

**NATIONAL COMPANY LAW APPELLATE TRIBUNAL**  
**CHENNAI BENCH**

**Company Appeal (AT) (CH) No. 06 of 2021**

**[Arising out of Order dated January 05, 2021 passed by the Adjudicating Authority/National Company Law Tribunal, Hyderabad Bench, Hyderabad in IA No. 989 of 2020 in Company Petition No.203/241/HDB/2021]**

**IN THE MATTER OF:**

- 1. Neeta Shrinivas Zanvar  
Flat No.401, 5<sup>th</sup> Floor, Janapriya Pramila  
Enclave, Uma Nagar, Begumpet  
Hyderabad – 500016** **...Appellant No.1**
  
- 2. Mr Mukund Ghanshyamdasji Maheswari  
Flat No.401, 5<sup>th</sup> Floor, Janapriya Pramila  
Enclave, Uma Nagar, Begumpet  
Hyderabad – 500016** **...Appellant No.2**

**Versus**

- 1. Nagarjuna Agro Chemicals Private Limited  
Flat No.302, 3<sup>rd</sup> Floor  
Ujjwal Bhavishya Complex  
Street No.4, Uma Nagar, Begumpet  
Hyderabad 500016, Telangana  
Lalitha Bloom Field  
Khajaguda, Serilingampally  
Hyderabad – 500008** **...Respondent No.1**
  
- 2. Mr Shrikant Gopilal Rathi  
9, Bahubali Nagar, Gopuri Nalwadi  
Nagpur Road, Wardha – 442001** **...Respondent No.2**
  
- 3. Mrs Preeti  
9, Bahubali Nagar, Gopuri Nalwadi  
Nagpur Road, Wardha 442001** **...Respondent No.3**
  
- 4. Mr Aviraj  
9, Bahubali Nagar, Gopuri Nalwadi,  
Nagpur Road, Wardha – 442001** **...Respondent No.4**

**Present:**

**For Appellant : Mr C. Aryama Sundaram, Senior Advocate for  
Mr Manoj Menon Advocate**  
**For Respondent : Mr Soumendra Nath Mookherjee,**

**Senior Advocate for R-2  
Mr Ratnanko Banerji, Senior Advocate  
for R-3 and R-4  
Mr K. Gowtham Kumar, Mr Nakul Mohta,  
Mr Kanishk Kejriwal, Advocate and  
Mr Amit Rajkotia, PCS, Advocates for R-2 to R-4**

**J U D G M E N T**

**[Per; V. P. Singh, Member (T)]**

This Appeal emanates from the Order dated January 05, 2021, passed by the National Company Law Tribunal, Hyderabad Bench, Hyderabad in IA No.989 of 2020 in Company Petition No.203/241/HDB/2021, whereby the NCLT directed that the Bank Account of the Respondent No. 1 Company be operated jointly by one representative of Appellants and one representative of Respondent No. 2 to 4 and directed the Registrar of Companies to investigate into the affairs of the Respondent No. 1 Company. The original parties status in the Company Petition represents them in this Appeal for the sake of convenience.

**Appellant's Contention**

2. Respondent No. 2 to 4 herein applied the NCLT, vide IA No. 989 of 2020, challenging the Board Resolution of the Respondent No. 1 Company, which among other things, provided for the bank accounts of the Respondent No.1 Company to be jointly operated with the 2<sup>nd</sup> Respondent as a necessary signatory and anyone of the other three Directors of the said Company as a Co-signatory. Respondent No. 2 to 4 failed to maintain a challenge against the said Board Resolution in Civil Suit No. 117 of 2020 before the Civil Judge, Wardha, Maharashtra. After that, an unsuccessful attempt was made to get

the same relief by filing IA 664 of 2020. However, the Respondent filed IA No. 989 of 2020 before the NCLT, wherein the impugned Order has been passed.

