under Section 212 and Section 219. At this stage, the Union Government was only ordering an investigation and it would be inappropriate to place a burden of recording elaborate reasons when the purpose of the investigation is to ensure that a full enquiry into the affairs of the companies is carried out. The third reason which weighed with the High Court is hence specious. The High Court was not justified in staying the investigation and in passing the consequential directions which have been passed in the impugned orders at the interlocutory stage. [Paras 15, 16][1071-A-C]

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A *Serious Fraud Investigation Office vs. Rahul Modi (2019) 5 SCC 266 : [2019] 5 SCR 91; Neeharika Infrastructure Pvt. Ltd. State of Maharashtra and Others 2021 SCC OnLine SC 315 – referred to*

Case Law Reference

B [2019] 5 SCR 91 referred to Para 8

C CIVIL APPELLATE JURISDICTION : Civil Appeal No. 4299 of 2022.

From the Judgment and Order dated 13.12.2021 of the High Court of Delhi at New Delhi in W. P. (Civil) No.13984 of 2021.

With Civil Appeal No. 4300 of 2022.

D Tushar Mehta, SG, K.M. Nataraj, ASG, Kanu Agarwal, Rajan Kumar Chourasia, Arvind Kumar Sharma, Vishal Shrivastava, Advs. for the Appellants.

E Kapil Sibal, Sr. Adv., Gautam Awasthi, Ayush Choudhary, Nizam Pasha, Devanshu Yadav, Sameer Pandey, Simranjeet Singh, Gautam Talukdar, Rahul Tripathi, Ram Sajan Yadav, Vijay Kumar, Advs. for the Respondents.

F The Judgment of the Court was delivered by

DR. DHANANJAYA Y CHANDRACHUD, J.

G 1. Leave granted.

2. These appeals arise from the orders dated 13 December 2021 and 5 January 2022 of the Division Bench of the High Court of Delhi. The High Court is seized of a batch of writ petitions under Article 226 of the Constitution challenging the legality of the orders dated 31 October 2018 and 27 October 2020 of the Union Ministry of Corporate Affairs, authorizing an investigation under the provisions of Section 212 and Section 219 of the Companies Act, 2013 in respect of several corporate entities in the Sahara group. By its interim orders, the High Court stayed the operation, implementation and execution of the above orders. The High Court has also stayed all subsequent action and proceedings initiated in pursuance of those orders “including coercive proceedings and look-out notices” qua the petitioners and their directors, promoters, officers,

employees or any other person concerning them. A

3. On 31 October 2018, the Government of India in the Ministry of Corporate Affairs, in exercise of its jurisdiction under clauses (a) and (c) of Section 212(1) of the Companies Act 2013 formed an opinion, on the basis of a report dated 14 August 2018 submitted to it by the Registrar of Companies, Mumbai under Section 208, that an investigation was required to be conducted into the affairs of: B

- (i) Sahara Q Shop Unique Products Range Limited;
- (ii) Sahara Q Gold Mart Limited; and
- (iii) Sahara Housing Investment Corporation Limited. C

4. On 10 January 2019, the Ministry of Corporate Affairs addressed a communication to the Director of the Serious Fraud Investigation Office¹ seeking an approval for extending the time for the conclusion of the investigation. On 27 October 2020, a communication was addressed by the SFIO to the Ministry of Corporate Affairs seeking permission under Section 219 to investigate the affairs of six other companies, namely: D

- “(i) Aamby Valley Limited;
- (ii) Qing Ambay City Developers Corporation Ltd.;
- (iii) Sahara India Commercial Corporation Limited;
- (iv) Sahara Prime City Ltd;
- (v) Sahara India Financial Corporation Limited; and
- (vi) Sahara India Real Estate Corporation Limited” E

5. A challenge has been set up before the Delhi High Court to impugn the legality of the above orders dated 31 October 2018 and 27 October 2020. F

