* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

***Reserved on: August 23, 2023***

**%** ***Pronounced on: September 15, 2023***

\+ **CRL.M.C. 298/2023, CRL.M.A. 12731/2023 & CRL.M.A. 21779-21780/2023**

**ASHISH BHALLA** **..... Petitioner**

Through: Mr. Sudhir Nandrajog Sr. Advocate and Mr. Preetesh Kapur, Sr. Advocate with Mr. Nistha Gupta, Mr. Prateek Singh Kundu, Mr. Shaunak Kashyap, Mr. Kanav Agarwal, Mr. Manan Takkar and Ms. Aditi Prakash, Advocates

versus

**STATE & ANR.** **..... Respondents**

Through: Mr. Ajay Vikram Singh, APP for the State with Inspector Sandeep Maan, P.S.: EOW

Mr. Pramod Kumar Dubey, Sr. Advocate with Mr. Indresh Upadhyay, Mr. Brijesh Upadhyay, Mr. Satyam Sharma, Ms. Aditi, Mr. Kanush Dhawan and Mr. Amit Negi, Advocates for intervenors.

Mr. Satya Prakash Yadav, Advocate for R-2.

Mr. Rajiv Dawar and Mr. Sameer Dawar, Advocates for R-3

Mr. Praveen Mahajan and Mr. Bhavya Manchanda, Advocates for impleaders
Mr. Rohit Kathuria, Mr. Dhruv Verma and Mr. Sagar Chauhan, Advocates for R-4 to 11

**CORAM:**
**HON'BLE MR. JUSTICE SAURABH BANERJEE**

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

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*PREMISE:*

1. By way of the present petition under Section 482 of the Code of the Criminal Procedure, 1973[1], the petitioner is seeking quashing of FIR no.06/2023 dated 12.01.2023 registered under Section(s) 406/420/120-B of the Indian Penal Code, 1860[2] at P.S. Economic Offences Wing, New Delhi[3] and all proceedings emanating therefrom.

[1] Hereinafter referred to as "**Cr.P.C.**"
[2] Hereinafter referred to as **"IPC"**

*BACKGROUND:*

2. Before dwelling into the facts involved, this Court notes that barring the present litigation, there is already a spate of litigations ongoing inter-se the petitioner-Mr. Ashish Bhalla and respondent no.2/ complainant-Mr. Vishvendra Singh before various forum(s) including this Court within and outside the jurisdiction of this Court. The petitioner claims to be an architect and an urban designer besides being a development professional having experience of working on various projects in addition to teaching 'Housing and Urban Design' in different Institutions and Universities. The petitioner also claims to have tied up with service providers and financial institutions in addition to being also engaged with various distressed projects in NCR. In fact, the respondent no.2/ complainant and one Mr. Sunil Gandhi, who were former friends/ associates of the petitioner in one M/s A.N. Buildwell Private Limited, were involved in a dispute inter-se themselves. This is the alleged reason which resulted in filing of the first complaint giving rise to the SFIO proceedings.

*GENISIS OF THE DISPUTES INVOLVED:*

3. Succinctly put, the respondent no.2 made a complaint to the Ministry of Corporate Affairs[4], New Delhi and the Director, Serious Fraud Investigation Office[5] on ***14.06.2021*** under the "***Subject:*** *Complaint against*

[3] Herein after referred to as **"EOW"**
[4] Hereinafter referred to as "**MCA".**
[5] Hereinafter referred to as "**SFIO".**

*fraudulent and illegal siphoning of funds running into more than 1500 crores to various companies in India and Abroad through web of shell companies out of collection of Funds illegally, running into thousands of crores of Rupees by way of running Ponzi Scheme in the name of illegal 'Assured Return' in the guise of real estate projects in Gujarat, Uttar Pradesh, Punjab & Haryana*" against the "***Accused**: WTC group of companies where ownership vests with one Ashish Bhalla or his family members lie Abhijeet Bhalla, Suparna Bhalla through complicated web of Shell companies but Ashish Bhalla and his family members do not become directors to avoid legal liabilities. Following Companies besides more than 100 additional shell Companies form part of WTC Group of Companies and are collectively called as 'WTC Group'*"[6].

4. Pursuant to the aforesaid first complaint, notice was issued by the MCA to one of the Group entities-WTC Noida of petitioner, calling for inspection of records of the WTC group of Companies under Section 206(5) of The Companies Act, 2013[7] whereafter the MCA issued an order authorising and 'assigning' the SFIO to conduct investigation into the affairs of the said company "WTC Noida" under Section 212 of the 2013 Act on ***14.10.2021***.

[6] Hereinafter referred to as "**first complaint**".
[7] Hereinafter referred to as **"the 2013 Act".**

5. In the interregnum, respondent no.2 made another complaint to The Commissioner of Police, Delhi and the EOW via e-mail on ***15.08.2021*** under the "***Subject****: Complaint against fraudulent and illegal siphoning of funds running into more than 1500 crores to various companies in India and Abroad through web of shell companies out of collection of Funds illegally, running into thousands of crores of Rupees by way of running Ponzi Scheme in the name of illegal 'Assured Return' in the guise of real estate projects in Gujarat, Uttar Pradesh, Punjab & Haryana*" against the "***Accused****: WTC group of companies where ownership vests with one Ashish Bhalla or his family members lie Abhijeet Bhalla, Suparna Bhalla through complicated web of Shell companies but Ashish Bhalla and his family members do not become directors to avoid legal liabilities. Following Companies besides more than 100 additional shell Companies form part of WTC Group of Companies and are collectively called as 'WTC Group'*"[8]. The said second complaint resulted in the registration of the impugned FIR on ***12.01.2023***. The petitioner is seeking quashing of the impugned FIR in this petition.

6. *De hors* the pendency of aforesaid second complaint of the respondent no.2, the MCA in furtherance of the first complaint, sent another notice to WTC Noida calling upon the SFIO to commence investigation into the affairs of the WTC group of Companies under Section 212 of the 2013 Act on 14.01.2022, whereafter, search, seizure and raid operations were carried

[8] Hereinafter referred to as "**second complaint**"

out by the SFIO as part of the investigation at the premises of WTC, Noida on 26.04.2022. After an Investigating Officer was appointed to look into the affairs of the WTC, Noida by the SFIO under Section 212 of the 2013 Act on 05.05.2022, the SFIO on 29.09.2022 approached National Company Law Tribunal, New Delhi[9] vide C.P. 156 of 2022 entitled ***Union of India through SFIO vs. WTC Noida Development Company Pvt. Ltd. & Ors.*** wherein, it has also filed a Site Visit/ Inspection Report on 07.12.2022. Reverting to the impugned FIR registration of which has given rise to the present petition.

7. As per petitioner, the impugned FIR has been registered on a complaint to wage vendetta against the petitioner, as the respondent no.2 is nothing but a proxy acting for and behalf of one of his business rival. The business rival, on whose behest respondent no.2 is acting, has criminal records against himself as he has been declared a "Proclaimed Offender" under Section 82 Cr.P.C. in FIR no.116/2016 by the learned Trial Court in another case inter-se the petitioner and the respondent no.2. Not only that, it is a matter of fact that both respondent no.2 and his proxy have been charge-sheeted in FIR no.3/2020 as extortionist. Further, the respondent no.2 is indulging in forum shopping, as he has filed over 50 false and frivolous cases against the petitioner as well as his associated/ related entities, needless to mention, majority of such cases, like the once before SEBI, UPRERA and other such forums have already been dismissed.

[9] Hereinafter referred to as **"NCLT".**

8. Qua the impugned FIR, it is the case of the petitioner that the same does not divulge the details of any other similar complaint(s) filed by other complainants. Moreover, in any event the complainant does not have a locus to file the impugned FIR since the issue therein is pertaining to a Project involving WTC Noida wherein, the complainant is neither a connected party therein nor an investor in WTC group of Companies.

9. Based thereupon, the petitioner by way of the present petition has sought the following reliefs:-

> "*a. Pass an order thereby allowing the present petition and quash the FIR no. 06/ 2023 dated 12.01.2023 registered at P.S. Economic Offences Wing, New Delhi under Section(s) 406, 420 and 120-B of the Indian Penal Code, 1860 and/ or all other proceedings/ investigations arising thereto and/or;*
>
> *b. Pass an order staying the operation and effect of impugned FIR bearing No.06/2023, and any other proceeding arising therefrom, pending final adjudication of the accompanying petition, and/or;*
>
> *c. Pass an order thereby directing that no coercive steps be taken against the Petitioner by the concerned investigating authorities/agencies in respect of the FIR No.06/2023 dated 12.01.2023 registered at P.S. Economic Offences Wing, New Delhi, pending the final adjudication of the accompanying petition, and/or;*"

10. The State although has not filed a Status Report but has been supporting the case of the respondent no.2, details whereof are entailed hereinbelow.

11. The respondent no.2, in its reply claims that the impugned FIR cannot be quashed because vide letter no. 9833/Accounts/UP RERA/2022-23 dated 26.08.2022, UPRERA has recorded that the petitioner has overdrawn an amount to the tune of Rs.1,061.71 Crores from all the WTC registered projects with RERA. The SFIO in W.P.(Crl.) 1249/2022 entitled ***WTC Noida Development Company Private Limited vs. Union of India through Ministry of Corporate Affairs & Ors.*** filed before this Court, vide its affidavit dated 28.09.2022, has also confirmed the massive diversion of funds by the petitioner. Besides this, the respondent no.2 in the impugned FIR has also elaborated the position/ details about the alleged 'Ponzi scheme'/ siphoning of funds to the tune of Rs.1,500 Crores run by the petitioner and his group of Companies.

12. As many as 42 new applicants claiming to be the effected parties have filed impleadment applications. On 31.09.2023, with the consent of the learned senior counsels for the petitioner, the applicants have been impleaded as respondents and have been arrayed as respondent nos.3 to 45. Respondent nos.4 to 34, 38 and 39 are supporting the case of the petitioner whereas the respondent nos.3, 35 to 37 and 40 to 45 are opposing the case of the petitioner.

*CASE OF PETITIONER:*

13. This Court, at the outset wishes to note that though the petitioner has made detailed averments and raised numerous grounds in support thereof in the present petition but both the learned senior counsels Mr. Sudhir Nandrajog and Mr. Preetesh Kapur appearing for the petitioner, while addressing their arguments, have restricted themselves qua quashing of the impugned FIR, as per the submissions enumerated hereinbelow:-

13.1. The second complaint dated 15.08.2021 made by the complainant to EOW is nothing but a replica of the first complaint dated 14.06.2021 also made by the same complainant to SFIO. Thus, the impugned FIR emanating from the second complaint dated 15.08.2021 is not maintainable, in view of the fact that SFIO proceedings emanating from the earlier complaint already stood initiated under Section 212(2) of the 2013 Act and the same was pending.

13.2. Since the allegations made in the impugned FIR are all contained in/ covered by the provisions of the 2013 Act, there cannot be any fresh investigation by EOW, as it was not required.

13.3. The offences in the impugned FIR cannot be segregated from the offences finding mention in the 2013 Act. Thus, the investigation by both SFIO and EOW cannot continue and if allowed to continue, the same shall amount to a gross abuse of the process of law.

13.4. The 2013 Act is a complete special Code in itself enumerating the procedure(s) of investigation under Section 212 thereof. As such, the proceedings emanating under the said 2013 Act, will take precedence over the Cr.P.C. Reliance for the said proposition was placed upon ***Serious Fraud Investigation Office vs. Rahul Modi & Anr***.[10]; ***Doraisamy & Anr vs. Sate***[11] and ***Sunair Hotels Ltd. vs. Union of India***[12].

13.5. The investigation had already been ordered by MCA on 14.10.2021 whereby SFIO is to look into the "... ... *affairs of a company*... ..." based on the complaint dated 14.06.2021 made by the respondent no.2 as also another one dated 03.08.2021 made by Mr. Sunil Gandhi. It is thereafter that SFIO proceedings have commenced and are already undergoing. Thus, the impugned FIR is not maintainable in view of Section 212(1) and (2) of the 2013 Act.

13.6. Once an investigation has been initiated under Section 212 of the 2013 Act into the "... ... *affairs of a company*... ..." by SFIO, any subsequent parallel proceeding/ investigation by a different agency under the same set of facts is barred by law and the only recourse available is to either quash or transfer the subsequent proceedings to the appropriate agency being SFIO.

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[10] (2019) 5 SCC 266
[11] 2019 SCC OnLine Mad 1354
[12] 2019 SCC OnLine Del 6465

13.7. When proceedings/ one FIR is pending before SFIO, the subsequent proceedings/ impugned FIR is liable to be quashed or transferred, as per the mandate of Article 14 of The Constitution of India. Reliance for the said proposition was placed upon ***T.T. Antony v. State of Kerala***[13] and ***Babubhai v. State of Gujarat***[14].

13.8. The bar under Section 212(2) of the 2013 Act contains the term "*… …in respect of any offence under this act… …*" which means that any offence in relation to offences under the 2013 Act can only be investigated by SFIO and any/ all other State/ Central agencies are barred to proceed with such a complaint/ FIR.

13.9. Once an authority itself claims that the circumstances require investigation and prosecution involving Section 212 of the 2013 Act against named person therein under a stringent law by SFIO, the same authority cannot turnaround and purport to investigate and prosecute the very same person in accordance with the general law on the same set of allegations through a different agency. Reliance for the said proposition was placed upon ***Ravi Parthasarthy Vs. State***[15] and ***Opto Circuits Vs Axis Bank***[16].

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[13] (2001) 6 SCC 181
[14] (2010) 12 SCC 254
[15] Criminal. O.P. Nos. 3730/2021 dated 31.08.2021 Madras High Court
[16] (2021) 6 SCC 707

13.10. The respondent no.2, admittedly, being not an investor in the project involved has no locus to file the impugned FIR.

13.11. The present criminal proceedings are manifestly instituted for wreaking vengeance on the petitioner due to personal grudges and thus the impugned FIR ought to be quashed. Reliance for the said proposition was placed upon ***State of Haryana vs. Bhajan Lal***[17]; ***Vijay Kumar Ghai & Ors. vs. State of West Bengal & Ors.***[18] and ***Ramesh Chandra Gupta vs. State of Uttar Pradesh & Ors.***[19]; and

13.12. Attention of this Court was drawn to the Site Inspection Report filed before NCLT proceedings in C.P. 156 of 2022 to show the significant construction work which has already been completed in the various project(s).

*CASE OF RESPONDENT NOS. 4 TO 34, 38 & 39 SUPPORTING PETITIONER:*

14. In support of the contentions advanced by learned senior counsels appearing for the petitioner, learned senior counsel Mr. Promod Kumar Dubey appearing for the newly impleaded respondent nos.4 to 34, 38 and 39 argued as under:-

14.1. The investigation in the impugned FIR cannot go independently since '*fraud*' is the major offence under the 2013 Act and the offences under the IPC in Chapter XVII are subsets of it. Thus, SFIO is the

[17] (1992) Supp (1) SCC 335
[18] (2022) 7 SCC 124

correct statutory authority to investigate the same and the impugned FIR cannot subsist before EOW as it has no role to play. Moreover, the allegations in the impugned FIR are of a 'fraud' allegedly committed by the petitioner herein.

14.2. If the complaint under investigation by SFIO and the impugned FIR under investigation by EOW are allowed to continue at the same time, it will tantamount to abuse of the process of law. Reliance for the said proposition was placed upon ***Arnab Ranjan Goswami vs. Union of India***[20].

14.3. The respondent no.2 is indulging in forum shopping which is not and cannot be permissible. Reliance for the said proposition was placed upon ***Vijay Kumar Ghai (supra)***.

14.4. The impugned FIR being subsequent is *non-est* in law as the impugned FIR itself contains allegations under the 2013 Act and IPC which cannot be segregated. Reliance for the said proposition was placed upon ***Stepping Stone Pvt. Ltd. vs. State of Rajasthan***[21] and ***Anil Hiralal Shah vs. State of Rajasthan***[22]; and

14.5. The offences under Section(s) 405 and 415 cannot go together and in any event since the petitioner has already returned and, is also

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[19] SLP (Crl.) No. 39/2022 decided on 28.11.2022
[20] (2020) 14 SCC 12
[21] 2022 (1) RLW 618 (Raj)
[22] SLP(Crl.) no. 7325/2022 order dated 04.01.2023

returning the monies owed to the investors subject to RERA regulations, no *mens-rea* can be attributed towards him under Section(s) 415 and 405 IPC. Reliance for the said proposition was placed upon ***Wolfgang Riem vs State***[23] and ***Vimla Dhiman vs. State***[24].