3. The Appellant contends that Respondent No.2 is one of the Directors of Respondent No. 1 Company, who was the sole Authorised Signatory of the bank accounts maintained with Punjab National Bank, Wardha, in which more than 95% of the receivable of the Respondent No.1 Company are received, has siphoned an amount of ₹ 55,99,68,131/- of the Company to himself and his related parties (including Respondent No. 3 and 4.). Respondent No. 2 failed in making the payments to royalty and statutory dues, including GST. Around 95% of the sales proceeds are received into the bank accounts maintained at the Wardha Branch, which was solely operated by Respondent No. 2. Respondent No. 2, instead of making the payments, has diverted funds of the Respondent No. 1 Company to himself and its associates. In the circumstances, the Board of Directors, at its meeting held on November 19, 2019, passed the Resolution authorising any two Directors (including Respondent No. 2) to operate the bank accounts of Respondent No.1 Company.

4. The Appellant contends that the NCLT by the Impugned Order superseded the said Board Resolution dated November 19, 2019, of the Company and the manner in which the Company had been operating its accounts for more than a year, without any discussion or finding of any mismanagement or forming even a prima facie opinion on the allegations of the Respondent No. 2 to 4, of purported siphoning off funds.

5. The Appellant contends that the Learned NCLT interfered with the Company's internal management through the impugned Order, which Respondent No.1 Company was exercising by the Board Resolution dated November 19, 2019, impermissible in law. The NCLT further directed the Registrar of Companies to investigate the affairs of the Respondent No. 1 Company.

### **Respondent's contention**

6. Respondent No. 1 Company is a closely held family Company between the Appellant Group and the Respondent Group. The Company has been run like a quasi partnership between the two groups. Respondent No. 2 is a whole-time Director, appointed as a Director on December 11, 2014, and is the single largest shareholder, holding 39.70% of the Company's paid-up share capital. Respondent No. 2 and his Group was inducted into the Company and was allotted shares, among other things, on Respondent No.2's business experience in the agriculture sector. The Appellants started committing acts of oppression to oust Respondent No. 2 from the Board of Directors of the Respondent No. 1 Company and committed acts of mismanagement and siphoning and diverting the Company's funds to their accounts and related entities. This compelled Respondent No. 2 and his Group to file the present Company Petition for mismanagement and oppression. From time to time, interim orders have been passed to prevent the Appellants from committing any further acts of oppression and mismanagement and protect the assets and properties of the Company.

7. The latest attempt of the Appellants to oust Respondent No. 2 from the Board of Directors of Respondent No. 1 Company was by calling an Extraordinary General Meeting (EOGM) of the Company on August 14, 2020. However, by interim Order dated August 12, 2020, the NCLT restrained the Appellants from giving effect to any such Resolution to remove Respondent No. 2. To circumvent the said Order, the Appellant called another Board meeting of the Company on September 12, 2020, whereby the Resolution was passed for changing the designation of Respondent No. 2 from a whole-time Director to non-executive Director, thereby stripping Respondent No. 2 of all powers qua the Company.

8. The Appellants made an earlier attempt to undo the interim protection granted by NCLT by its Order dated September 23, 2020, by filing an Appeal before this Appellate Tribunal, being Company Appeal (AT) No. 222 of 2020. However, by its Order dated December 22, 2020, the NCLAT, without interfering with the orders of the NCLT, directed the NCLT to dispose of the Company Petition expeditiously within two months.

9. The bank accounts of the Company at Punjab National Bank, Wardha Branch could be operated by the signature of all the Directors. On November 6, 2019, by way of settlement, a Circular Resolution was passed by all the Directors, mandating that all four Directors shall sign all cheques of the amounts above ₹ 1000/-. However, vide Board Resolution dated November 19 2019, of Respondent No. 1 Company resolved that **any two Directors can jointly operate the Bank Account.**

10. The mala-fide intention behind this Resolution was that the Appellants could have a free hand to withdraw money from the Company without Respondent No. 2. It is further contended that large sums of money from debtors totalling ₹ 15,74,96,859/- are due to Respondent No. 1 from various Government undertakings. Appellants were pressurising all the Directors to deposit such amounts to accounts in Yes Bank, Hyderabad, over which the Appellants have exclusive control.

11. The Respondent contends that the Board Resolution dated November 19, 2020, cannot give the Appellants any right to derogate their fiduciary duty to the Respondent No. 1 Company and its Members, including the Respondents.