6. The Division Bench of the High Court, while staying the operation of the above orders and all consequential steps pursuant to them, has recorded three reasons for coming to the conclusion that the investigation was *prima facie* required to be stayed: G

- (i) Section 212(3) of the Companies Act, 2013 empowers the Central Government to direct that an investigation

¹ “SFIO” H

A be conducted into the affairs of a company within a stipulated period and, in the present case, the period of three months which was stipulated in the order dated 31 October 2018 had expired;

B (ii) The order dated 27 October, 2020 which authorizes an investigation into the affairs of six other companies *prima facie* appears to be contrary to the provisions of Section 219 since the six companies are neither subsidiaries nor holding companies of the three companies which were ordered to be investigated earlier nor have they been managed by the Managing Director of the earlier three companies under investigation; and

C (iii) The orders dated 31 October 2018 and 27 October 2020 do not furnish the reasons or circumstances which compelled the Central Government to form an opinion while ordering the investigation.

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7. The Union Government is in appeal.

E 8. Mr Tushar Mehta, Solicitor General submitted that each of the three reasons which have weighed with the High Court in staying the investigation at the interlocutory stage is contrary to the express provisions of the statute or, as the case may be, the material which has emerged on the record on the basis of which the orders dated 31 October 2018 and 27 October 2020 were issued. In this context, it is submitted that:

F (i) Section 212(3) of the Companies Act 2013 has expressly been held to be directory in nature by a judgment of this Court in *Serious Fraud Investigation Office vs. Rahul Modi*²;

G (ii) While staying the investigation directed to be carried out in the order dated 27 October 2020, the Division Bench of the High Court has noted that the six companies are neither subsidiaries nor holding companies of the earlier three companies governed by the order dated 31 October 2018 nor were they managed by the same Managing Director. In coming to this conclusion, the High Court has relied on the

H ² (2019) 5 SCC 256 (“*SFIO vs. Rahul Modi*”)

provisions of clauses (a) and (b) of Section 219 A
ignoring the provisions of clause (c) which have
specifically been invoked in the order dated 27
October 2020; and

(iii) The Union Government while issuing both the orders B
was acting within its jurisdiction and it would be an
improper construction of the statute to postulate that
while ordering an investigation, detailed reasons have
to be spelt out. On the contrary, it was submitted that
the very purpose of an investigation is to enquire into
the affairs of the company and the entirety of the
material will emerge only in the course of the
investigation. C

9. In response to the above submissions, Mr Kapil Sibal, senior D
counsel has fairly accepted the position that the provisions of Section
212(3) have been held to be directory in the judgment of this Court in
SFIO vs. Rahul Modi (supra). However, it has been submitted that
there are several substantive issues which would arise at the hearing of
the writ petitions under Article 226 of the Constitution before the High
Court. Mr Sibal has urged that either the petitions may be directed to be
heard expeditiously by the High Court or they may be transferred for
hearing before this Court. The issues which have been highlighted by E
the senior counsel include the following:

(i) The Sahara Housing Investment Corporation Limited F
has deposited an amount of Rs 24,000 crores with
SEBI in pursuance of a judgment delivered by this
Court in 2012;

(ii) The provisions of Section 212 and Section 219 are G
embodied in the Companies Act 2013 whereas the
transactions in the present cases relate to the period
2010-2011 and the applicability of the Act to such
transactions would merit consideration;

(iii) Though extension orders were passed from time to H
time, it would appear that the extension was granted
by the Central Government only in regard to the
affairs of Sahara Q Shop Unique Products Range
Limited; and

- A (iv) There is absolutely no material, within the meaning of Section 219(c) to indicate that the bodies corporate against whom an investigation has been ordered on 27 October 2020 comprise of a Board of Directors drawn from nominees of the company or which is accustomed to act in accordance with the directions or instructions of the company or any of its directors within the meaning of Section 219(c).
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10. While we have set out the broad line of submissions which have been urged on behalf of the contesting parties, we would make it clear at the outset that it is not appropriate or proper for this Court to render a final adjudication on the merits of the submissions since the writ petitions before the High Court are pending consideration.