*CASE OF STATE:*

15. *Per Contra*, learned APP Mr. Ajay Vikram Singh appearing for the State contended that the impugned FIR and the proceedings, in offence(s) under Section 406 IPC and 420 IPC, involved therein, are very much different from the complaint before MCA as the offences involved before SFIO are arising under the 2013 Act. Therefore, as per the learned APP, SFIO cannot enter into the domain of offences under the IPC, there is no occasion for this Court to quash the impugned FIR.

*CASE OF RESPONDENT NO. 2/ COMPLAINANT:*

16. Supporting the case of the State, this Court notes that though the Respondent no.2 has made detailed averments and raised various defences in the reply, however, the learned counsel Mr. Satya Prakash Yadav appearing for respondent no.2, while addressing arguments, has restricted his submissions to what is enumerated hereinbelow:-

16.1. There is no embargo on the power of other agencies under any Statute to investigate if, SFIO proceedings are pending. A careful

[23] 2012 SCC OnLine Del 3341
[24] 2013 SCC OnLine Del 6465

reading of Section 212(2) and Section 212(17) of the 2013 Act with the Scheme of the 2013 Act demonstrates that the said 2013 Act is meant to achieve mutual cooperation inter-se the different investigating agencies and not for taking away any power of investigation from other agencies than the SFIO. Reliance for the said proposition was placed upon ***Rahul Modi (supra)***.

16.2. Simultaneous investigations can continue while investigation and proceeding are pending before SFIO. Reliance for this proposition was placed upon order(s) passed by this Court in ***Jaskaran Singh Chawla vs. Union of India & Ors***.[25]; ***Ranvir Singh vs Union of India & Ors***.[26] and ***Subhash Khandelwal vs EOW & Ors***.[27].

16.3. The affairs of a Company are different from the tasks of a Company and the punishment awarded under the 2013 Act is far less than what is awarded for offences mentioned in Chapter XVII of the IPC.

16.4. While interpreting a Statute if two meanings are permissible, a Court ought to resolve the ambiguity and carve out a meaning which is consistent with the provisions of the Statute taking into account the consequences of alternative constructions. Reliance for this

[25] W.P.(Crl.) 246/2022 dated 03.11.2022 Delhi High Court
[26] W.P.(C) 818/2023 dated 25.04.2016 Delhi High Cort
[27] W.P.(Crl.) 1894/2020 dated 18.12.2020 Delhi High Court

proposition was placed upon ***Anant Thanur Karmuse vs. State of Maharashtra***[28].

16.5. In any event, applying the principle that party cannot choose a forum to investigate into the offence, the petitioner herein cannot thus seek quashing of the impugned FIR as it is before EOW which is admittedly before a different forum than that SFIO.

16.6. There is no ground taken in the present petition pertaining to parallel proceedings in the impugned FIR before EOW not being possible during the pendency of the ongoing SFIO proceedings. As such, the arguments addressed thereto cannot be gone into by this Court;

16.7. Also, it is a matter of fact that the petitioner has not challenged the other ongoing investigations conducted by the Enforcement Directorate or UPRERA.

*CASE OF RESPONDENT NOS. 3, 35 to 37 & 40 to 45 OPPOSING PETITIONER:*

17. In support of the contentions advanced by learned counsel for the respondent no.2, the respondent no.3 Mr. Rajiv Dawar appearing in person ably assisted by learned counsel Mr. Sameer Dawar and also learned counsel Mr. Rohit Kathuria, together appearing for and on behalf of the respondent nos.3, 35 to 37 and 40 to 45 opposing the case of the petitioner argued as under: -

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[28] (2023) 5 SCC 802

17.1. The inherent power of a High Court under Section 482 Cr.P.C. is only limited for giving effect to any order or to secure ends of justice or to stop the abuse of the process of law. As such, the impugned FIR cannot be quashed at this nascent/ preliminary stage of investigation, as this Court has to use its powers under Section 482 Cr.P.C. sparingly and only when the case for such exigency is made out.

17.2. The nature and scope of investigation conducted by SFIO under Section 212 of the 2013 Act is vastly different from the investigation conducted by Police under the Cr.P.C. as the procedures prescribed thereunder are entirely different. Reliance for this proposition was placed upon ***S.P. Gupta & Ors. vs. State (NCT of Delhi) & Anr.***[29].

17.3. In addition the power and the jurisdiction of SFIO under the 2013 Act are also different from that of the Police under the Cr.P.C. for various reasons, [i] SFIO proceedings are initiated at the discretion of the Central Government and there is no provision for filing and/ or entertaining a private complaint under the provisions of the 2013 Act, whereas the Police is obligated to register an FIR, as the same having been arisen out of a private complaint involving cognizable offences as per the Cr.P.C.; [ii] the power of an

[29] 2005 SCC OnLine Del 417

Investigating Officer, including power to arrest is different from that of the Police, in SFIO proceeding; and [iii] the offences under the 2013 Act are non-cognizable offences whereas those under the IPC are involving cognizable as well as non-cognizable offences.

17.4. The provisions of 2013 Act do not specifically bar institution of criminal proceedings under other relevant penal Sections of the IPC before a different forum.

17.5. Section 26 of the General Clauses Act, 1987 permits prosecution under two different enactments where any act or omission constitutes an offence under two or more enactments. It is well settled that the same set of facts, in conceivable cases, can constitute offences under two different enactments and parallel investigation can go on under the two different enactments. Reliance for this proposition was placed upon ***State of Maharashtra & Anr. vs. Sayyed Hassan Sayyad Subhan & Ors***.[30].

17.6. In any event, the offences mentioned in the complaint made to the MCA resulting in the initiation of proceedings before SFIO and those made in the subsequent complaint resulting in the registration of the impugned FIR involved in the present proceedings are separate, as they are having different ingredients. Reliance for this

[30] (2019) 18 SCC 145

proposition was placed upon ***Vandana Yadav & Ors. vs. Sate of UP & Ors***.[31]; and

17.7. The offence envisaged in the impugned FIR is supplemental to other penal laws. Reliance for this proposition was placed upon ***State of West Bengal vs. Narayan K. Patodia***[32] and also upon the words *"Without prejudice to any liability including repayment of any debt under this Act or any other law for the time being in force"* finding mention in Section 447 of the 2013 Act.

18. This Court has heard both learned senior counsels Mr. Sudhir Nandrajog and Mr. Preetesh Kapur appearing for the petitioner ably assisted by the learned counsel for the petitioner along with learned senior counsel Mr. Pramod Kumar Dubey appearing for the respondent nos.4 to 34, 38 and 39 supporting the case of the petitioner and also ably assisted by the learned counsel on record for the said respondents on one hand and learned APP Mr. Ajay Vikram Singh appearing for the State, learned counsel Mr. Satya Prakash Yadav appearing for respondent no.2 along with the respondent no.3 Mr. Rajiv Dawar appearing in person ably assisted by the learned counsel Mr. Sameer Dawar together with learned counsel Mr. Rohit Kathuria appearing for and on behalf of the respondent nos.3, 35 to 37 and 40 to 45 opposing the case of the petitioner, at length and has also

[31] MANU/UP/1115/2023
[32] (2000) 4 SCC 447

gone through all the documents on record including the voluminous written synopsis handed over by the learned (senior) counsel for the parties from time to time during the course of arguments in addition to the plethora of judgments cited thereunder.

*ISSUES INVOLVED:*

19. In the considered opinion of this Court, based upon the contentions raised by the learned (senior) counsels for the parties and the documents on record, for determining whether the FIR in question is liable to be quashed, this Court has to primarily adjudicate the below

(i) Whether the impugned FIR dated 12.01.2023 before the EOW and the proceedings emanating therefrom are maintainable in view of the pendency of earlier SFIO proceedings initiated pursuant to first complaint to the Central Government(MCA) on 14.10.2021 under Section 212 of the 2013 Act? and;

(ii) Whether the allegations made in the first complaint dated 14.06.2021 to the MCA and in the second complaint dated 15.08.2021 to the EOW are similar/ same involving the same set of facts containing the same allegations made against the same individual(s) by the same complainant? and;

(iii) What are the effects of the provisions contained in Section 212 of the 2013 Act upon the factual matrix of the case?

*MAINTAINABILITY QUA LEGAL ISSUE NOT BEING PLEADED:*

20. Prior to adverting to the factual matrix involved, this Court is of the opinion that it would be prudent and in the interest of justice to set out a vital question of law with respect to an objection raised by the respondent no.2 qua there being no ground taken by the petitioner about any parallel proceedings in the form of the impugned FIR before EOW, in view of the pending SFIO proceedings, calling for dismissal of the present petition.

21. Since the aforesaid objection has a material bearing upon the position in the present circumstances as they stand today, which is primarily based on the interpretation and applicability of Section 212 of the 2013 Act, despite, there being no direct reference thereto in the pleadings before this Court.

22. It is a matter of fact that the aforesaid issue qua interpretation and applicability of Section 212 of the 2013 Act is a pure legal issue, which is a question of law. As per settled law and under the facts and circumstances involved such a legal issue can be taken up at any stage, more so, whence it is having a material connection and bearing upon the merits involved herein. Reliance is placed upon ***K. Lubna & Ors. vs. Beevi & Ors***.[33] wherein the Hon'ble Supreme Court has held as under:-

> *"9. On the legal principle, it is trite to say that a pure question of law can be examined at any stage, including before this Court. If the factual foundation for a case has been laid and the legal consequences*

[33] Civil Appeal No. 2442/2023 dated 13.01.2020 Supreme Court

> *of the same have not been examined, the examination of such legal consequences would be a pure question of law*"

Reliance is further placed upon ***Greater Mohali Area Development Authority & Ors. vs. Manju Jain & Ors***.[34] wherein the Hon'ble Supreme Court has held as under:-

> "*26.… …It is settled legal proposition that pure question of law can be raised at any time of the proceedings.… …*"

23. In the opinion of this Court, the aforesaid issue is hardly of any relevance, especially in view of the fact that the same has a material connection having a direct bearing on the facts of the case involved. Accordingly, in view thereof, without deliberating on the said issue any further, this Court is proceeding with adjudication of the present petition on its merits.

*GENESIS OF THE COMPANIES ACT, 2013:*

24. Under the facts and circumstances involved and before adverting to decide the issues involved in the present petition, in the opinion of this Court, it is felt prudent to dwell into the genesis of the 2013 Act and the background which culminated into its enactment.

25. Prior to the 2013 Act, all offences related to 'fraud' were governed and dealt with under The Companies Act, 1956[35]. Faced with repeated amendments, periodical shifts and upheavals in the economy with passage of time, the Central Government felt it necessary for bringing about

[34] (2010) 9 SCC 157

changes in the already existing 1956 Act as it was very much required to be brought upto date with the changing situations as the shifting times kept giving rise to various unanswered questions without any concrete solutions. Thus, somewhere in late 1990's/ early 2000's, the Central Government, identifying the various undercurrents and turbulence in the Indian economy with changing times, where on one hand 'privatisation' was playing a pivotal role while on the other hand 'scams' involving economic frauds like the stock markets or entities started foraying in, set up a high-level '*Committee of Corporate Affairs*' on 21.08.2002 to make the ends meet.

26. It was based upon the suggestions of the said 'Committee of Corporate Affairs' that the Central Government proceeded ahead to repeal the earlier 1956 Act and introduced the 2013 Act setting up '*Serious Fraud Investigation Office*' [already referred to as the '***SFIO***'] demarcating/ defining/ assigning *'wider'* role(s), step(s), specification(s), procedure(s) and purpose(s) to it than what they were under Section(s) 235, 237, 239 and 247 of 1956 Act[36]. The 2013 Act, not only introduced but, in fact, gave a

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[35] Hereinafter referred to as **"1956 Act"**

[36]***Section 235. INVESTIGATION OF THE AFFAIRS OF A COMPANY.*** *(1) The Central Government may, where a report has been made by the Registrar under sub-section (6) of section 234, or under sub-section (7) of that section, read with sub-section (6) thereof, appoint one or more competent persons as inspectors to investigate the affairs of a company and to report thereon in such manner as the Central Government may direct. (2) Where-(a) in the case of a company having a share capital, an application has been received from not less than two hundred members or from members holding not less than one-tenth of the total voting power therein, and (b) in case of a company having no share capital, an application has been received from not less than one-fifth of the*

*persons on the company's register of members, the 2 [Tribunal] may, after giving the parties an opportunity of being heard, by order, declare that the affairs of the company ought to be investigated by an inspector or inspectors, and on such a declaration being made, the Central Government shall appoint one or more competent persons as inspectors to investigate the affairs of the company and to report thereon in such manner as the Central Government may direct.]*

***Section 237. INVESTIGATION OF COMPANY'S AFFAIRS IN OTHER CASES.*** *Without prejudice to its powers under section 235, the Central Government - (a) shall appoint one or more competent persons as inspectors to investigate the affairs of a company and to report thereon in such manner as the Central Government may direct, if -(i) the company, by special resolution ; or (ii) the Court, by order, declares that the affairs of the company ought to be investigated by an inspector appointed by the Central Government ; and (b) may do so if, 1 [in its opinion or in the opinion of the Tribunal], there are circumstances suggesting-(i) that 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 in a manner oppressive of any of its members, or that the company was formed for any fraudulent or unlawful purpose; (ii) that 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) that 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 mana-ging or other director, 2 [***] or the manager, of the company.*

***Section 239. POWER OF INSPECTORS TO CARRY INVESTIGATION INTO AFFAIRS OF RELATED COMPANIES *{OR OF MANAGING AGENT OR ASSOCIATE}, ETC.—*** *(1) If an inspector appointed under section 235 or 237 to investigate the affairs of the company thinks it necessary for the purposes of his investigation to investigate also the affairs of –*

*(a) any other body corporate which is, or has at any relevant time been, the company's subsidiary or holding company, or a sub-sidiary of its holding company, or a holding company of its subsidiary ; or*

*(b) 1 [(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 ; or]*

*(c) any other body corporate, which is, or has at any relevant time been, managed by the company or whose Board of directors comprises of nominees of the company or is accustomed to act in accordance with the directions or instructions of –*

*(i) the company, or *

*(ii) any of the directors of the company, or*

*(iii) any company, any of whose directorships is held by the employees or nominees of those having the control and management of the first-mentioned company ; or*

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

*1 [the inspector shall, subject to the provisions of sub-section (2), have power so to do and shall report on the affairs of the other body corporate or of the managing director or manager, so far as he thinks that the results of his investigation thereof are relevant to the investigation of the affairs of the first-mentioned company.]*

*(2) In the case of any body corporate or person referred to in clause (b)(ii), (b)(iii), (c) or (d) of sub-section (1), the inspector shall not exercise his power of investigating into, and reporting on, its or his affairs without first having obtained the prior approval of the Central Government thereto:*

*Provided that before according approval under this sub-section, the Central Government shall give the body corporate or person a reasonable opportunity to show cause why such approval should not be accorded.*

***Section 247. INVESTIGATION OF OWNERSHIP OF COMPANY.**.—(1) Where it appears to the Central Government that there is good reason so to do, it may appoint one or more inspectors to investigate and report on the membership of any company and other matters relating to the company, for the purpose of determining the true persons –*

*(a) who are or have been financially interested in the success or failure, whether real or apparent, of the company ; or*

*(b) who are or have been able to control or materially to influence the policy of the company.*

*[(1A) Without prejudice to its powers under this section, the Central Government shall appoint one or more inspectors under sub-section (1), if the 2 [Tribunal], in the course of any proceedings before it, declares by an order that the affairs of the company ought to be investigated as regards the membership of the company and other matters relating to the company, for the purpose of determining the true persons –*

*(a) who are or have been financially interested in the success or failure, whether real or apparent, of the company ; or*

*(b) who are or have been able to control or materially to influence the policy of the company.]*

*(2) When appointing an inspector under sub-section (1), the Central Government may define the scope of his investigation, whether as respects the matters or the period to*

new lease of life, as it was able to infuse a new dimension to SFIO proceedings.