12. The NCLT has noticed prima facie acts of oppression and mismanagement committed by Appellants; therefore, to protect the rights and interests of the Respondents and the Respondent Company, the NCLT has passed various interim orders, including the impugned Order, which do not warrant any intervention of this Appellate Tribunal. The NCLT has passed the balancing order to protect the interest of both parties until the parties resolve the disputes amicably. The Respondents being almost 50% shareholder and having played a crucial role in the Company, has a legitimate right and expectation of being in management and financial operation of the Respondent No.1 Company.

13. It is contended that despite the impugned Orders of NCLT, the Appellants continued to disregard the Orders of NCLT and passed a

Resolution in the Board meeting held on January 30, 2021, to open the Respondent's Bank Account of Respondent No. 1 Company without the signature of Respondent No. 2. In its meeting held on January 30, 2021, the Board of Directors passed the Resolution to wind up and shift the factory from Wardha. It issued an office Order dated February 5, 2021, which may also result in loss of subsidy.

14. We have heard the arguments of the Learned Counsel for the parties and perused the records.

15. Before the NCLT in IA No. 989 of 2020, the primary challenge of Respondent No. 2 to 4 herein was against the Board Resolution of Respondent No. 1 Company, passed on November 19, 2019. By the impugned Order, NCLT, among other things, provided for the Bank Accounts of Respondent No. 1 Company to be jointly operated with the 2<sup>nd</sup> Respondent as a necessary signatory and anyone of the other three Directors of the said Company as a Co-signatory. The Resolution dated November 19, 2019, already provided **for any two Directors out of the four Directors** being a Joint Authorised Signatory of the Bank Accounts of Respondent No. 1 Company. The Appellant contended that the NCLT by the impugned Order superseded the Board Resolution of the Company. The NCLT, without any discussion or finding of any mismanagement, even without a prima facie opinion on the allegations of Respondent No. 2 to 4, about purported siphoning off funds, etc., changed the mode of operation of bank accounts Respondent No.1 Company. However,

the Company had been operating its accounts for more than a year, given the terms of Board Resolution dated November 19, 2019.

16. In response to the above, the Learned Counsel for the Respondent herein submits that based on serious charges of siphoning off funds, Respondent No. 2 and his Group were compelled to file IA No. 989 of 2020, resulting in the impugned Order.

17. The operation of the bank accounts of the Respondent No. 1 Company could be operated initially by any of the Directors. Subsequently, mutually agreed that the accounts could be operated by both the groups (all the Directors) jointly in terms of Circular Resolution dated November 6, 2019. From then onwards, the Appellants are constantly trying to control all the bank accounts in spite of Respondent No. 2 being a Full-time Director and his Group having a substantial shareholding of 45.33%. It is further contended that despite Orders of the NCLT, the Appellants have passed Board Resolution dated January 30, 2021, to open new bank accounts of the Respondent No. 1 Company without the signature of Respondent No. 2. Fearing adverse Order, Appellants diverted ₹ 80,25,000/- from the Bank Account of the Respondent No. 1 Company to the personal accounts of the Appellant group. The Appellant further passed the Resolution in its Board meeting dated January 30, 2021, to wind up and shift the factory from Wardha.

18. The Learned Counsel for the Appellant submitted that the impugned Directions of the NCLT are against the Board Resolution dated November 19, 2019, of the Respondent No. 1 Company. The NCLT has passed the impugned



Order without even forming a prima facie opinion as to how the implementation of the said Board Resolution has been detrimental to the interests of the Respondent No. 1 Company or even the Members.

19. It is important to point out that the Respondent No. 1 Company is a closely held family Company between the Appellants and Respondent No.2 groups. The Company has been running like a quasi partnership between the two groups. Respondent No. 2 is a Full-time Director appointed as a director on December 11, 2014, and is the single largest shareholder with 39.70% of the Company's paid-up share capital. Both groups have allegations and counter-allegations about siphoning off funds from the Respondent No. 1 Company. Respondent No. 2 and his Group has filed the Company Petition for mismanagement and oppression wherein, from time to time, interim Orders have been passed to prevent the Appellants from further acts of mismanagement and oppression and to protect the assets and properties of the Company. From the earlier interim Orders dated September 23, 2020, the Board Resolution to change the designation of Respondent No. 2 to a Non-executive Director was stayed. This Order was challenged before this Appellate Tribunal. Still, this Appellate Tribunal did not interfere with the Order of the NCLT, but the only direction was to dispose of the Company Petition within two months expeditiously. However, the said Company Petition is still lying pending.