11. The narrow issue before this Court at the present stage is whether the High Court was justified in passing an interim direction staying the operation of the two orders dated 31 October 2018 and 27 October 2020 and interdicting all subsequent actions including the issuance of look-out circulars. The High Court does have the power to pass wide-ranging directions in the exercise of its extraordinary jurisdiction. The issue is whether in the facts of the present case, the High Court was justified in issuing such extra-ordinary directions, particularly at the interlocutory stage..

12. The first reason which has weighed with the High Court in regard to the construction of Section 212(3) is *ex facie* contrary to the law, as has been laid down by a two judge Bench of this Court in ***SFIO vs Rahul Modi (supra)***. While elaborating upon the provisions of Section 212(3), this Court has held that the statute does not contain any specific prescription of time and the reference to the completion of the investigation within a stipulated period is directory and not mandatory. Paragraphs 31 and 34 of the decision are extracted below for convenience of reference:

G “31. Section 212(3) of the 2013 Act by itself does not lay down any fixed period within which the report has to be submitted. Even under sub-section (12) which is regarding “investigation report”, again there is no stipulation of any period. In fact such a report under sub-section (12) is to be submitted “on completion of the investigation”.

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There is no stipulation of any fixed period for completion of investigation which is consistent with normal principles under the general law. For instance, there is no fixed period within which the investigation under the Criminal Procedure Code must be completed. If the investigation proceeds for a longer period, under Section 167 of the Code, certain rights may flow in favour of the accused. But it is certainly not the idea that in case the investigation is not over within any fixed period, the authority to investigate would come to an end. A

34. It is well settled that while laying down a particular procedure if no negative or adverse consequences are contemplated for non-adherence to such procedure, the relevant provision is normally not taken to be mandatory and is considered to be purely directory. Furthermore, the provision has to be seen in the context in which it occurs in the statute. There are three basic features which are present in this matter: B

1. Absolute transfer of investigation in terms of Section 212(2) of the 2013 Act in favour of SFIO and upon such transfer all documents and records are required to be transferred to SFIO by every other investigating agency. C

2. For completion of investigation, sub-section (12) of Section 212 does not contemplate any period. D

3. Under sub-section (11) of Section 212 there could be interim reports as and when directed. E

In the face of these three salient features it cannot be said that the prescription of period within which a report is to be submitted by SFIO under sub-section (3) of Section 212 is for completion of F

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A period of investigation and on the expiry of that period the mandate in favour of SFIO must come to an end. If it was to come to an end, the legislation would have contemplated certain results including retransfer of investigation back to the original investigating agencies which were directed to transfer the entire record under sub-section (2) of Section 212. In the absence of any clear stipulation, in our view, an interpretation that with the expiry of the period, the mandate in favour of SFIO must come to an end, will cause great violence to the scheme of legislation. If such interpretation is accepted, with the transfer of investigation in terms of sub-section (2) of Section 212 the original investigating agencies would be denuded of the power to investigate and with the expiry of mandate SFIO would also be powerless which would lead to an incongruous situation that serious frauds would remain beyond investigation. That could never have been the idea. The only construction which is possible, therefore, is that the prescription of period within which a report has to be submitted to the Central Government under sub-section (3) of Section 212 is purely directory. Even after the expiry of such stipulated period, the mandate in favour of SFIO and the assignment of investigation under sub-section (1) would not come to an end. The only logical end as contemplated is after completion of investigation when a final report or “investigation report” is submitted in terms of sub-section (12) of Section 212. It cannot, therefore, be said that in the instant case the mandate came to an end on 19-9-2018 and the arrest effected on 10-12-2018 under the orders passed by the Director, SFIO was in any way illegal or unauthorised by law. In any case, extension was granted in the present case by the Central Government on 14-12-2018. But that is completely beside the point