*SECTION 447 OF THE COMPANIES ACT, 2013:*

27. Section 447 of the 2013 Act plays a very pivotal role in SFIO proceedings as much depends upon the phraseology and the interpretation

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*which it is to extend or otherwise, and in particular, may limit the investigation to matters connected with particular shares or debentures.*

*(3) Subject to the terms of an inspector's appointment, his powers shall extend to the investigation of any circumstances suggesting the existence of any arrangement or understanding which, though not legally binding, is or was observed or is likely to be observed in practice and which is relevant to the purposes of his investigation.*

*(4) [Omitted by the Companies (Amendment) Act, 2000, with effect from 13-12-2000.]*

*(5) For the purposes of any investigation under this section, sections 239, 240 and 241 shall apply with the necessary modifications of references to the affairs of the company or to those of any other body corporate 3 [***] :*

***Provided*** *that the said sections shall apply in relation to all persons (including persons concerned only on behalf of others) who are or have been, or whom the inspector has reasonable cause to believe to be or to have been, -*

*(i) financially interested in the success or failure, or the apparent success or failure, of the company, or of any other body corporate 4 [***] whose membership or constitution is investigated with that of the company ; or*

*(ii) able to control or materially to influence the policy of such company, body corporate 2 [***] ; as they apply in relation to officers and other employees and agents of the company, of the other body corporate 5 [***], as the case may be :*

***Provided further*** *that the Central Government shall not be bound to furnish the company or any other person with a copy of any report by an inspector appointed under this section or with a complete copy thereof, if it is of opinion that there is good reason for not divulging the contents of the report or of parts thereof ; but in such a case, the Central Government shall cause to be kept by the Registrar a copy of any such report or, as the case may be, of the parts thereof, as respects which it is not of that opinion.*

*(6) The expenses of any investigation under this section shall be defrayed by the Central Government out of moneys provided by Parliament, unless the Central Government directs that the expenses or any part thereof should be paid by the persons on whose application the investigation was ordered.*

thereof. Particularly whence the '*explanation*' of Section 447[37] of the 2013 Act defines '*fraud*' *per-se* in respect of affairs of a Company which is inclusive of any act, omission, concealment of any fact or abuse of position committed by any person or any other person with the connivance in any manner, with intent to deceive, to gain undue advantage from, or to injure the interests of, the Company or its shareholders or its creditors or any other person, whether or not there is any wrongful gain or wrongful loss, the relevance of the said Section 447 of the 2013 Act is such that it is forming the very essence of the SFIO proceedings conducted under Section 212 of the 2013 Act. As per Section 447 of the 2013 Act, anyone found guilty of

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[37]***Section 447. Punishment for fraud***-*Without prejudice to any liability including repayment of any debt under this Act or any other law for the time being in force, any person who is found to be guilty of fraud, shall be punishable with imprisonment for a term which shall not be less than six months but which may extend to ten years and shall also be liable to fine which shall not be less than the amount involved in the fraud, but which may extend to three times the amount involved in the fraud:*

*Provided that where the fraud in question involves public interest, the term of imprisonment shall not be less than three years.*

*Explanation.-For the purposes of this section-*

*(i) "fraud" in relation to affairs of a company or any body corporate, includes any act, omission, concealment of any fact or abuse of position committed by any person or any other person with the connivance in any manner, with intent to deceive, to gain undue advantage from, or to injure the interests of, the company or its shareholders or its creditors or any other person, whether or not there is any wrongful gain or wrongful loss;*

*(ii) "wrongful gain" means the gain by unlawful means of property to which the person gaining is not legally entitled;*

*(iii) "wrongful loss" means the loss by unlawful means of property to which the person losing is legally entitled."*

fraud shall be punishable qua any liability, including that of, repayment of any debt under the 2013 Act or any other law along with imprisonment and fine as well, specified therein. Moreover, in case the fraud is involving public interest, the minimum period of prescribed imprisonment is more than in other circumstances. Thus, in the opinion of this Court, the term '*fraud*' as used in Section 447 of the 2013 Act is in itself an all-encompassing term which has been given the widest possible meaning.

*SECTION 206-211 OF THE COMPANIES ACT, 2013:*

28. Section 206 of the 2013 Act empowers the Registrar, who on receipt of information or on scrutiny of documents filed by a Company, may issue notice to a Company calling for information, inspecting books and conducting inquiries or scrutinizing any document filed by a Company or on receiving any information. Also, as per the said Section 206 of the 2013 Act, it is incumbent upon the said Company and its concerned officials to furnish the information/ explanation known to them and produce such documents. It is also provided therein that on receipt of such information if, the Registrar is unsatisfied with the information so received, the Registrar is empowered to issue a fresh reasoned notice asking for any written information or explanation and carry out inquiry as deemed fit, after according a reasonable opportunity to the Company concerned. It is also provided therein that the Central Government may direct the Registrar or an Inspector to carry out an inquiry and any officer(s) of the Company found guilty shall be liable to be punished under Section 447 of the 2013 Act.

Additionally, the Central Government may also direct inspection of books and papers of the Company and to carry out the inspection of books of account of an entity or class of entities. As stated in Section 206 of the 2013 Act, in case of any default of the above, the Company shall be punishable.

29. Section 207 of the 2013 Act is relating to the conduct of inspection and inquiry by a Registrar on the basis of information derived under Section 206 of the 2013 Act hereinabove. It is also specified therein that the Registrar or Inspector making an inspection or inquiry shall have all the same powers as that of a Civil Court under the Code of Civil Procedure, 1908 qua matters finding mention under Section 207(3)(a–c) of the 2013 Act.

30. Section 208 of the 2013 Act pertains to a written report to be made by the Registrar or the Inspector to the Central Government along with such documents wherein, if required, further investigation into the affairs of the Company can also be called for. Thus, it is incumbent upon the Registrar or the Inspector, as the case may be, to make/ give a report to the Central Government.

31. Section 209 of the 2013 Act empowers such Registrar or Inspector to proceed with search and seizure, *albeit* after obtaining an order to that effect from the Special Court, if upon information having reasonable ground to believe that the books and papers of Company or relating to its affairs have been falsified/ destroyed/ mutilated/ altered/ secreted. It is also

specified therein that the provisions of Cr.P.C. shall apply, *mutatis mutandis*, to all search and seizure operations made under Section 209.

32. As per Section 210 of the 2013 Act, if the Central Government is of the opinion that there subsists a need to investigate into the said affairs of the Company, as per the report of the Registrar or Inspector, as the case may be, or on intimation of a Special Resolution passed by a Company or in public interest, as the case may be, conduct investigation into the affairs of the Company or conduct such investigation where there is an order passed by a Court or a Tribunal to that effect in any proceedings involving the said Company.

33. Section 211[38] of the 2013 Act pertains to the establishment of SFIO by the Central Government in terms of the Government of India Resolution

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[38] ***211. Establishment of Serious Fraud Investigation Office.***- *(1) The Central Government shall, by notification, establish an office to be called the Serious Fraud Investigation Office to investigate frauds relating to a company:*
*Provided that until the Serious Fraud Investigation Office is established under subsection (1), the Serious Fraud Investigation Office set-up by the Central Government in terms of the Government of India Resolution No. 45011/16/2003-Adm-I, dated the 2nd July, 2003 shall be deemed to be the Serious Fraud Investigation Office for the purpose of this section.*
*(2) The Serious Fraud Investigation Office shall be headed by a Director and consist of such number of experts from the following fields to be appointed by the Central Government from amongst persons of ability, integrity and experience in, -*
*(i) banking;*
*(ii) corporate affairs;*
*(iii) taxation;*
*(iv) forensic audit;*
*(v) capital market;*

No.45011/16/2003-Adm-I, dated 2nd July, 2003 is to be headed by a Director consisting of experts from the fields of (i) banking, (ii) corporate affairs, (iii) taxation, (iv) forensic audit, (v) capital market, (vi) information technology, (vii) law, or (viii) such other prescribed fields thereby confirming that the SFIO is a specialised body formed with a view to look into the diverse fields in terms of Section 211 of the 2013 Act, the said SFIO is consisting of eminent experts from various fields having "… …*ability, integrity and experience*.… …".

*SECTION 212 OF THE COMPANIES ACT, 2013:*

34. The aforesaid brings this Court to the other relevant, if not the most relevant provision in addition to Section 447 of the 2013 Act involved in the present petition in the form of Section 212[39] of the 2013 Act which is

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*(vi) information technology;*
*(vii) law; or*
*(viii) such other fields as may be prescribed.*
*(3) The Central Government shall, by notification, appoint a Director in the Serious Fraud Investigation Office, who shall be an officer not below the rank of a Joint Secretary to the Government of India having knowledge and experience in dealing with matters relating to corporate affairs.*
*(4) The Central Government may appoint such experts and other officers and employees in the Serious Fraud Investigation Office as it considers necessary for the efficient discharge of its functions under this Act.*
*(5) The terms and conditions of service of Director, experts, and other officers and employees of the Serious Fraud Investigation Office shall be such as may be prescribed.*

[39] ***Section 212. Investigation into affairs of Company by Serious Fraud Investigation Office***.- *(1) Without prejudice to the provisions of section 210, where the Central Government is of the opinion, that it is necessary to*

*investigate into the affairs of a company by the Serious Fraud Investigation Office-*

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

*(b) on intimation of a special resolution passed by a company that its affairs are required to be investigated;*

*(c) in the public interest; or*

*(d) on request from any Department of the Central Government or a State Government,*

*the Central Government may, by order, assign the investigation into the affairs of the said company to the Serious Fraud Investigation Office and its Director, may designate such number of inspectors, as he may consider necessary for the purpose of such investigation.*

*(2) Where any case has been assigned by the Central Government to the Serious Fraud Investigation Office for investigation under this Act, no other investigating agency of Central Government or any State Government shall proceed with investigation in such case in respect of any offence under this Act and in case any such investigation has already been initiated, it shall not be proceeded further with and the concerned agency shall transfer the relevant documents and records in respect of such offences under this Act to Serious Fraud Investigation Office.*

*(3) Where the investigation into the affairs of a company has been assigned by the Central Government to Serious Fraud Investigation Office, it shall conduct the investigation in the manner and follow the procedure provided in this Chapter; and submit its report to the Central Government within such period as may be specified in the order.*

*(4) The Director, Serious Fraud Investigation Office shall cause the affairs of the company to be investigated by an Investigating Officer who shall have the power of the inspector under section 217.*

*(5) The company and its officers and employees, who are or have been in employment of the company shall be responsible to provide all information, explanation, documents and assistance to the Investigating Officer as he may require for conduct of the investigation.*

*(6) Notwithstanding anything contained in the Code of Criminal Procedure, 1973 (2 of 1974), 1 [offence covered under section 447] of this Act shall be cognizable and no person accused of any offence under those sections shall be released on bail or on his own bond unless—*

*(i) the Public Prosecutor has been given an opportunity to oppose the application for such release; and*

*(ii) where the Public Prosecutor opposes the application, the court is satisfied that there are reasonable grounds for believing that he is not guilty of such offence and that he is not likely to commit any offence while on bail:*

*Provided that a person, who, is under the age of sixteen years or is a woman or is sick or infirm, may be released on bail, if the Special Court so directs:*

*Provided further that the Special Court shall not take cognizance of any offence referred to this subsection except upon a complaint in writing made by—*

*(i) the Director, Serious Fraud Investigation Office; or*

*(ii) any officer of the Central Government authorised, by a general or special order in writing in this behalf by that Government.*

*(7) The limitation on granting of bail specified in sub-section (6) is in addition to the limitations under the Code of Criminal Procedure, 1973 (2 of 1974) or any other law for the time being in force on granting of bail.*

*(8) If the Director, Additional Director or Assistant Director of Serious Fraud Investigation Office authorised in this behalf by the Central Government by general or special order, has on the basis of material in his possession reason to believe (the reason for such belief to be recorded in writing) that any person has been guilty of any offence punishable under sections referred to in sub-section (6), he may arrest such person and shall, as soon as may be, inform him of the grounds for such arrest.*

*(9) The Director, Additional Director or Assistant Director of Serious Fraud Investigation Office shall, immediately after arrest of such person under sub-section (8), forward a copy of the order, along with the material in his possession, referred to in that sub-section, to the Serious Fraud Investigation Office in a sealed envelope, in such manner as may be prescribed and the Serious Fraud Investigation Office shall keep such order and material for such period as may be prescribed.*

*(10) Every person arrested under sub-section (8) shall within twenty-four hours, be taken to a Judicial Magistrate or a Metropolitan Magistrate, as the case may be, having jurisdiction: Provided that the period of twenty-four hours shall exclude the time necessary for the journey from the place of arrest to the Magistrate's court.*

*(11) The Central Government if so directs, the Serious Fraud Investigation Office shall submit an interim report to the Central Government.*

*(12) On completion of the investigation, the Serious Fraud Investigation Office shall submit the investigation report to the Central Government.*

*(13) Notwithstanding anything contained in this Act or in any other law for the time being in force, a copy of the investigation report may be obtained by any person concerned by making an application in this regard to the court.*

dealing with investigation into the affairs of a Company by SFIO. In the opinion of this Court, Section 212 of the 2013 Act is nothing less than being a Code in itself. Hence each sub-section thereof is being elaborated singularly hereinunder.

35. Section 212(1) of the 2013 Act in a nutshell shows that as per it only when the Central Government finds it "… …*necessary to investigate into the affairs*… …" of a Company by the SFIO on different factors prescribed

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*(14) On receipt of the investigation report, the Central Government may, after examination of the report (and after taking such legal advice, as it may think fit), direct the Serious Fraud Investigation Office to initiate prosecution against the company and its officers or employees, who are or have been in employment of the company or any other person directly or indirectly connected with the affairs of the company.*

*(15) Notwithstanding anything contained in this Act or in any other law for the time being in force, the investigation report filed with the Special Court for framing of charges shall be deemed to be a report filed by a police officer under section 173 of the Code of Criminal Procedure, 1973 (2 of 1974).*

*(16) Notwithstanding anything contained in this Act, any investigation or other action taken or initiated by Serious Fraud Investigation Office under the provisions of the 2013 Act, 1956 (1 of 1956) shall continue to be proceeded with under that Act as if this Act had not been passed.*

*(17) (a) In case Serious Fraud Investigation Office has been investigating any offence under this Act, any other investigating agency, State Government, police authority, income-tax authorities having any information or documents in respect of such offence shall provide all such information or documents available with it to the Serious Fraud Investigation Office;*

*(b) The Serious Fraud Investigation Office shall share any information or documents available with it, with any investigating agency, State Government, police authority or income-tax authorities, which may be relevant or useful for such investigating agency, State Government, police authority or income-tax authorities in respect of any offence or matter being investigated or examined by it under any other law.*

therein, it shall assign investigation into the affairs of a Company to the SFIO. As per Section 212(2) of the 2013 Act, if the Central Government *assigns* any case to the SFIO, "*… …no other investigating agency… …*" shall investigate qua any offences "*… …under this Act… …*" and further the investigation, if initiated, shall not proceed further and as "*… …the relevant documents and records… …*" in respect of such "*… …offences under this Act… …*" shall stand transferred to the SFIO.

36. As per Section 212(3) of the 2013 Act, once the Central Government assigns the investigation to the SFIO, the investigation thereof shall be conducted in the manner and procedure provided therein and SFIO shall submit its report to the Central Government within the allotted time, if any.

37. As per Section 212(4) of the 2013 Act, an Investigating Officer shall investigate into the "*… …affairs of the company*" and shall have the powers of an Inspector under Section 217 of the 2013 Act.

38. As per Section 212(5) of the 2013 Act, the Company, including its past and present officers and employees, shall "*… …provide all information, explanation, documents and assistance… …*" to and as required by the Investigating Officer.

39. Section 212(6) of the 2013 Act is in the form of a non-obstante clause wherein it is specified that *de hors* what is contained in the Cr.P.C. "*… …[offence covered under Section 447] of this Act shall be cognizable… …*" wherein the conditions qua release or bail of an accused of any offence

under those sections are also enumerated. These are stringent conditions contained in a Special legislation in comparison to any General legislation. Not only that, it is also specified in the second proviso to Section 212(6) referred herein "*… …that the Special Court shall not take cognizance of any offence… …*" unless there is "*… …complaint in writing… …*" made by either the Director, SFIO or any authorised officer of the Central Government.

40. It is then specified in Section 212(7) of the 2013 Act that the limitation of granting bail enumerated in Section 212(5) is "*… …in addition to the limitations… …*" under the Cr.P.C. or any other law on granting of bail.

41. Section 212(8) of the 2013 Act recognises that only an Officer, above the rank of Assistant Director of SFIO, authorised by the Central Government, may arrest, after following the requisite conditions specified therein alongwith the procedure enumerated under Section 212(9) and 212(10) of the 2013 Act.

42. The SFIO, as per Section 212(11) of the 2013 Act, is obligated to submit an Interim Report as per directions of the Central Government and thereafter is further obligated as per Section 212(12) of the 2013 Act to also submit the Investigation Report, after closure of the investigation to the Central Government.

43. In terms of Section 212(14) of the 2013 Act, after receiving the Investigation Report, the Central Government has discretion and "… …*after examination of the report*… …" and upon legal advice, if required, to direct the SFIO to initiate prosecution against the Company and its past and present officers and employees or any other person directly or indirectly connected with the "… …*affairs of the company*… …".

44. Furthermore, as per the newly inserted Section 212(14A) of the 2013 Act, liberty has been granted to the Central Government to file an appropriate application before the Tribunal, if the Report under Section(s) 212(11) and (12) of the 2013 Act alleges 'fraud' in the affairs of the Company or by its officials.