20. However, at this interim stage, it cannot be decided as to whose allegations are correct. It is pertinent to mention that this Appellate Tribunal, by its Order dated December 4, 2020, in Company Appeal (AT) No. 222 of *Company Appeal (AT) (CH) No. 06 of 2021*

2020, directed the NCLT to dispose of the Company Petition within two months expeditiously. The said Company Petition is still undisposed.

21. By the impugned Interim Orders, the Learned NCLT prevents the Appellant from continuing alleged acts of mismanagement and prevents them from siphoning off the funds of the Company for which the Appellants cannot be aggrieved; it protects and preserves the rights of both parties. The Appellants have failed to show at all in the Appeal why there should be no interim Order of protection as directed by the impugned Order. The impugned Order is equitable and maintains the perfect balance of convenience. Since there are allegations and counter-allegations of siphoning off funds of the Company by both parties, we think it appropriate to add some more restrictions to bring transparency about the Bank Accounts of the Respondent No. 1 Company.

22. Therefore, in addition to other Directions of NCLT, we further direct that a weekly report of all the transactions of more than ₹ 1000/- from all the Bank Accounts of the Company be circulated to all the Directors by email, so that any transaction which pertains to siphoning off funds may immediately be reported to the Adjudicating Authority, who may examine the reported transaction and pass appropriate Order.

**Appellant's objection about the investigation of the Respondent No. 1 Company's affairs by Registrar of Companies;**

23. The Appellant further contends that the direction of the NCLT to the Registrar of Companies to conduct an investigation into the affairs of Respondent No. 1 Company and to take appropriate action against the persons found guilty is erroneous.

24. Appellant contends that the Companies Act provides for inspection, enquiry and investigation under Chapter XIV. The specific powers of the Learned NCLT to direct an investigation are traced to Section 210 (2) and 213 of the Act. In this regard, the powers of the Registrar of Companies are found in Section 206 and 207 of the Companies Act, 2013. The relevant provisions are given below for ready reference;

**"Chapter 14,**

**Inspection, Inquiry and Investigation Section 206.  
Power to call for information, inspect books and conduct inquiries**

*Chapter XIV*

*INSPECTION, INQUIRY AND INVESTIGATION*

*206. Power to call for information, inspect books and conduct inquiries.—(1) Where on a scrutiny of any document filed by a company or on any information received by him, the Registrar is of the opinion that any further information or explanation or any further documents relating to the Company is necessary, he may by a written notice require the Company—*

- (a) to furnish in writing such information or explanation;*
- or*
- (b) to produce such documents, within such reasonable time, as may be specified in the notice.*

*(2) On the receipt of a notice under sub-section (1), it shall be the duty of the Company and of its officers concerned to furnish such information or explanation to the best of their knowledge and power and to produce the documents to the Registrar within the time specified or extended by the Registrar:*

*Provided that where such information or explanation relates to any past period, the officers who had been in the employment of the Company for such period, if so called upon by the Registrar through a notice served on them in writing, shall also furnish such information or explanation to the best of their knowledge.*

*(3) If no information or explanation is furnished to the Registrar within the time specified under sub-section (1) or if the Registrar on an examination of the documents furnished is of the opinion that the information or explanation furnished is inadequate or if the Registrar is satisfied on a scrutiny of the documents furnished that an unsatisfactory state of affairs exists in the Company and does not disclose a full and fair statement of the information required, he may, by another written notice, call on the Company to produce for his inspection such further books of account, books, papers and explanations as he may require at such place and at such time as he may specify in the notice:*

*Provided that before any notice is served under this sub-section, the Registrar shall record his reasons in writing for issuing such notice.*

***(4) If the Registrar is satisfied on the basis of information available with or furnished to him or on a representation made to him by any person that the***

***business of a company is being carried on for a fraudulent or unlawful purpose or not in compliance with the provisions of this Act or if the grievances of investors are not being addressed, the Registrar may, after informing the Company of the allegations made against it by a written order, call on the Company to furnish in writing any information or explanation on matters specified in the Order within such time as he may specify therein and carry out such inquiry as he deems fit after providing the Company a reasonable opportunity of being heard:***