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since the original arrest itself was not in any way illegal. In our considered view, the High Court completely erred in proceeding on that premise and in passing the order under appeal.” A

13. The second reason which *prima facie* weighed with the High Court was that the six companies in respect of which an investigation has been ordered on 27 October 2020 are neither subsidiary nor holding companies of the three companies which were covered by the order dated 31 October 2018 nor is there a commonality of Managing Directors. These observations are evidently made in the context of clauses (a) and (b) of Section 219. Section 219 reads as follows: B

“Power of inspector to conduct investigation into affairs of related companies, etc.—If an inspector appointed under Section 210 or Section 212 or Section 213 to investigate into the affairs of a company considers it necessary for the purposes of the investigation, to investigate also the affairs of— C

- (a) any other body corporate which is, or has at any relevant time been the company’s subsidiary company or holding company, or a subsidiary company of its holding company; E
- (b) any other body corporate which is, or has at any relevant time been managed by any person as managing director or as manager, who is, or was, at the relevant time, the managing director or the manager of the company; F
- (c) any other body corporate whose Board of Directors comprises nominees of the company or is accustomed to act in accordance with the directions or instructions of the company or any of its directors; or G

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

he shall, subject to the prior approval of the Central Government, investigate into and report on the affairs of the other body corporate or of the managing director or manager, insofar as he considers that the results of his investigation are relevant to the investigation of the affairs of the company for which he is appointed."

C 14. The order of the Union Government dated 27 October 2020 contains factual averments which relate to the invocation of the jurisdiction clause (c) of Section 219. Clause (c) of Section 219 allows an investigation into the affairs of any other body corporate whose Board of Directors comprises nominees of a company or is accustomed to act in accordance with the directions or instructions of the company or any of its directors. The order dated 27 October 2020 contains a specific invocation of the above provision, when it states thus:

"AND whereas SFIO vide letter dated 24th Sept. 2020 sought permission under section 219 of the Companies Act, 2013 for investigation into the affairs of the following six companies that intertwined the activities of the companies under investigation:

[...]

E Now, therefore, in exercise of powers conferred under Section 219 read with section 212 (1) (c) of the Act, the Central Government has formed an opinion that the affairs of the above referred companies/ entities needs to be investigated.."

F Hence, the finding of the High Court on the above ground to stay the investigation at the interlocutory stage was not warranted.

G 15. This Court in *Neiharika Infrastructure Pvt. Ltd. vs State of Maharashtra and Others*³ cautioned the High Courts against passing

H ³ 2021 SCC OnLine SC 315

blanket interim orders directing no coercive steps to be taken by the investigating authorities as that might hamper the investigation at an early stage. Having due regard to the material which has been placed on record, it cannot be said that the Union Government had not indicated reasons for the exercise of its jurisdiction under Section 212 and Section 219. At this stage, the Union Government was only ordering an investigation and it would be inappropriate to place a burden of recording elaborate reasons when the purpose of the investigation is to ensure that a full enquiry into the affairs of the companies is carried out. The third reason which weighed with the High Court is hence specious.

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16. For the above reasons, we are of the view that the High Court was not justified in staying the investigation and in passing the consequential directions which have been passed in the impugned orders at the interlocutory stage.

17. We accordingly allow the appeals and set aside the impugned orders of the High Court dated 13 December 2021 and 5 January 2022.

18. However, since the writ petitions before the High Court are pending, we clarify that the reasons contained in the present judgment are confined to the issue as to whether an interim injunction was warranted and shall not affect the merits of the writ petitions which are pending before the High Court for consideration.

19. We request the High Court to take up the writ petitions for disposal expeditiously and to endeavour a disposal preferably within a period of two months after the reopening of the High Court upon the conclusion of the ensuing summer vacation.

20. Pending applications, if any, stand disposed of.

Devika Gujral and Amarendra Kumar
(Assisted by : Pooja Mishra, LCRA)

Appeals allowed.