45. As specified in Section 212(15) of the 2013 Act that irrespective of what is contained in the 2013 Act or any other law, the Investigation Report filed with the Special Court for framing of charges "… …*shall be deemed*… …" to be treated as a Report filed by a Police Officer under Section 173 Cr.P.C.

46. It is thence that as per Section 212(16) of the 2013 Act, irrespective of what is contained in the 2013 Act, any investigation or other action taken or initiated by the SFIO under the Companies Act, 1956 "… …*shall continue*… …" to proceed under that Act.

47. Thereafter, as per Section 212(17)(a), while the SFIO has been investigating any offence under this Act, if there is/ are any other

investigating agency, State Government, Police Authority, Income-Tax Authorities having any information or documents in respect of such offence then such other investigation agency is bound to provide all such information or documents available with it to the SFIO.

48. Last, but not the least, as per Section 212(17)(b) of the 2013 Act, the SFIO is also bound to share any information or documents available with it with any investigating agency, State Government, Police Authority or Income-Tax Authorities, which may be relevant or useful for such investigating agency, State Government, Police Authority or Income-Tax Authorities in respect of any offence or matter being investigated or examined by it under any other law with the other investigating agency.

49. In the opinion of this Court, all the sub-sections of Section 212 of the 2013 Act have to be harmoniously read together as they are all not only inter-connected but dependent upon each other as well.

*SECTION 436 OF THE COMPANIES ACT, 2013:*

50. Section 436[40] which deals with the offences triable by a Special Court, irrespective of what is contained in the Cr.P.C., is another relevant provision of the 2013 Act for the adjudication of the present petition.

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[40] ***436. Offences triable by Special Courts***.- *(1) Notwithstanding anything contained in the Code of Criminal Procedure, 1973 (2 of 1974),-*

*(a) [3][all offences specified under sub-section (1) of section 435] shall be triable only by the Special Court established for the area in which the registered office of the company in relation to which the offence is committed or where there are more*

51. In fact, the provisions of Section 436(1) of the 2013 Act are applicable notwithstanding "… …*anything contained in the Code of*

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*Special Courts than one for such area, by such one of them as may be specified in this behalf by the High Court concerned;*
*(b) where a person accused of, or suspected of the commission of, an offence under this Act is forwarded to a Magistrate under sub-section (2) or sub-section (2A) of section 167 of the Code of Criminal Procedure, 1973 (2 of 1974), such Magistrate may authorise the detention of such person in such custody as he thinks fit for a period not exceeding fifteen days in the whole where such Magistrate is a Judicial Magistrate and seven days in the whole where such Magistrate is an Executive Magistrate:*
*Provided that where such Magistrate considers that the detention of such person upon or before the expiry of the period of detention is unnecessary, he shall order such person to be forwarded to the Special Court having jurisdiction;*
*(c) the Special Court may exercise, in relation to the person forwarded to it under clause (b), the same power which a Magistrate having jurisdiction to try a case may exercise under section 167 of the Code of Criminal Procedure, 1973 (2 of 1974) in relation to an accused person who has been forwarded to him under that section; and*
*(d) a Special Court may, upon perusal of the police report of the facts constituting an offence under this Act or upon a complaint in that behalf, take cognizance of that offence without the accused being committed to it for trial.*
*(2) When trying an offence under this Act, a Special Court may also try an offence other than an offence under this Act with which the accused may, under the Code of Criminal Procedure, 1973 (2 of 1974) be charged at the same trial.*
*(3) Notwithstanding anything contained in the Code of Criminal Procedure, 1973 (2 of 1974), the Special Court may, if it thinks fit, try in a summary way any offence under this Act which is punishable with imprisonment for a term not exceeding three years:*
*Provided that in the case of any conviction in a summary trial, no sentence of imprisonment for a term exceeding one year shall be passed:*
*Provided further that when at the commencement of, or in the course of, a summary trial, it appears to the Special Court that the nature of the case is such that the sentence of imprisonment for a term exceeding one year may have to be passed or that it is, for any other reason, undesirable to try the case summarily, the Special Court shall, after hearing the parties, record an order to that effect*

*Criminal Procedure, 1973… …*" and all the offences specified in Section 435(1) of the 2013 Act shall be triable by a Special Court, established or designated, and the person accused of/ suspected of the commission of an offence under the 2013 Act is forwarded to the concerned Magistrate under Section 167(2) or 167(2A) of the Cr.P.C., as the case may be, after which such Magistrate may, exercising powers as vested in him, authorize detention under Section 167 of the Cr.P.C. Additionally, the said Special Court may also, after perusing the Police Report qua the facts of the offence under the 2013 Act or upon a complaint in that behalf, take cognizance thereof "*... …without the accused being committed to it for trail… …*".

52. Moreover, Section 436(2) of the 2013 Act empowers such Special Magistrate, while trying an offence under this Act, may also try an offence "*… …other than an offence under this Act… …*" with which the accused may be charged under the Cr.P.C. at the same trial. Meaning thereby any other provision(s) under any of the criminal statute(s) can very well co-exist along with SFIO proceedings as they can well be conducted by a Special Court dealing with such SFIO proceedings. In the opinion of this Court, it can be safely inferred therefrom that there is no bar in the 2013 Act for such proceedings to continue before such Special Court.

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*and thereafter recall any witnesses who may have been examined and proceed to hear or rehear the case in accordance with the procedure for the regular trial.*

53. A collective reading of the aforesaid provisions reflects the clarity and interdependence upon each other as also the provisions of the Cr.P.C. as a path has been demarcated for the SFIO proceedings to continue further.

54. It is reiterated that in the opinion of this Court, the enactment of the 2013 Act being a special piece of legislation is not in derogation of the Cr.P.C. which is a general piece of legislation. The same is reinforced from the fact that they both and the proceedings emanating therefrom are very much co-existing and operating though in different spheres but before the same Special Court together[41]. In fact, in the opinion of this Court, going by what is contained in Section 209, 212(7) and 436(2) of the 2013 Act, the provisions of Cr.P.C. are very much applicable to the SFIO proceedings. This is despite the fact that the SFIO proceedings are different and are conducted by a specialized team comprising of *"… … persons of ability, integrity and experience … …"* as per Section 211 of the 2013 Act.[42]

*SECTION 36 OF THE COMPANIES ACT, 2013:*

55. Section 36 of the 2013 Act which plays a pivotal role, provides for punishment in case anyone is found to be fraudulently inducing persons to invest money, is of utmost significance as the issues involved in the present case also revolve around the same analogy. As per Section 36 of the 2013 Act, if any person is found guilty of knowingly or unknowingly making any statement, promise or forecast, which is false, deceptive or misleading or

[41] *infra* Para 79

has deliberately concealed any material facts for inducing such/ another person to enter into or to offer to enter into any agreement with an objective of "*… …acquiring, disposing of, subscribing for, or underwriting, securities.… …*" or with the purpose of securing a profit to any of the parties from securities or fluctuations in the value thereof or for "*… …obtaining credit facilities.… … "* from any bank or financial institution, then the said person shall be liable for action under Section 447 of the 2013 Act.

*SECTION 448 OF THE COMPANIES ACT, 2013:*

56. If any person makes a statement in any "*… … return, report, certificate, financial statement, prospectus, statement or other document required by, or for the purposes of.… …*" or for the purpose of any of the provisions of the 2013 Act or the Rules made thereunder, which and if the same is found to be false in any "*… …material particulars.… …*" or "*… …which omits any material fact.… …*", such person shall be liable for action under Section 447 of the 2013 Act. It is pertinent note that the relevancy of Section 448 of the 2013 Act is to be seen once there is/ are any such statement(s) made for the purpose specified thereof. It should also be noted that Section 448 of the 2013 Act is a *saving* clause.

*SECTION 452 OF THE COMPANIES ACT, 2013:*

57. Section 452(1) of the 2013 Act provides for punishment if it is found that any officer or employee of a Company wrongfully obtains possession of any *property* or *cash* or on having possession of any such property either

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[42] Id. Para 33.

withholds it or knowingly applies it, for any other purpose other than what he is authorized or directed as per the articles, which as per Section 2(5) of the 2013 Act means the Article of Association, and authorized by this Act. Based on a complaint made by "… …*the Company or of any member or creditor or contributory thereof*… …" such person shall be punishable with fine as stipulated therein. Section 452(1) of the 2013 Act further states that the Court trying the said offence may also order such officer or employee to deliver up or refund with a fixed time period "… …*any such property*… …" or cash which is wrongfully obtained or withheld or knowingly misapplied the benefits derived from such property or cash for imprisonment for the period provided therein. However, the aforesaid imprisonment is not to be ordered subject to satisfaction of the Court, where the amounts are related to what are specified therein.

*SFIO PROCEEDINGS VERSUS THE IMPUGNED FIR:*

58. It is in view of the aforesaid that this Court is to determine the legitimacy of the impugned FIR registered pursuant to the making of the second complainant dated ***15.08.2021*** in view of the pending SFIO proceedings initiated by the Central Government on ***14.10.2021*** under Section 212 of the 2013 Act pursuant to making of the first complaint dated ***14.06.2021***. Thus, what is to be seen is the question of filing, continuance and prosecution of the proceedings before EOW. When those before the SFIO are already in subsistence is indeed a matter of concern calling for adjudication by this Court.

59. For determining the same, this Court has to keep in mind that the legislature in its wisdom, while taking into consideration the earlier facts, complexities involved and the types of cases arising which were all primarily including '*fraud*', has especially included various experts from diverse fields in the SFIO for smooth functioning of the department under Section 211 of the 2013 Act. The legislature, furthermore, has taken special care of carving out the provisions of Section 212 of the 2013 Act with all the provisions in itself as it contains the role(s), step(s), specification(s), procedure(s) and purpose(s) as to be undertaken and followed by the SFIO[43].

60. It is once again noteworthy that a cumulative reading of Section 212 of the 2013 Act leads this Court to the definitive conclusion that the proceedings therefrom can be initiated, if the Central Government finds it "… …*necessary to investigate into the affairs*… …" of a Company by the SFIO as per 212(1) of the 2013 Act, as it can then '*assign'* the SFIO to look into the affairs of such Company and to conduct an investigation under the 2013 Act as per Section 212(2) of the 2013 Act, thereby leaving "… …*no other investigating agency*… …" to investigate "… …*in respect of* … …" any offence "… …*under this Act*… …". As such "… …*the relevant documents and records*… …" in respect of such "… …*offences under this Act*… …" shall stand transferred to the SFIO. Such investigation by the

[43] Id. Para 34-49

SFIO is to be first conducted in the manner and procedure provided therein, whereafter a report is to be submitted to the Central Government within the allotted time, if any, as per Section 212(3) of the 2013 Act and the company, including its past and present officers and employees shall "… …*provide all information, explanation, documents and assistance*… …" to and as required by the Investigating Officer as per Section 212(5) of the 2013 Act.

61. It is clear from the aforesaid that whenever it is necessary for the Central Government to conduct an inquiry and investigation into the affairs of a Company, due to the complexities involved therein, SFIO, an expert body, is to be entrusted with such investigation. Once the investigation into the affairs of a Company has been initiated by the SFIO, there is no reason for any other agency to conduct investigation into the affairs of such a Company, more so whence the SFIO under Section 212 of the 2013 Act itself is a specialized agency consisting of experts from diverse fields with the expertise, knowledge and requisite information under Section 211 of the 2013 Act having a demarcated/ specialised mechanism. The SFIO has thus a vast power to investigate and enquire into the affairs of the Company once it has been given a green signal by the Central Government.

62. As discussed earlier, Section 212(2) deals with a situation wherein whilst an investigating agency of the Central Government or State Government is seized of a case and the SFIO is assigned the case under

Section 212(1) of the 2013 Act, thereafter such agency not being SFIO ***shall not*** proceed further with the investigation, particularly, if such investigation is pertaining not only to the offences under the 2013 Act but also is in "*… … respect of any offence under this Act… …*" meaning thereby that once SFIO is seized of a case to look into the affairs of a Company, all such (pending) cases with other investigating authorities investigating cases under other laws ***having relation to***/ ***directly related to*** offences under the Companies Act, 2013 ***have to be*** transferred to the SFIO.

63. Furthermore, as already opined, Section 212 of the 2013 Act is a complete code in itself wherein all the provisions contained therein are, not only interdependent upon each other and thus have to be harmoniously read together conjointly with each other, especially when it concerns readings of the provisions of Section 212(2) and Section 212(17)(a) and Section 212(17)(b) of the 2013 Act. [44]

64. It is reiterated that as per Section 212(2) of the 2013 Act, no other agency can proceed with the investigation when SFIO is seized of the matter. Similarly, Section 212(17)(a) of the 2013 Act enumerates a situation whence the SFIO is already seized of the case and thereafter, a case has come before "*… … any other investigating agency… …*" it shall provide all such documents available with it to the SFIO.

[44] Id. Para 47

65. In the opinion of this Court, as per Section 212 (17)(b) which enumerates a situation, therein that if the SFIO, while being seized of the proceedings into the affairs of a Company, comes across information which pertains to an offence under any other law, which is relevant for other investigating agency, the SFIO has to share such information with the concerned agency. Needless to say, the aforesaid provision as contained under Section 212(17)(b) of the 2013 Act has to be read in conjunction with the provisions contained in Section 212(2) of the 2013 Act, meaning thereby that "*… …any offence… …*" used therein is pertaining to such offences which are not in 'relation' to the offences under the 2013 Act. Reliance is placed upon ***Madanlal Farikchand Dudhediya vs Shree Changedeo Sugar Mills Ltd. & Ors.***[45] wherein the Hon'ble Supreme Court has held as under:-

> "*17. In construing Section 76(1) and (2), it would be necessary to bear in mind the relevant rules of construction. The first rule of construction which is elementary, is that the words used in the section must be given their plain grammatical meaning. Since we are dealing with two sub-sections of Section 76, it is necessary that the said two sub-sections must be construed as a whole "each portion throwing light, if need be, on the rest". The two sub-sections must be read as parts of an integral whole and as being inter-dependent; an attempt should be made in construing them to reconcile them if it is reasonably possible to do so, and to avoid repugnancy. If repugnancy cannot possibly be avoided, then a question may arise as to which of the two should prevail. But that question can arise only if repugnancy cannot be avoided.*"

[45] 1962 Supp (3) SCR 973

Reliance is further placed upon ***Tahsildar Singh & Anr. vs State of U.P.***[46] wherein the Hon'ble Supreme Court has held as under :-

> *"14. …… The cardinal rule of construction of the provisions of a section with a proviso is succinctly stated in Maxwell's Interpretation of Statutes, 10th Edn., at p. 162 thus:*
> *"The proper course is to apply the broad general rule of construction, which is that a section or enactment must be construed as a whole, each portion throwing light if need be on the rest.*
> *The true principle undoubtedly is, that the sound interpretation and meaning of the statute, on a view of the enacting clause, saving clause, and proviso, taken and construed together is to prevail."*
> *Unless the words are clear, the court should not so construe the proviso as to attribute an intention to the legislature to give with one hand and take away with another. To put it in other words, a sincere attempt should be made to reconcile the enacting clause and the proviso and to avoid repugnancy between the two."*

66. Thus, in the opinion of this Court, a holistic reading of the aforesaid provisions contained in Section(s) 212(2) and 212(17)(a) of the 2013 Act, the only conclusion possible to be drawn is that after any transfer as per Section 212(17)(a) of the 2013 Act to SFIO, no other agency can proceed further with investigation of such offence involving the same nature, particularly, if the said offence is arising out of the same facts and circumstances. It is trite that the provisions of a statute have to be read together as a whole to avoid inconsistency/ repugnancy and to give constructive meaning and effect to the purpose and intent of the legislature.

[46] 1959 Supp (2) SCR 875

Reliance is placed upon ***Wiseman And Another And Borneman And Others***[47] wherein House of Lords has held as under:-

> *"LORD MORRIS OF BORTH-Y-GEST My Lords, that the conception of natural justice should at all stages guide those who discharge judicial functions is not merely an acceptable but is an essential part of the philosophy of the law. We often speak of the rules of natural justice. But there is nothing rigid or mechanical about them. What they comprehend has been analysed and described in many authorities. But any analysis must bring into relief rather their spirit and their inspiration than any precision of definition or precision as to application. We do not search for prescriptions which will lay down exactly what must, in various divergent situations, be done. The principles and procedures are to be applied which, in any particular situation or set of circumstances, are right and just and fair. Natural justice, it has been said, is only "fair play in action." Nor do we wait for directions from Parliament. The common law has abundant riches: there may we find what Byles J. called "the justice of the common law" (Cooper v. Wandsworth Board of Works (1863) 14 C.B.(N.S.) 180, 194)."*

67. Further, once the legislature in its wisdom upon considering the gravity and complexity of the offences involved into the affairs of the Company has carefully crafted and carved out an expert body like the SFIO for a definitive purpose with a clear and special objective in the mind[48] then in the opinion of this Court, no other parallel agency like EOW in the present case can be held to be competent to look into the same set of facts/ allegations.