***Provided that the Central Government may, if it is satisfied that the circumstances so warrant, direct the Registrar or an inspector appointed by it for the purpose to carry out the inquiry under this sub-section:***

***Provided further that where business of a company has been or is being carried on for a fraudulent or unlawful purpose, every officer of the Company who is in default shall be punishable for fraud in the manner as provided in Section 447.***

***(5) Without prejudice to the foregoing provisions of this section, the Central Government may, if it is satisfied that the circumstances so warrant, direct inspection of books and papers of a company by an inspector appointed by it for the purpose.***

***(6) The Central Government may, having regard to the circumstances by general or special Order, authorise any statutory authority to carry out the inspection of books of account of a company or class of companies.***

*(7) If a company fails to furnish any information or explanation or produce any document required under this section, the Company and every officer of the Company, who is in default shall be punishable with a fine which may extend to one lakh rupees and in the case of a continuing failure, with an additional fine which may extend to five hundred rupees for every day after the first during which the failure continues.*

**207. Conduct of inspection and inquiry.—**

*(1) Where a Registrar or inspector calls for the books of account and other books and papers under Section 206, it shall be the duty of every director, officer or other employee of the Company to produce all such documents to the Registrar or inspector and furnish him with such statements, information or explanations in such form as the Registrar or inspector may require and shall render all assistance to the Registrar or inspector in connection with such inspection.*

*(2) The Registrar or inspector, making an inspection or inquiry under Section 206 may, during the course of such inspection or inquiry, as the case may be,—*

*(a) make or cause to be made copies of books of account and other books and papers; or*

*(b) place or cause to be placed any marks of identification in such books in token of the inspection having been made.*

*(3) Notwithstanding anything contained in any other law for the time being in force or in any contract to the contrary, the Registrar or inspector making an inspection or inquiry shall*

*have all the powers as are vested in a civil court under the Code of Civil Procedure, 1908 (5 of 1908), while trying a suit in respect of the following matters, namely:—*

*(a) the discovery and production of books of account and other documents, at such place and time as may be specified by such Registrar or inspector making the inspection or inquiry;*

*(b) summoning and enforcing the attendance of persons and examining them on oath; and*

*(c) inspection of any books, registers and other documents of the Company at any place.*

*(4)(i) If any director or officer of the Company disobeys the direction issued by the Registrar or the inspector under this section, the director or the officer shall be punishable with imprisonment which may extend to one year and with fine which shall not be less than twenty-five thousand rupees but which may extend to one lakh rupees.*

*(ii) If a director or an officer of the Company has been convicted of an offence under this section, the director or the officer shall, on and from the date on which he is so convicted, be deemed to have vacated his office as such and on such vacation of office, shall be disqualified from holding an office in any company.*

**210. Investigation into affairs of Company.—**

**(1) Where the Central Government is of the opinion, that it is necessary to investigate into the affairs of a company,—**

**(a) on the receipt of a report of the Registrar or inspector under Section 208;**

***(b) on intimation of a special resolution passed by a company that the affairs of the Company ought to be investigated; or***

***(c) in public interest, it may order an investigation into the affairs of the Company.***

*(2) Where an order is passed by a court or the Tribunal in any proceedings before it that the affairs of a company ought to be investigated, the Central Government shall order an investigation into the affairs of that Company.*

*(3) For the purposes of this section, the Central Government may appoint one or more persons as inspectors to investigate into the affairs of the Company and to report thereon in such manner as the Central Government may direct.*

**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."***

25. The Companies Act provides for inspection, enquiry and investigation under Chapter XIV. The specific powers of the Learned the NCLT direct an investigation traced to Section 210 (2) and Section 213 of the Act. In this regard, the powers of the Registrar are found in Section 206 and 207 of the Act. The Registrar has been granted powers of inspection and enquiry and not of investigation. Such powers have been vested solely with the Central Government or any Inspector appointed by the Central Government, under Section 210 to 213 of the Act.