68. In any event, in the opinion of this Court, it could not have been the intention of the legislature for allowing any parallel proceedings to be

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[47] [1969] 3 WLR 706
[48] Id. Para 59

conducted by any other agency as it would not only be futile but also entail more confusion and trouble, particularly if there are diverse decisions/ outcome from two or more different sets of proceedings. The same would tantamount to sheer abuse of the process of law. Once an investigation has been initiated by the SFIO under Section 212 of the 2013 Act, a parallel investigation by a separate agency into the affairs of the Company, considering the bar under Section 212(2), is not permissible. As per the facts involved herein, *admittedly*, the SFIO had already filed numerous Interim Report(s) before this Court and before NCLT.

69. Taking note of all the aforesaid as they stand today, in the opinion of this Court, there is no reason for the subsequent impugned FIR before the EOW to continue.

70. Furthermore, in terms of the provisions of Section 212 of the 2013 Act, it is clear that the word "*assign*" used in Section 212(3) means a total assignment to the SFIO for looking into the "*affairs of the company*" as the same means to include within itself each and everything connected with the Company and all past and present officials engaged with it. The assignment of an investigation into the "*affairs of the company*" is of widest amplitude, moreover, considering "*… …in respect of any offence under this Act… …*" it would necessarily encompass all acts of wrongdoings in relation to offences under the 2013 Act. Reliance is placed upon ***Rahul Modi (supra)*** wherein the Hon'ble Supreme Court has held as under:-

> *"33. The very expression "assign" in Section 212(3) of the 2013 Act contemplates transfer of investigation for all purposes whereafter the original investigating agencies of the Central Government or any State Government are completely denuded of any power to conduct and complete the investigation in respect of the offences contemplated therein. The idea under sub-section (2) is complete transfer of investigation. The transfer under sub-section (2) of Section 213 would not stand revoked or recalled in any contingency. If a time-limit is construed and contemplated within which the investigation must be completed then logically, the provisions would have dealt with as to what must happen if the time-limit is not adhered to. The statute must also have contemplated a situation that a valid investigation undertaken by any investigating agency of the Central Government or the State Government which was transferred to SFIO, must then be retransferred to the said investigating agencies. But the statute does not contemplate that. The transfer is irrevocable and cannot be recalled in any manner. Once assigned, SFIO continues to have the power to conduct and complete investigation [ The decision of this Court in Kazi Lhendup Dorji v. CBI, 1994 Supp (2) SCC 116, para 16 : 1994 SCC (Cri) 873, though in a different situation, laid down that consent once given by the State Government under which investigation was handed over to CBI, could not be recalled or rescinded by the State Government and it is CBI which would be competent to complete the investigation.] . If that be so, can such power stand curtailed or diminished if the investigation is not completed within a particular period. The statute has not prescribed any period for completion of investigation. The prescription in the instant case came in the order of 20-6-2018. Whether such prescription in the order could be taken as curtailing the powers of SFIO is the issue.*"

Reliance is further placed upon ***Sunair Hotels (supra)*** wherein a Division Bench of this Court (comprising of Justice S. Ravindra Bhat as he then was) has held as under:-

> *"62. In the 2013 Act however both Section 210 and Section 212 confer powers on the Central Government to order an investigation on almost similar grounds as enumerated in the three sub-clauses. An investigation under Section 210 can be conducted by investigating officers appointed by the Government, who derive their powers of investigation from Section 217. On the other hand, it is important to note*

*that the SFIO is a body comprising experts in the field of forensic audits, taxation, banking etc. Further, the SFIO derives its powers of investigation under Section 212 and has been given far greater powers to investigate the affairs of the company, rather than that would be available to investigations conducted under Section 210. For instance, when a case has been assigned to the SFIO, no other agency may investigate the affairs of the company and all files concerning the affairs of the company should be transferred to the SFIO. Further, certain offences if discovered in the course of an SFIO investigation, bail would only be made available at a much higher threshold than under Section 437 of the Criminal Procedure Code. The SFIO is also bestowed with greater powers of arrest. Upon completion of the investigations by the SFIO it must submit its report to the Central Government upon which the Government may direct it to initiate prosecution against the officers of the Company. Although the constitutional validity of Section 212 is not presently under challenge in the present petition, based on the above observations by Justice Shelat in Barium Chemicals (supra), there ought to be a higher threshold of severity and scrutiny before the SFIO may be assigned a case. In the absence of a higher threshold Section 212 courts the risk of falling foul of Article 14 and an interpretation that renders a provision invalid ought to be avoided.*"

71. In the opinion of this Court, the aforesaid taken wholistically calls for interference with FIR No.06/2023 dated 12.01.2023 registered under Section(s) 406/420/120-B of the Indian Penal Code, 1860 at P.S. Economic Offences Wing, New Delhi pursuant to second complaint dated 15.08.2021, which led to registration of the impugned FIR during the pendency of earlier SFIO proceedings pursuant to first complaint dated 14.06.2021.

*FACTUAL ASPECTS:*

72. Now, adverting to the factual aspect, *admittedly*, the respondent no.2 first made his first complaint before MCA and SFIO on ***14.06.2021***. Based thereon, the Central Government (MCA) assigned it to SFIO to conduct investigation into the affairs of the said WTC, Noida under Section 212 of

the 2013 Act on ***14.10.2021***. It is also an admitted position that the same complainant, i.e., respondent no.2 then made the second complaint before the Commissioner of Police, Delhi and the EOW via e-mail on ***15.08.2021*** which resulted in the registration of the impugned FIR, quashing whereof has been sought in the present petition.

73. This Court on perusal of both, first and the second complaint finds that both of them are verbatim copy of each other, so much so, there is no change in the language, tenor, punctuation, formation or like and the only difference lies in the last paragraph, wherein the provisions of law have been changed. Both the said complaints, run into as many as 37 pages and have been made by the same respondent no.2, *albeit*, before two different agencies/ forums. For better elucidation, the comparative chart showing the relevant portions thereof, necessary for proper adjudication, is as under:-

| ***SFIO Complaint*** | ***FIR*** |
|---|---|
| ***Subject***: Complaint against fraudulent and illegal siphoning of funds running into more than 1500 crores to various companies in India and Abroad through web of shell companies out of collection of Funds illegally, running into thousands | ***Subject***: Complaint against fraudulent and illegal siphoning of funds running into more than 1500 crores to various companies in India and Abroad through web of shell companies out of collection of Funds illegally, running into |

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| of crores of Rupees by way of running Ponzi Scheme in the name of illegal 'Assured Return' in the guise of real estate project s in Gujarat, Uttar Pradesh, Punjab & Haryana. | thousands of crores of Rupees by way of running Ponzi Scheme in the name of illegal 'Assured Return' in the guise of real estate projects in Gujarat, Uttar Pradesh, Punjab & Haryana. |
| ***Accused***: WTC group of companies where ownership vests with one Ashish Bhalla or his family members lie Abhijeet Bhalla, Suparna Bhalla through complicated web of Shell companies but Ashish Bhalla and his family members do not become directors to avoid legal liabilities. Following Companies besides more than 100 additional shell Companies form part of WTC Group of Companies and are collectively called as 'WTC Group'. | ***Accused***: WTC group of companies where ownership vests with one Ashish Bhalla or his family members lie Abhijeet Bhalla, Suparna Bhalla through complicated web of Shell companies but Ashish Bhalla and his family members do not become directors to avoid legal liabilities. Following Companies besides more than 100 additional shell Companies form part of WTC Group of Companies and are collectively called as 'WTC Group'. |

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|---|---|
| ***Persons named***: (1) WTC Noida Development Company Pvt. Ltd.<br>(2) Magic eye Developers Pvt ltd.<br>(3) Spire Tech Park Pvt. Ltd.<br>(4) WTC Faridabad Infrastructure Development Pvt. Ltd.<br>(5) Abaxial Design Pvt. Ltd.<br>(6) Proactive Construction Pvt. Ltd.<br>(7) Mr. Ashish Bhalla<br>(8) Mr. Abhijeet Bhalla<br>(9) Mrs. Suparna Bhalla<br>(10) Balaji IT Parks Pvt. Ltd.<br>(11) Sundaram IT Parks Pvt. Ltd.<br>(12) August Residency Pvt. Ltd.<br>(13) Viridian Development | ***Details of Known/ Suspect/ Unknown accused***: (1) Mr. Ashish Bhalla<br>(2) Mr. Abhijeet Bhalla<br>(3) Mrs. Suparna Bhalla<br>(4) M A Sayed<br>(5) WTC Noida Development Company Pvt. Ltd.<br>(6) Spire Techpark Pvt. Ltd.<br>(7) WTC Faridabad Infrastructure Development Pvt. Ltd.<br>(8) Abaxial Design Pvt. Ltd.<br>(9) Proactive Construction Pvt. Ltd.<br>(10) Balaji IT Parks Pvt. Ltd.<br>(11) Sundaram IT Parks Pvt. Ltd.<br>(12) August Residency Pvt. |

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| Managers Pvt. Ltd.<br><br>(14) World Trade Centres Association | Ltd.<br><br>(13) Viridian Development Managers Pvt. Ltd.<br><br>(14) World Trade Centres Association<br><br>* *Only the order of the names have changed and all the names are the same.* |
| First two paragraphs: The present complaint is being made in respect of a massive financial fraud committed by WTC Group. The said group is owned by one Ashish Bhalla in which whose Flagship Company named 'WTC Naida Development Pvt Ltd (WTC) along with other companies, having the felonious backing/ endorsement/ patronage of WTCA, are consistently engaged | First two paragraphs: The present complaint is being made in respect of a massive financial fraud committed by WTC Group. The said group is owned by one Ashish Bhalla in which whose Flagship Company named 'WTC Naida Development Pvt Ltd (WTC) along with other companies, having the felonious backing/ endorsement/ patronage of WTCA, are consistently |

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| in siphoning off funds in India and abroad thereby also Committing serious violations of FEMA, Prevention of Money Laundering Act 2002, GST Act. Income Tax Act, SEBI Act, 1992, SEBI (CIS] Regulations 1998, RERA Act 2016, IPC, Companies Act, etc. It is worth noting that the active participation of WTCA in the instant fraud, duping thousands of gullible investors, is apparent from the fact that every project (including residential where WTCA is not even authorized to grant franchise, as per their own constitution/byelaws) launched by Ashish Bhalla's group of companies bear the name of 'WTC or 'World Trade Center' for the purpose of betraying gullible investors who always | engaged in siphoning off funds in India and abroad thereby also Committing serious violations of FEMA, Prevention of Money Laundering Act 2002, GST Act. Income Tax Act, SEBI Act, 1992, SEBI (CIS] Regulations 1998, RERA Act 2016, IPC, Companies Act, etc. It is worth noting that the active participation of WTCA in the instant fraud, duping thousands of gullible investors, is apparent from the fact that every project (including residential where WTCA is not even authorized to grant franchise, as per their own constitution/byelaws) launched by Ashish Bhalla's group of companies bear the name of 'WTC or 'World Trade Center' |

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| get captivated by WTC Brand's glare & dazzle. In essence WTCA is actively involved in defrauding investors in India alongside Ashish Bhalla.<br>Infact, instant fraud explained hereinafter involves complex, multi-disciplinary ramifications while having serious public interest at stake due to the sheer magnitude of money laundering involved, apart from various other aspects. It is worth noting that the accused have collected more than Rs. 5,000 Crores and have also siphoned/misappropriated the same due to lackadaisical approach of authorities | for the purpose of betraying gullible investors who always get captivated by WTC Brand's glare & dazzle. In essence WTCA is actively involved in defrauding investors in India alongside Ashish Bhalla.<br>Infact, instant fraud explained hereinafter involves complex, multi-disciplinary ramifications while having serious public interest at stake due to the sheer magnitude of money laundering involved, apart from various other aspects. It is worth noting that the accused have collected more than Rs. 5,000 Crores and have also siphoned/misappropriated the same due to lackadaisical approach of authorities |
| The present complaint is divided | The present FIR is divided into |

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| IV: | (Conclusion) |

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| | Abetment |
| PART IV: | Bullet Points (Conclusion) |

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| It is sufficient to say that due to the nature of facts involved, it is Incumbent to Involve experts from the field of accountancy, forensic auditing, law, Information technology, investigation company law, capital market and taxation for investigating the present case which cannot be done by any other agency except ***SFIO Department***<br>As such it is prayed that your good self may kindly register my complaint against all accused companies as it is clear from all above that the sole objective is to run and operate illegal Ponzi Schemes and Serious Fraud with | It is sufficient to say that due to the nature of facts involved, it is Incumbent to Involve experts from the field of accountancy, forensic auditing, law, Information technology, investigation company law, capital market and taxation for investigating the present case which cannot be done by any other agency except ***EOW***.<br>As such it is prayed that your good self may kindly register my complaint against all accused companies as it is clear from all above that the sole objective is to run and operate illegal Ponzi Schemes and Serious Fraud with public at |

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| public at large. These frauds are punishable under Companies Act, Income Tax Act, GST Act, Indian Penal Code, RERA, SEBI Act, PMLA, FEMA and other relevant laws” | large. These frauds are punishable under Companies Act, Income Tax Act, GST Act, Indian Penal Code, RERA, SEBI Act, PMLA, FEMA and other relevant laws”.<br>*(Emphasis supplied)*<br><br>* *Only the names of the agency have been changed in both the complaints, everything else is verbatim/ similar.* |

74. Perusal of the records, especially that of the aforesaid first complaint and the impugned FIR before this Court, reveal that respondent no.2, though is the complainant before two different forums, *however*, he is only a Power of Attorney holder of Mr. Sunil Gandhi, having no direct connection with the Project qua which the proceedings have been initiated by the SFIO or which is involved before EOW in FIR No.006/2023. In the opinion of this Court, facts emerging from the aforesaid are such which reflect that the respondent no.2 has been clearly indulging in forum shopping. The respondent no.2 cannot be allowed to vent his ire.

75. Moreover, it is the same respondent no.2 who, himself has expressed/ made the same averments vide his own subsequent e-mail filed before the Commissioner of Police, Delhi and the EOW on ***15.08.2021*** which resulted in the registration of the impugned FIR to the effect that the offences involved therein are those which are very much falling within the ambit of SFIO, and there is a need of an expert agency to look into the offences mentioned therein. Thereby confirming that the SFIO is the only expert body which can take up and then look into what is stated in the impugned FIR. As evidently visible from the aforesaid there is a clear admission by the respondent no.2 himself, which, in the opinion of this Court, is the correct position of law that nobody barring the SFIO is competent to proceed with the investigation in the impugned FIR.

76. The only difference between the first complaint resulting in the SFIO proceedings made by respondent no.2 and the second complaint resulting in the registration of the impugned FIR also made by the respondent no.2 is that the said respondent in the end of the complaint has instead of using the words "*… …cannot be done by any other agency except SFIO Department… …*" in the initial complaint made to the MCA cleverly replaced it with the words "*… …cannot be done by any other agency except EOW… …*" with a view to include Section(s) 406/ 420/ 120B IPC, since the offence of '*fraud*' *per-se* does not find mention in the IPC. The same, in the opinion of this Court, does not make an *iota* of difference as it seems to

be a deliberate act. As such, the respondent no.2 cannot be given any benefit of the same.