26. Further, as stated (supra), the Learned the NCLT has also been granted powers to direct an investigation into a company's affairs. However, such direction may be issued only to the Central Government and not to the Registrar under Section 210 (2) and 213. The NCLT, in passing the Order, for the investigation to be conducted into the affairs of the Respondent No. 1 Company by the Registrar, ignored the mandate of Section 213, which requires "good reasons" to be shown and "satisfaction" of the Learned NCLT of the circumstances, both of which are absent in the impugned Order.

27. Hon'ble, the Supreme Court of India in case of Rohtas Industries, Limited<sup>1</sup>, while examining the nature of the power conferred on the Central Government under the corresponding Section 235 of the Companies Act 1956, held that unless proper grounds exist for the investigation of the affairs of the Company, such investigation ought not to be lightly undertaken. The same was explained by stating that investigation can seriously damage the reputation of the Company and, therefore, ought not to be ordered without proper material gathered in the manner prescribed under the Companies Act. Such powers have been conferred on the Central Government with the faith that it will be exercised reasonably.

28. Further, in case of Barium Chemicals Ltd<sup>2</sup> held that "there must exist circumstances which, in the opinion of the Authority, suggest what has been set out in Sub-clause (i), (ii) or (iii). If it is shown that the circumstances do

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<sup>1</sup> Rohtas Industries Ltd vs D. Agarwal 1969 (1) SCC 325

<sup>2</sup> Barium Chemical Ltd vs CLB reported in AIR 1967 SC 295

not exist or that they are such that it is impossible for anyone to form an opinion therefrom suggestive of the aforesaid things, the opinion a challenge will on the ground of non-application of mind or perversity or on the ground that it was formed on collateral grounds and well beyond the scope of a statute".

29. The above-mentioned cases deals with the matter existing under the Companies Act 1956. This Appellate Tribunal, while dealing with the same issue in the Lagadapati Ramesh<sup>3</sup> case, while dealing with Section 213 of the Companies Act 2013 (pari-materia in its content to Section 237 of the 1956 Act), has reiterated the very same view.

30. Therefore, it is clear that the NCLT may direct the Central Government to investigate under Section 210 (2) of the Companies Act 2013. After a reference from the NCLT, the Central Government has to mandatorily appoint an Inspector under Section 210 (2) of the Act. Therefore, before the Learned NCLT passes such an order, it will follow as a natural corollary that the Learned NCLT, at least form prime facie opinion, based on the records available and the submissions made, that such an investigation into the affairs of the Company was necessary, and such direction, in any event, ought to be issued to the Central Government and not to the Registrar.

31. Therefore, the direction issued by the Learned NCLT appointing the Registrar of Companies to investigate into the affairs of Respondent No. 1 Company violates the provisions of the statute, in as much as in terms of

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<sup>3</sup> Lagadapati Ramesh vs Ramnathan Bhavaneshwari reported in 2019 SCC online NCLT 1153

Section 210 (2) of the Companies Act 2013, such a direction can be given only to the Central Government and not to the Registrar. In terms of Section 213 of the Companies Act 2013, such a direction can be given, once again, only to the Central Government and not to the Registrar, and only upon the satisfaction of the conditions precedent specified therein.

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.

#### **ORDER**

**The Appeal is partly allowed. The directions as stated in Clause (ii), (iii) & (iv) of Para 61 of the Impugned Order are being set aside. However, the Learned NCLT, after providing an opportunity of hearing to both the parties, if it makes a prima facie opinion and arrives at the conclusion that investigation into the affairs of the Respondent No. 1 Company is needed, may pass an order under Section 210(2) of the Companies Act 2013.**

**Regarding the Order about the operation of the Bank Accounts of the Respondent No. 1 Company, without any alteration of the earlier Order, we further direct that;**

"A weekly report of all the transactions of more than ₹ 1000/- from all the bank accounts of the company be circulated to all the directors by email, so that any transaction which pertains to siphoning off funds may immediately be reported to the Adjudicating Authority, who may examine the reported transaction and pass appropriate orders."

**The Appeal is disposed of accordingly—no order as to costs.**

[Justice Venugopal M.]  
Member (Judicial)

[V. P. Singh]  
Member (Technical)

**NEW DELHI**  
**26<sup>th</sup> APRIL, 2021**

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