77. In any event, it is thus not in dispute that the allegations made in the impugned FIR had all been mentioned and contained in the first complaint made by the respondent no.2 before the MCA which thence resulted in instillation of the SFIO proceedings against the petitioner. The same is/ are encapsulated the table below for giving a better elucidation: -

| ***Allegations made in impugned FIR*** | ***Provision of The Companies Act, 2013*** |
|---|---|
| Money misappropriated through fraudulent inflation of invoices and inflated payments made to group companies to deceive. | ***Section 447*** *[Explanation (i)]*: Allegation amounts to act with intention to deceive and to gain undue advantage from investors and allotees. |
| Investors and allottees into believing money is being utilized for construction. | ***Section 452***: Allegations amounts to wrongfully utilizing property of company (including cash) or the purposes other than those expressed or directed in the articles and authorised by the 2013 Act. |
| The funds collected are siphoned off | ***Section 447*** *[Explanation (i)]*: |

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| by taking part of the money from investors in cash and then not accounting for the same. | Allegation amounts to act and omission to gain undue advantage from investors and allottees.<br>*Section 448*: Falsification of financial statements and account books. |
| Rate per sq. ft. as shown to have been realized is much lower than rate being paid by customers. However, since assured returns are on total amount, the assured returns can be seen to be much higher. | ***Section 447*** *[Explanation (i)]*: Allegation amounts to act and omission to gain undue advantage from investors and allottees.<br>***Section 448***: Falsification of financial<br>statements and account books. |
| Huge amount of funds collected from investors have been siphoned out to various shell companies in the name of payments for contracts, consultancy services, showing inflated costs by entering into fraudulent contracts with related | ***Section 447*** *[Explanation (i)]*: Allegation amounts to an act to gain undue advantage from and injure the interests of investors and allottees.<br>***Section 452***: Allegations amounts to wrongfully utilizing |

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| group shell companies. | property of company (including cash) or the purposes other than those expressed or directed in the articles and authorised by the 2013 Act. |
| Assured returns paid to investors have been shown as construction cost. | ***Section 447*** *[Explanation (i)]*: Allegation amounts to act and omission to gain undue advantage from investors and allottees.<br>***Section 448***: Falsification of financial<br>statements and account books.<br>***Section 452***: Allegations amounts to wrongfully utilizing property of company (including cash) or the purposes other than those expressed or directed in the articles and authorised by the 2013 Act. |
| Giving unsecured loans to related parties to the tune of Rs. 500 crores. | ***Section 447*** *[Explanation (i)]*: Allegation amounts to act and |

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| | omission to gain undue advantage from investors and allottees.<br>***Section 452***: Allegations amounts to wrongfully utilizing property of company (including cash) or the purposes other than those expressed or directed in the articles and authorised by the 2013 Act. |
| The Assured Returns model being a Ponzi scheme. Money taken from old<br>investors is given as assured returns to new investors instead of being utilized in construction. | ***Section 447*** *[Explanation (i)]*: Allegation amounts to act with intention to deceive and to gain undue advantage from investors and allotees.<br>***Section 452***: Allegations amounts to wrongfully utilizing property of company (including cash) or the purposes other than those expressed or directed in the articles and authorised by the 2013 Act. |

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| Use of “non-lockable units”, “Lease Commitment Charges”, and “private placement of debentures” as a means to deceive investors and allottees into investing in a Ponzi scheme/ Collective Investment Scheme. | ***Section 447*** *[Explanation (i)]*: Allegation amounts to act with intention to deceive and to gain undue advantage from investors and allotees.<br>***Section 452***: Allegations amounts to wrongfully utilizing property of company (including cash) or the purposes other than those expressed or directed in the articles and authorised by the 2013 Act.<br>*Section 36*: Allegations essentially amount to using deceptive or misleading statements to induce people to invest in acquiring and subscribing to securities. |
| Multiple sale/ booking of same space in the projects. | ***Section 447*** *[Explanation (i)]*: Allegation amounts to act with intention to deceive and to gain undue advantage from investors and allotees. |

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| | ***Section 452***: Allegations amounts to wrongfully utilizing property of company (including cash) or the purposes other than those expressed or directed in the articles and authorised by the 2013 Act. |
| Adjusting assured returns owed to allottees and investors by making false claims of adjusting future instalments and by allotting additional area in future projects without consent of customers. | ***Section 447*** *[Explanation (i)]*: Allegation amounts to act with intention to deceive and to gain undue advantage from investors and allotees. |

78. The aforesaid makes it amply clear that the allegations raised by respondent no.2 as contained in the impugned FIR are all covered within Section(s) 447, Section 452, Section 36 of the 2013 Act. It is thus more than apparent therefrom that the present FIR is nothing but an attempt to wreck vengeance upon the petitioner with an ulterior motive considering the chequered history of the petitioner and the respondent no.2. The same is not permissible and has been held repeatedly by various Courts across the

Country, especially after following ***State of Haryana vs. Bhajan Lal***[49] wherein the Hon'ble Supreme Court has held as under:-

> *"*"*102. … … (1) Where the allegations made in the first information report or the complaint, even if they are taken at their face value and accepted in their entirety do not prima facie constitute any offence or make out a case against the accused.*
> *(2) Where the allegations in the first information report and other materials, if any, accompanying the FIR do not disclose a cognizable offence, justifying an investigation by police officers under Section 156(1) of the Code except under an order of a Magistrate within the purview of Section 155(2) of the Code.*
> *(3) Where the uncontroverted allegations made in the FIR or complaint and the evidence collected in support of the same do not disclose the commission of any offence and make out a case against the accused.*
> *(4) Where the allegations in the FIR do not constitute a cognizable offence but constitute only a non-cognizable offence, no investigation is permitted by a police officer without an order of a Magistrate as contemplated under Section 155(2) of the Code.*
> *(5) Where the allegations made in the FIR or complaint are so absurd and inherently improbable on the basis of which no prudent person can ever reach a just conclusion that there is sufficient ground for proceeding against the accused.*
> *(6) Where there is an express legal bar engrafted in any of the provisions of the Code or the Act concerned (under which a criminal proceeding is instituted) to the institution and continuance of the proceedings and/or where there is a specific provision in the Code or the Act concerned, providing efficacious redress for the grievance of the aggrieved party.*
> *(7) Where a criminal proceeding is manifestly attended with mala fide and/or where the proceeding is maliciously instituted with an ulterior motive for wreaking vengeance on the accused and with a view to spite him due to private and personal grudge.*"

Reliance is further placed upon ***Vijay Kumar Ghai & Ors. vs. State of West Bengal & Ors.***[50] wherein the Hon'ble Supreme Court has held as under:-

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[49] (1992) Supp (1) SCC 335

*"19. This Court in the widely celebrated judgment of State of Haryana v. Bhajan Lal [State of Haryana v. Bhajan Lal, 1992 Supp (1) SCC 335 : 1992 SCC (Cri) 426] considered in detail the scope of the High Court powers under Section 482CrPC and/or Article 226 of the Constitution of India to quash the FIR and referred to several judicial precedents and held that the High Court should not embark upon an inquiry into the merits and demerits of the allegations and quash the proceedings without allowing the investigating agency to complete its task. At the same time, this Court identified the following cases in which FIR/complaint can be quashed : (SCC pp. 378-79, para 102)… …*

*xxxx*

*21. This Court in Inder Mohan Goswami v. State of Uttaranchal [Inder Mohan Goswami v. State of Uttaranchal, (2007) 12 SCC 1 : (2008) 1 SCC (Cri) 259] observed : (SCC p. 11, para 27)*
*"27. The powers possessed by the High Court under Section 482 of the Code are very wide and the very plenitude of the power requires great caution in its exercise. The court must be careful to see that its decision in exercise of this power is based on sound principles. The inherent power should not be exercised to stifle a legitimate prosecution. The High Court should normally refrain from giving a prima facie decision in a case where all the facts are incomplete and hazy; more so, when the evidence has not been collected and produced before the court and the issues involved, whether factual or legal, are of such magnitude that they cannot be seen in their true perspective without sufficient material. Of course, no hard-and-fast rule can be laid down in regard to cases in which the High Court will exercise its extraordinary jurisdiction of quashing the proceedings at any stage."*
*22. In Indian Oil Corpn. v. NEPC India Ltd. [Indian Oil Corpn. v. NEPC India Ltd., (2006) 6 SCC 736 : (2006) 3 SCC (Cri) 188] , a two-Judge Bench of this Court reviewed the precedents on the exercise of jurisdiction under Section 482 of the Criminal Procedure Code, 1973 and formulated guiding principles in the following terms : (SCC p. 748, para 12)*
*"12. … (i) A complaint can be quashed where the allegations made in the complaint, even if they are taken at their face value and accepted in their*

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[50] (2022) 7 SCC 124

*entirety, do not prima facie constitute any offence or make out the case alleged against the accused.*
*For this purpose, the complaint has to be examined as a whole, but without examining the merits of the allegations. Neither a detailed inquiry nor a meticulous analysis of the material nor an assessment of the reliability or genuineness of the allegations in the complaint, is warranted while examining prayer for quashing of a complaint.*
*(ii) A complaint may also be quashed where it is a clear abuse of the process of the court, as when the criminal proceeding is found to have been initiated with mala fides/malice for wreaking vengeance or to cause harm, or where the allegations are absurd and inherently improbable.*
*(iii) The power to quash shall not, however, be used to stifle or scuttle a legitimate prosecution. The power should be used sparingly and with abundant caution.*
*(iv) The complaint is not required to verbatim reproduce the legal ingredients of the offence alleged. If the necessary factual foundation is laid in the complaint, merely on the ground that a few ingredients have not been stated in detail, the proceedings should not be quashed. Quashing of the complaint is warranted only where the complaint is so bereft of even the basic facts which are absolutely necessary for making out the offence.*
*(v)***" "*

Reliance is also placed upon ***Ramesh Chandra Gupta vs. State of Uttar Pradesh & Ors.***[51] wherein the Hon'ble Supreme Court has held as under:-

*"15. This Court has an occasion to consider the ambit and scope of the power of the High Court under Section 482 CrPC for quashing of criminal proceedings in Vineet Kumar v. State of Uttar Pradesh[1] decided on 31st March, 2017. It may be useful to refer to paras 22, 23 and 41 of the above judgment where the following was stated:*
*"22. Before we enter into the facts of the present case it is necessary to consider the ambit and scope of jurisdiction under Section 482 CrPC vested in the High Court. Section 482 CrPC saves the inherent power of the High Court to make such orders as may be necessary to give effect to*

[51] 2022 SCC OnLine SC 1634

*any order under this Code, or to prevent abuse of the process of any court or otherwise to secure the ends of justice.*

*23. This Court time and again has examined the scope of jurisdiction of the High Court under Section 482 CrPC and laid down several principles which govern the exercise of jurisdiction of the High Court under Section 482 CrPC. A three-Judge Bench of this Court in State of Karnataka v. L. Muniswamy, (1977) 2 SCC 699 held that the High Court is entitled to quash a proceeding if it comes to the conclusion that allowing the proceeding to continue would be an abuse of the process of the Court or that the ends of justice require that the proceeding ought to be quashed. In para 7 of the judgment, the following has been stated:*

*'7. … In the exercise of this wholesome power, the High Court is entitled to quash a proceeding if it comes to the conclusion that allowing the proceeding to continue would be an abuse of the process of the court or that the ends of justice require that the proceeding ought to be quashed. The saving of the High Court's inherent powers, both in civil and criminal matters, is designed to achieve a salutary public purpose which is that a court proceeding ought not to be permitted to degenerate into a weapon of harassment or persecution. In a criminal case, the veiled object behind a lame prosecution, the very nature of the material on which the structure of the prosecution rests and the like would justify the High Court in quashing the proceeding in the interest of justice. The ends of justice are higher than the ends of mere law though justice has got to be administered according to laws made by the legislature. The compelling necessity for making these observations is that without a proper realisation of the object and purpose of the provision which seeks to save the inherent powers of the High Court to do justice, between the State and its subjects, it would be impossible to appreciate the width and contours of that salient jurisdiction.'*

*41. Inherent power given to the High Court under Section 482 CrPC is with the purpose and object of advancement of justice. In case solemn process of Court is sought to be abused by a person with some oblique motive, the Court has to thwart the attempt at the very threshold. The Court cannot permit a prosecution to go on if the case falls in one of the categories as illustratively enumerated by this Court in State of Haryana v. Bhajan Lal, 1992 Supp (1) SCC 335. Judicial process is a solemn proceeding which cannot be allowed to be converted into an instrument of operation or harassment. When there are materials to indicate that a criminal proceeding is manifestly attended with mala fides and proceeding is maliciously instituted with an ulterior motive, the High*

*Court will not hesitate in exercise of its jurisdiction under Section 482 CrPC to quash the proceeding under Category 7 as enumerated in State of Haryana v. Bhajan Lal, 1992 Supp (1) SCC 335 which is to the following effect:*

*'102.(7) Where a criminal proceeding is manifestly attended with mala fides and/or where the proceeding is maliciously instituted with an ulterior motive for wreaking vengeance on the accused and with a view to spite him due to private and personal grudge.'*

*Above Category 7 is clearly attracted in the facts of the present case. Although, the High Court has noted the judgment of State of Haryana v. Bhajan Lal, 1992 Supp (1) SCC 335 but did not advert to the relevant facts of the present case, materials on which final report was submitted by the IO. We, thus, are fully satisfied that the present is a fit case where the High Court ought to have exercised its jurisdiction under Section 482 CrPC and quashed the criminal proceedings."*

*16.The exposition of law on the subject relating to the exercise of the extra-ordinary power under Article 226 of the Constitution or the inherent power under Section 482 CrPC are well settled and to the possible extent, this Court has defined sufficiently channelized guidelines, to give an exhaustive list of myriad kinds of cases wherein such power should be exercised. This Court has held in para 102 in State of Haryana v. Bhajan Lal[2] as under:*

***"**102**.** In the backdrop of the interpretation of the various relevant provisions of the Code under Chapter XIV and of the principles of law enunciated by this Court in a series of decisions relating to the exercise of the extraordinary power under Article 226 or the inherent powers under Section 482 of the Code which we have extracted and reproduced above, we give the following categories of cases by way of illustration wherein such power could be exercised either to prevent abuse of the process of any court or otherwise to secure the ends of justice, though it may not be possible to lay down any precise, clearly defined and sufficiently channelised and inflexible guidelines or rigid formulae and to give an exhaustive list of myriad kinds of cases wherein such power should be exercised.*

*(1) Where the allegations made in the first information report or the complaint, even if they are taken at their face value and accepted in their entirety do not prima facie constitute any offence or make out a case against the accused.*

*(2) Where the allegations in the first information report and other materials, if any, accompanying the FIR do not disclose a cognizable*

*offence, justifying an investigation by police officers under Section 156(1) of the Code except under an order of a Magistrate within the purview of Section 155(2) of the Code.*
*(3) Where the uncontroverted allegations made in the FIR or complaint and the evidence collected in support of the same do not disclose the commission of any offence and make out a case against the accused.*
*(4) Where, the allegations in the FIR do not constitute a cognizable offence but constitute only a non-cognizable offence, no investigation is permitted by a police officer without an order of a Magistrate as contemplated under Section 155(2) of the Code.*
*(5) Where the allegations made in the FIR or complaint are so absurd and inherently improbable on the basis of which no prudent person can ever reach a just conclusion that there is sufficient ground for proceeding against the accused.*
*(6) Where there is an express legal bar engrafted in any of the provisions of the Code or the concerned Act (under which a criminal proceeding is instituted) to the institution and continuance of the proceedings and/or where there is a specific provision in the Code or the concerned Act, providing efficacious redress for the grievance of the aggrieved party.*
*(7) Where a criminal proceeding is manifestly attended with mala fide and/or where the proceeding is maliciously instituted with an ulterior motive for wreaking vengeance on the accused and with a view to spite him due to private and personal grudge.*""

*GENERALI SPECIBUS NON DEROGANT:*

79. *Generalia Specialibus Non Derogant* (General things do not derogate from special things). It is trite that if there is any kind of conflict between 'special law' and a 'general law', the former would take precedence. It is a matter of fact that the 2013 Act which is a 'special law', which was enacted only in the year 2013 as against the Cr.P.C. which is a 'general law' which was enacted much before to that in year 1973. When Section 212 of the 2013 Act, which is the special law is clear and is unambiguous, it will take precedence over the provisions of Cr.P.C. which

is a 'general law'. This is more so as there is nothing contradictory specified in the special law to already prevalent general law. Reliance is placed upon ***Opto Circuits vs. Axis Bank***[52] wherein the Hon'ble Supreme Court has held as under:-

> *"11. Mr S.V. Raju, learned Additional Solicitor General made a subtle attempt to contend that the power of seizure is available under Section 102 CrPC, which has been exercised and as such the freezing of the account would remain valid. We are unable to appreciate and accept such contention for more than one reason. Firstly, as noted, it has been the contention of Respondent 4 that the PMLA is a standalone enactment. If that be so and when such enactment contains a provision for seizure which includes freezing, the power available therein is to be exercised and the procedure contemplated therein is to be complied with. Secondly, when the power is available under the special enactment, the question of resorting to the power under the general law does not arise. Thirdly, the power under Section 102 CrPC is to the police officer during the course of investigation and the scheme of the provision is different from the scheme under the PMLA. Further, even sub-section (3) to Section 102 CrPC requires that the police officer shall forthwith report the seizure to the Magistrate having jurisdiction, the compliance with which is also not shown if the said provision was in fact invoked. That apart, the impugned Communication dated 15-5-2020 does not refer to the power being exercised under the Code of Criminal Procedure."*

Reliance is further placed upon ***CIT vs. Shahzada Nand & Sons***[53] wherein the Hon'ble Supreme Court has held as under:-

> *"10. Before we advert to the said arguments, it will be convenient to notice the relevant rules of construction. The classic statement of Rowlatt, J., in Cape Brandy Syndicate v. IRC [(1921) 1 KB 64, 71] still holds the field. It reads:*
> *"In a Taxing Act one has to look merely at what is clearly said. There is no room for any intendment. There is no equity about a tax. There is no*

[52] (2021) 6 SCC 707
[53] (1966) 3 SCR 379

*presumption as to a tax. Nothing is to be read in, nothing is to be implied. One can only look fairly at the language used."*

*To this may be added a rider : in a case of reasonable doubt, the construction most beneficial to the subject is to be adopted. But even so, the fundamental rule of construction is the same for all statutes, whether fiscal or otherwise. "The underlying principle is that the meaning and intention of a statute must be collected from the plain and unambiguous expression used therein rather than from any notions which may be entertained by the court as to what is just or expedient". The expressed intention must guide the court. Another rule of construction which is relevant to the present enquiry is expressed in the maxim, generalia specialibus non derogant, which means that when there is a conflict between a general and a special provision, the latter shall prevail. The said principle has been stated in Craies on Statute Law, 5th Edn., at p. 205, thus:*

*"The rule is, that whenever there is a particular enactment and a general enactment in the same statute, and the latter, taken in its most comprehensive sense, would overrule the former, the particular enactment must be operative, and the general enactment must be taken to affect only the other parts of the statute to which it may properly apply."*

*But this rule of construction is not of, universal application. It is subject to the condition that there is nothing in the general provision, expressed or implied, indicating an intention to the contrary : see Maxwell on Interpretation of Statutes, 11th Edn., at pp. 168-169. When the words of a section are clear, but its scope is sought to be curtailed by construction, the approach suggested by Lord Coke in Heydon case [(1584) 3 Rep 7b] , yield better results:*

*"To arrive at the real meaning, it is always necessary to get an exact conception of the aim, scope, and object of the whole Act : to consider, according to Lord Coke : (1) What was the law before the Act was passed; (2) What was the mischief or defect for which the law had not provided; (3) What remedy Parliament has appointed; and (4) The reason of the remedy."*

*With these rules of construction in mind, let us now tackle the problem raised in this case. Under Section 34(1)(a), after it was amended by the Finance Act, 1956, a notice in respect of an escaped concealed income could be issued at any time. The terms of clause (a) and the expression "at any time" are clear and unambiguous and, if there is nothing in the Act detracting from the width of the said terms, it is clear that a notice can be issued at any time in respect of the concealed income of any year*

*not being a year ending before March 31, 1941. But Section 34(1-A) provides for the issue of notice in respect of escaped income of the previous years within the period beginning on September 1, 1939, and ending on March 31, 1946. Does this sub-section detract from the generality of Section 34(1)(a)? The history of the said provision may usefully be noticed. As we have stated earlier, the Parliament passed the Taxation of Income (Investigation Commission) Act, 1947, mainly to catch the escaped incomes of the war profiteers. This Court in Suraj Mall Mohta and Co. v. A.V. Viswanatha Sastri [(1955) 1 SCR 448] and Muthiah v. CIT [(1955) 2 SCR 1247] held that Section 5(4) and 5(1) of the said Act became void on the commencement of the Constitution as offending Article 14 thereof. The first decision led to the insertion of sub-sections (I-A) to (I-D) in Section 34 by the Income tax (Amendment) Act, 1954, with effect from July 17, 1954. The object of the Amending Act was to provide for the assessment or re-assessment of persons who had, to a substantial extent, evaded payment of taxes during the war years and for matters connected therewith. But at the time sub-section (1-A) was inserted in Section 34, the period of limitation provided with regard to issue of notices under Section 34(1)(a) was 8 years and for cases falling under Section 34(1)(b) it was 4 years; but, as the Income Tax (Amendment) Act, 1954, came into force only on July 17, 1954, the said periods of limitation prescribed in respect of escaped concealed incomes during the said period had run out except in respect of one or two years. So, with the twin object of extending the time and expediting the assessment, the second proviso was introduced therein to the effect that no such notice should be issued after March 31, 1956. But, notwithstanding the said Act, presumably notices could not have been issued against all the evaders of tax with incomes of rupees one lakh or more during the said period. Parliament also wanted to bring to tax escaped concealed incomes during the period not covered by the said years. With that object, in 1956 Section 34 was amended by the Finance Act, 1956, by which it was provided that notice under Section 34(1)(a) can be issued at any time. But sub-section (1-A) was retained, including the second proviso. This amendment, along with the other amendments, made by the said Act came into force on April 1, 1956. In 1959, the said section was again amended by the Indian Income Tax (Amendment) Act, 1959. Under sub-section (4), as amended by the 1959 amendment Act, notice under sub-section (1)(a) might be issued at any time notwithstanding that at the time of the issue of notice the period of 8 years specified in that sub-section before its amendment by the Finance*

*Act, 1956, had expired in respect of the year to which the notice related. This amendment was necessitated by the judgments of the Bombay and Calcutta High Courts in Debi Dutt v. T. Belan [(1959) 35 ITR 781] and S.C. Prashar v. Vasantsen [(1956) 29 ITR 857] respectively holding that if the right of the Income Tax Officer to reopen an assessment was barred under the law for the time being in force, no subsequent enlargement of the time could revive such right in the absence of press words or necessary intendment. Sub-section (4) was added to Section 34 to make it abundantly clear that notice under Section 34(1)(a) could be issued at any time notwithstanding that the said right was barred before the Amendment Act of 1956. This history of the legislation leaves no room for doubt that the intention of the legislature was to bring the escaped concealed income of rupees one lakh and more to tax without any time limit. Before the 1956 Act was passed, the period of limitation prescribed for proceeding against concealed incomes of rupees one lakh and more during the war years and the earlier years had expired. The legislature stepped in to prevent evasion of taxes on such incomes and lifted the ban of limitation in respect thereof, subject to certain conditions.*"

Reliance is also placed upon ***Maya Mathew vs. State of Kerala & Ors.***[54] wherein the Hon'ble Supreme Court has held as under:-

"*12. The rules of interpretation when a subject is governed by two sets of rules are well settled. They are:*

*(i) When a provision of law regulates a particular subject and a subsequent law contains a provision regulating the same subject, there is no presumption that the latter law repeals the earlier law. The rule-making authority while making the later rule is deemed to know the existing law on the subject. If the subsequent law does not repeal the earlier rule, there can be no presumption of an intention to repeal the earlier rule;*

*(ii) When two provisions of law—one being a general law and the other being a special law govern a matter, the court should endeavour to apply a harmonious construction to the said provisions. But where the intention of the rule-making authority is made clear either expressly or impliedly, as to which law should prevail, the same shall be given effect.*

[54] (2010) 4 SCC 498

*(iii) If the repugnancy or inconsistency subsists in spite of an effort to read them harmoniously, the prior special law is not presumed to be repealed by the later general law. The prior special law will continue to apply and prevail in spite of the subsequent general law. But where a clear intention to make a rule of universal application by superseding the earlier special law is evident from the later general law, then the later general law, will prevail over the prior special law.*

*(iv) Where a later special law is repugnant to or inconsistent with an earlier general law, the later special law will prevail over the earlier general law.*

*13.Having regard to the fact that several special rules had been tailor-made to suit and meet the special requirements of different specified services, the General Rules recognised the need for the Special Rules to prevail over the General Rules. Rule 2 of the General Rules providing for it, is extracted below:*

*"2. Relation to the Special Rules.—If any provision in the General Rules contained in the part is repugnant to a provision in the Special Rules applicable to any particular service contained in Part III, the latter shall in respect of that service, prevail over the provision in the General Rules in this part."*

*Therefore, the provision of the Special Rules [Note (2) under Entry 5 of the Table] will prevail over the provision of the General Rules [Note (3) under Rule 5]. Even without such a specific provision, contextually, the said later special rule would have prevailed over the said prior general rule.*

*14.The question whether there can be an exception to the primacy given to the Special Rules by Rule 2 of the General Rules, was considered by this Court in S. Prakash [(1999) 5 SCC 624 : 1999 SCC (L&S) 997] and Prasad Kurien [(2008) 3 SCC 529 : (2008) 1 SCC (L&S) 856] , with particular reference to Note (3) to Rule 5 of the General Rules.*

*15.In S. Prakash [(1999) 5 SCC 624 : 1999 SCC (L&S) 997] , this Court considered whether the provisions of the Special Rules, the Kerala Agricultural Income Tax and Sales Tax Service Rules, will have to yield to Note (3) to Rule 5 of the General Rules. This Court held: (SCC pp. 633-34, para 14)*

*"14. From the aforesaid discussion, it is clear that if the intention of the rule-making authority was to establish a rule of universal application to all the services in the State of Kerala for which the Special Rules are made, then the Special Rules will give way to the General Rules enacted*

*for that purpose. This has to be found out from the language used in the Rules which may be express or by implication. If the language is clear and unqualified, the subsequent General Rule would prevail despite repugnancy. If the intention of the rule-making authority is to sweep away all the Special Rules and to establish a uniform pattern for computation of the ratio or percentage of direct recruits and by transfer, in such a case, the Special Rules will give way. … The language of Note (3) is crystal clear and is for removal of any ambiguity by using positive and negative terms. It applies to all the Special Rules whenever a ratio or percentage is prescribed in the Rules. It also emphatically states that it has to be computed on the cadre strength of the post to which the recruitment is to be made and not on the basis of the vacancies existing at that time."*

*(emphasis supplied)*

*16.In Prasad Kurien [(2008) 3 SCC 529 : (2008) 1 SCC (L&S) 856] , while considering the Special Rules, the Kerala Excise and Prohibition Subordinate Service Rules, 1974, vis-à-vis Note (3) to Rule 5 of the General Rules, this Court followed the dictum in S. Prakash [(1999) 5 SCC 624 : 1999 SCC (L&S) 997] .*

*17.These decisions reiterate the position that if the intention of the rule-making authority is to make a later general rule to apply to all services in the State, for which different earlier special rules exist, then the existing special rules will give way to such later general rule. That is, where the general rule is made subsequent to the special rule and the language of the general rule signified that it was intended to apply to all services and prevail over any prior special rules, the intention of the rule-making authority should be given effect by applying the subsequent general rule instead of the earlier special rule.*

*18.This Court held that the language of Note (3) to Rule 5 of General Rules showed that it was intended to prevail over existing Special Rules which indicated a contrary position. What is significant is that the two decisions considered the Special Rules that were earlier in point of time to the General Rules as amended by the 1992 Amendment rules which introduced Note (3) to Rule 5 of the General Rules.*

*19.This Court held, on reading the General Rules in conjunction with the Special Rules, that Note (3) to Rule 5 of General Rules will prevail over the corresponding provisions in the Special Rules showing a different intention, when deciding whether the ratio of each feeder category*

> *should be determined with reference to the cadre strength or existing vacancies.*
> *20.What logically follows from the principle enunciated in the two decisions is that if any special rule is subsequent to the general rule, then the question of examining whether the prior general rule will prevail over a later special rule will not arise at all having regard to the categorical provision contained in Rule 2 of the General Rules. The principle laid down in those decisions will not apply where the special rule is made subsequent to the general rule.*"

80. It is thus notable that the SFIO proceedings are primarily governed by what is enumerated in the relevant provisions of Section 212 and Section 447 of the 2013 Act in addition to the other provisions of the 2013 Act as enumerated hereinabove. Not only Section 212 of the 2013 Act but also, the 2013 Act itself is a special piece of legislation enacted specifically for looking into the affairs of a Company, which has alleged to have committed '*fraud*' whereas the proceedings before the EOW involving the provisions of the IPC, which are governed by the provisions of the Cr.P.C., a general piece of legislation. While dealing with the provisions of the 2013 Act, this Court cannot lose sight of the fact that the provisions of Section 212 introduced and contained in the 2013 Act is in addition to and not in derogation of any provisions contained in any other Act(s) or Statute(s). In view thereof and in any event, in case of a conflict, the provisions of Section 212 of the 2013 Act shall have an overriding effect upon the provisions of the Cr.P.C. in respect of offences relating to a Company. It is once again reiterated that it is trite law that special piece of legislation overrides the general piece of legislation. Reliance is placed upon ***Serious***

***Fraud Investigation Office vs. Rahul Modi & Anr. (supra)*** wherein the Hon'ble Supreme Court has held as under:-

> *"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:*
> *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.*
> *2. For completion of investigation, sub-section (12) of Section 212 does not contemplate any period.*
> *3. Under sub-section (11) of Section 212 there could be interim reports as and when directed.*
> *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 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 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. "*

*REGISTRATION OF SECOND FIR VERSUS ALREADY REGISTERED FIR:*

81. It is trite law that subsistence of two FIRs is not maintainable as they can neither be filed nor allowed to co-exist or continue at the same time, particularly, whence they are arising out of the same set of facts and allegations, more so, whence the complainant happens to be the same in both the FIRs. Thus, in such an event, in the opinion of this Court and as laid down by the Hon'ble Supreme Court, the subsequent FIR calls for quashing as the fundamental right of a citizen/ person as provided under Part III of The Constitution of India and the power of the Police under Cr.P.C. has to be balanced and a person cannot be subjected to fresh investigation(s) under the same set of allegations qua the same offence(s). Reliance is placed upon ***T.T. Antony vs. State of Kerala***[55] wherein the Hon'ble Supreme Court has held as under: -

[55] (2001) 6 SCC 181

> *"27. A just balance between the fundamental rights of the citizens under Articles 19 and 21 of the Constitution and the expansive power of the police to investigate a cognizable offence has to be struck by the court. There cannot be any controversy that sub-section (8) of Section 173 CrPC empowers the police to make further investigation, obtain further evidence (both oral and documentary) and forward a further report or reports to the Magistrate. In Narang case [(1979) 2 SCC 322 : 1979 SCC (Cri) 479] it was, however, observed that it would be appropriate to conduct further investigation with the permission of the court. However, the sweeping power of investigation does not warrant subjecting a citizen each time to fresh investigation by the police in respect of the same incident, giving rise to one or more cognizable offences, consequent upon filing of successive FIRs whether before or after filing the final report under Section 173(2) CrPC. It would clearly be beyond the purview of Sections 154 and 156 CrPC, nay, a case of abuse of the statutory power of investigation in a given case. In our view a case of fresh investigation based on the second or successive FIRs, not being a counter-case, filed in connection with the same or connected cognizable offence alleged to have been committed in the course of the same transaction and in respect of which pursuant to the first FIR either investigation is under way or final report under Section 173(2) has been forwarded to the Magistrate, may be a fit case for exercise of power under Section 482 CrPC or under Articles 226/227 of the Constitution. "*

*FATE OF IMPUGNED FIR ON SAME FACTS VERSUS THE FIRST COMPLAINT:*

82. Admittedly, this is a case involving FIR No.06/2023 dated 12.01.2023 registered under Section(s) 406/420/120-B IPC at P.S. EOW, New Delhi and complaint dated 14.06.2021 made to the MCA, and SFIO proceedings initiated by the Central Government vide order 14.10.2021 under Section 212 of the 2013 Act identically placed against each other wherein SFIO proceedings has been initiated at the behest of the Central Government made by the respondent no.2.

83. This Court being mindful of the factum and legal position that proceedings initiated under Section 154 Cr.P.C. and that under Section 212 of the 2013 Act are different from one another. One such difference is what is contained in Section 212(14) of the 2013 Act wherein the Central Government, after examination of the Report so received under Section 212(12) after due legal advice, may direct SFIO to initiate prosecution against the Company and also against those who are directly and/ or indirectly connected with the affairs of the said Company[56]. This Court finds that the same is different from the provisions of the Cr.P.C. under Chapter XII.

84. A bare on perusal of the various provisions of the 2013 Act, taken together/ collectively in a harmonious manner and also taking note of the enshrined principles of natural justice which require that essentially philosophy of law has to be followed in a just, fair and judicious manner to strike and maintain a fine balance of equities and based on what has been held by the Hon'ble Supreme Court in ***T.T. Antony (supra)*** coupled with the fact that a specialised agency, i.e. SFIO is already seized of the investigation, and the rights enshrined under Part III of The Constitution of India along with provisions under Section 212(17)(a) of the 2013 Act as discussed earlier, in the opinion of Court, the impugned FIR cannot be allowed to subsist in the present form. Reliance is placed upon ***Maneka***

[56] Id. Para 43

***Gandhi vs Union of India***[57] wherein the Hon'ble Supreme Court has held as under:-

> *"9. We may commence the discussion of this question with a few general observations to emphasise the increasing importance of natural justice in the field of administrative law. Natural justice is a great humanising principle intended to invest law with fairness and to secure justice and over the years it has grown into a widely pervasive rule affecting large areas of administrative action. Lord Morris of Borth-y-Gest spoke of this rule in eloquent terms in his address before the Bentham Club:*
> *"We can, I think, take pride in what has been done in recent periods and particularly in the field of administrative law by invoking and by applying these principles which we broadly classify under the designation of natural justice. Many testing problems as to their application yet re-remain to be solved. But I affirm that the area of administrative action is but one area in which the principles are to be deployed. Nor are they to be invoked only when procedural failures are shown. Does natural justice qualify to be described as a 'majestic' conception? I believe it does. Is it just a rhetorical but vague phrase which can be employed, when needed, to give a gloss of assurance? I believe that it is very much more. If it can be summarised as being fair-play in action — who could wish that it would ever be out of action? It denotes that the law is not only to be guided by reason and by logic but that its purpose will not be fulfilled; it lacks more exalted inspiration. [ Current Legal Problems, 1973, Vol. 26, p. 16] "*
> *And then again, in his speech in the House of Lords in Wiseman v. Borneman [1971 AC 297 : (1969) 3 All ER 275] the learned Law Lord said in words of inspired felicity:*
> *"... that the conception of natural justice should at all stages guide those who discharge judicial functions is not merely an acceptable but is an essential part of the philosophy of the law. We often speak of the rules of natural justice. But there is nothing rigid or mechanical about them. What they comprehend has been analysed and described in many authorities. But any analysis must bring into relief rather their spirit and their inspiration than any precision of definition or precision as to application. We do not search for prescriptions which will lay down exactly what must, in various divergent situations, be done. The*

[57] (1978) 1 SCC 248

*principles and procedures are to be applied which, in any particular situation or set of circumstances, are right and just and fair. Natural justice, it has been said, is only 'fair play in action'. Nor do we wait for directions from Parliament. The common law has abundant riches : there may we find what Byles, J., called 'the justice of the common law' ".*
*Thus, the soul of natural justice is "fair-play in action" and that is why it has received the widest recognition throughout the democratic world. In the United States, the right to an administrative hearing is regarded as essential requirement of fundamental fairness. And in England too it has been held that "fair-play in action" demands that before any prejudicial or adverse action is taken against a person, he must be given an opportunity to be heard. The rule was stated by Lord Denning, MR in these terms in Schmidt v. Secretary of State or Home Affairs [(1969) 2 Ch D 149 : (1969) 1 All ER 904] — "where a public officer has power to deprive a person of his liberty or his property, the general principle is that it has not to be done without his being given an opportunity of being heard and of making representations on his own behalf". The same rule also prevails in other Commonwealth countries like Canada, Australia and New Zealand. It has even gained access to the United Nations (vide American Journal of International Law, Vol. 67, p. 479). Magarry, J., describes natural justice "as a distillate of due process of law" (vide Fontaine v. Chastarton [(1968) 112 Solicitor General 690] ). It is the quintessence of the process of justice inspired and guided by "fair-play in action". If we look at the speeches of the various Law Lords in Wiseman case [1971 AC 297 : (1969) 3 All ER 275] it will be seen that each one of them asked the question "whether in the particular circumstances of the case, the Tribunal acted unfairly so that it could be said that their procedure did not match with what justice demanded", or, was the procedure adopted by the Tribunal "in all the circumstances unfair?" The test adopted by every Law Lord was whether the procedure followed was fair in all the circumstances and "fair-play in action" required that an opportunity should be given to the taxpayer "to see and reply to the counter-statement of the Commissioners" before reaching the conclusion that "there is a prima facie case against him". The inquiry must, therefore, always be : does fairness in action demand that an opportunity to be heard should be given to the person affected?*"

85. In the opinion of this Court, especially in view of what is contained above herein, it would be a travesty of justice and a gross abuse of the

process of law, if the impugned FIR is allowed to co-exist and be proceeded with simultaneously along with the SFIO proceedings as the same would tantamount to vexing the petitioner twice because he will be subjected twice over again and that too by two different agencies at the same time for the same offence. This cannot be permitted, when there exists a bar under the special law i.e., Section 212(2) of the 2013 Act. Should the same be allowed, two different agencies will be investigating the same set of facts and may come out with two independent results in the form of two separate results/ Reports, which in all likelihood, will lead to confusion and further debate, particularly if, there are divergent opinion(s)/ Reports/ results, the same could never have been the intension of the legislature.

86. Taking into the account the aforesaid, more particularly Section 212(2) read with Section 212(17)(a) of the 2013 Act, this Court is of the opinion that it would be in the interest of justice and benefit of the general public and the money and resources involved and also all the parties involved herein, if the impugned FIR is transferred to the SFIO, which shall take over the same along with the already pending proceedings before it arising out of the complaint dated 14.06.2021. There is no doubt about the fact that the SFIO proceedings can proceed with respect to the offences under the 2013 Act and also under the IPC. In fact, it is not the other way around as the EOW cannot take over the investigation qua the offence(s) under the 2013 Act which is the specific domain of the SFIO, is a matter of

fact which needs not be gone into by this Court as the same is not involved herein. Interestingly a co-ordinate Bench of Rajasthan High Court, while dealing with somewhat similar facts as involved herein, in ***Stepping Stone (supra)*** held as under: -

> *"18. Be that as it. may, it would be too pre-mature for this court to draw conclusions with regard to the aforesaid aspects. However, as pointed out earlier in the foregoing parts, it would be in the interest of justice that the investigation relating to FIR and subsequent complaint of using the proceeds of fraud committed in buying shares, be conducted by SFIO in the matter.*
> *19.The petitioner as well as the applicants before this court can always submit their stand before the concerned SFIO who shall look into the entire case and reach to its own independent conclusion. If it is found that the shares as purchased by the applicants are in no manner connected, the SFIO shall be free to unfreeze the shares. However, if he reaches to the conclusion otherwise that money is involved, he shall take all steps to prevent loss to the Govt, and to the petitioner-company who claims of having been subjected to fraud. The investigation in FIR No. 213/2020 registered at Police Station Shah- janpur District Bhiwadi is, therefore, transferred to the SFIO. The Investigation Officer in FIR No. 213/2020 shall handover all details as required to the SFIO."*

Reliance is further placed upon the judgment dated 04.01.2023 in SLP(Crl.) No. 7325/2022 entitled ***Anil Hiralal Shah vs State of Rajasthan*** wherein the challenge was made to ***Stepping Stone (supra)*** wherein the Hon'ble Supreme Court has upheld the same while holding as under:-

> *"… ….Our attention has been drawn to the provisions of sub Section(2) of Section 210 of the 2013 Act, which stipulates that where an order is passed by a Court or Tribunal in any proceeding 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. This provision applies to proceedings arising out of complaints of illegalities of corporate entities, and the requirement that it would be for the Central Government to order investigation would not apply to cases of this*

> *nature. It is our opinion that it would be within the jurisdiction of the Constitutional Court, even if that Court exercises power or jurisdiction emanating from the Code of Criminal Procedure 1973, to direct investigation in respect of complaint of commission of any offence brought before it, by any specialized investigating agency. Provided of course, such specialized agency must otherwise have the expertise to deal with such offences. The SFIO would come within the ambit of power of that Constitutional Court, as an investigating agency, upon whom such direction could be issued. The statutory provisions containing the manner of engaging such agency would not bind the Constitutional Court in issuing directions for investigation to reach at the root of the offences alleged before it."*

87. A shadow *per-se* is without meaning and is non-existent on its own accord, thus, a shadow cannot be treated differently. The facts therein are such that in view of the aforesaid discussions the subsequent impugned FIR is nothing but a shadow of the first complaint dated 14.06.2021 made by the respondent no.2 to the MCA which has led to the initiation of the SFIO proceedings. Interestingly, though the scheme of the 2013 Act and the functions/ procedure of the investigation of the said agency i.e. SFIO in comparison to that of the other independent agency in the impugned FIR namely EOW, respectively follow the 2013 Act and the Cr.P.C. respectively, leading to similar consequences.

88. In the present case, the ingredients of offences under Sections 406 and 420 of the IPC, as detailed hereinabove, are well and truly covered/ contained by the provisions of the 2013 Act[58]. Reliance is placed upon ***Dr.***

[58] Id. Para 77

***Vimla vs Delhi Administration***[59] wherein the Hon'ble Supreme Court has held as under:-

> *"5. Before we consider the decisions cited at the Bar, it would be convenient to look at the relevant provisions of the Indian Penal Code:*
> *"463 : Whoever makes any false document or part of a document with intent to cause damage or injury, to the public or to any person, or to support any claim or title, or to cause any person to part with property or to enter into any express or implied contract, or with intent to commit fraud or that fraud may be committed, commits forgery.*
> *464 : A person is said to make a false document-First-Who dishonestly or fraudulently makes, signs, seals or executes a document or part of a document, or makes any mark denoting the execution of a document, with the intention of causing it to be believed that such document/or part of a document was made, signed, sealed or executed by or by the authority of a person by whom or by whose authority he knows that it was not made, signed, sealed or executed, or at a time at which he knows that it was not made, signed, sealed or executed; or*
> *"***"*
> *The definition of "false document" is a part of the definition of "forgery". Both must be read together. If so read, the ingredients of the offence of forgery relevant to the present enquiry are as follows: (1) fraudulently signing a document or a part of a document with an intention of causing it to be believed that such document or part of a document was signed by another or under his authority; (2) making of such a document with an intention to commit fraud or that fraud may be committed. In the two definitions, both mens rea described in Section 464 i.e. "fraudulently" and the intention to commit fraud in Section 463 have the same meaning. This redundancy has perhaps become necessary as the element of fraud is not the ingredient of other intentions mentioned in Section 463. The idea of deceit is a necessary ingredient of fraud, but it does not exhaust it; an additional element is implicit in the expression. The scope of that something more is the subject of many decisions. We shall consider that question at a later stage in the light of the decisions, bearing on the subject. The second thing to be noticed is that in Section 464 two adverbs, "dishonestly" and "fraudulently" are used alternatively indicating thereby that one excludes the other. That means*

[59] 1963 Supp (2) SCR 585

*they are not tautological and must be given different meanings. Section 24 of the Penal Code defines "dishonestly" thus:*
*"Whoever does anything with the intention of causing wrongful gain to one person or wrongful loss to another person, is said to do that thing 'dishonestly'.*
*"Fraudulently" is defined in Section 25 thus:*
*"A person is said to do a thing fraudulently if he does that thing with intent to defraud but not otherwise".*
*The word "defraud" includes an element of deceit. Deceit is not an ingredient of the definition of the word "dishonestly" while it is an important ingredient of the definition of the word "fraudulently". The former involves a pecuniary or economic gain or loss while the latter by construction excludes that element. Further, the juxtaposition of the two expressions "dishonestly" and "fraudulently" used in the various sections of the Code indicates their close affinity and therefore the definition of one may give colour to the other. To illustrate, in the definition of "dishonestly", wrongful gain or wrongful loss is the necessary ingredient. Both need not exist, one would be enough. So too, if the expression "fraudulently" were to be held to involve the element of injury to the person or persons deceived, it would be reasonable to assume that the injury should be something other than pecuniary or economic loss. Though almost always an advantage to one causes loss to another and vice versa, it need not necessarily be so. Should we hold that the concept of "fraud" would include not only deceit, but also some injury to the person deceived, it would be appropriate to hold by analogy drawn from the definition of "dishonestly" that to satisfy the definition of "fraudulently" it would be enough if there was a non-economic advantage to the deceiver or a non-economic loss to the deceived. Both need not co-exist.*
*xxxx*
*7. The classic definition of the word "fraudulently" is found in Stephen's History of the Criminal Law of England, Vol. 2, at p. 121 and it reads:*
*"I shall not attempt to construct a definition which will meet every case which might be suggested, but there is little danger in saying that whenever the words 'fraud' or 'intent to defraud' or 'fraudulently' occur in the definition of a crime two elements at least are essential to the commission of the crime : namely, first, deceit or an intention to deceive or in some cases mere secrecy; and secondly, either actual injury possible in jury or to a risk of possible injury by means of that deceit secrecy…. This intent is very seldom the only, or the principal, intention*

*entertained by the fraudulent person, whose principal object nearly every case is his own advantage…. A practically conclusive test of the fraudulent character of a deception for criminal purposes is this: did the author of the deceit derive any advantage from which could not have been had if the truth had been known? If so it is hardly possible that the advantage should not have had an equivalent in loss or risk of loss to someone else, and if so, there was fraud."*

*It would be seen from this passage that "fraud" is made up of two ingredients deceit and injury. The learned author also realizes that the principal object of every fraudulent person in nearly every case is to derive some advantage though such advantage has a corresponding loss or risk of loss to another. Though the author has not visualized the extremely rare situation of an advantage secured by one without a corresponding loss to another, this idea pursued in later decisions.*

*8. As regards the nature of this injury, in Kenny's Outline of Criminal Law, 15th Edn., at p. 333, it is stated that pecuniary detriment is unnecessary. In Baycraft v. Creasy [(1801) 2 East 92] LeBlanc, J., observed:*

*"by fraud is meant an intention to deceive; whether it be from any expectation of advantage to the party himself or from the illwill towards the other is immaterial".*

*This passage for the first time brings out the distinction between an advantage derived by the person who deceives in contrast to the loss incurred by the person deceived. Buckley, J., in Re London & Globe Finance Corporation Ltd. [(1903) 1 Ch 732] brings out the ingredients of fraud thus:*

*"To deceive is, I apprehend, to induce a man to believe that a thing is true which is false, and which the person practising the deceit knows or believes to be false. To defraud is to deprive by deceit; it is by deceit to induce a man to act to his injury. More tersely it may be put, that to deceive is by falsehood to induce a state of mind; to defraud is by deceit to induce a course of action."*

*The English decisions have been elaborately considered by the Court of Criminal Appeal in R. v. Welham [(1960) 1 All ER 260, 264, 266]. In that case, hire-purchase finance companies advanced money on a hire-purchase form and agreement and on credit-sale agreements witnessed by the accused. The form and agreements were forgeries. The accused was charged with offences of uttering forged documents with intent to defraud. It was not proved that he had intended to cause any loss of money to the finance companies. His intention had been by deceit to*

*induce any person who was charged with the duty of seeing that the credit restrictions then current were observed to act in a way in which he would not act if he had known the true facts, namely, not to prevent the advancing of large sums of money exceeding the limits allowed by law at the time. The court held that the said intention amounted to intend to defraud. Hilbery, J., speaking for the court, pointed out the distinction between deceit and defraud and came to the conclusion that "to defraud" is "to deprive by deceit". Adverting to the argument that the deprivation must be something of value, i.e, economic loss the learned Judge observed:*

*"We have, however, come to the conclusion that this is too narrow a view. While, no doubt, in most cases of an intention to defraud the intention is to cause an economic loss, there is no reason to introduce any such limitation. Provided that the intention is to cause the person deceived to act to his real detriment, it matters not that he suffers no economic loss. It is sufficient if the intention is to deprive him of a right or to induce him to do something contrary to what it would have been his duty to do, had he not been deceived."*

*On the basis of the said principle, it was held that the accused by deceit induced the finance companies to advance moneys contrary to the credit restrictions and that he was guilty of the offence of forgery. This decision is therefore a clear authority for the position that the loss or the injury caused to the person deceived need not be economic loss. Even a deprivation of a right without any economic consequences would be enough. This decision has not expressed any definite opinion on the question whether a benefit to the accused without a corresponding loss to the person deceived would amount to fraud. But it has incidentally touched upon that aspect. The learned Judge again observed:*

*"…This the appellant was doing in order that he might benefit by getting further loans."*

*This may indicate that a benefit derived by the person deceiving another may amount to an act to defraud that other.*

*9. A Full Bench of the Madras High Court, in Kotamraju Venkatraadu v. Emperor [(1905) ILR 28 Mad 90, 96, 97] had to consider the case of a person obtaining admission to the matriculation examination of the Madras University as a private candidate producing to the Registrar a certificate purporting to have been signed by the headmaster of a recognized High School that he was of good character and had attained his 20th year. It was found in that case that the*

*candidate had fabricated the signature of the headmaster. The court held that the accused was guilty of forgery. White, C.J., observed:*

*"Intending to defraud means, of course, something more than deceiving."*

*10.He illustrated this by the following example:*

*"A tells B a lie and B believes him. B is deceived but it does not follow that A intended to defraud B. But, as it seems to me, if A tells B a lie intending that B should do something which A conceives to be to his own benefit or advantage, and which, if done, would be to the loss or detriment of B, A intends to defraud B."*

*The learned Chief Justice indicated his line of thought, which has some bearing on the question now raised, by the following observations:*

*"I may observe, however, in this connection that by Section 24 of the Code person does a thing dishonestly who does it with the intention of causing wrongful gain or wrongful loss. It is not necessary that there should be an intention to cause both. On the analogy of this definition, it might be said that either an intention to secure a benefit or advantage on the one hand, or to cause loss or detriment on the other, by means of deceit is an intent to defraud."*

*But, he found in that case that both the elements were present. Benson, J. pointed out at p. 114:*

*"I am of opinion that the act was fraudulent not merely by reason of the advantage which the accused intended to secure for himself by means of his deceit, but also by reason of the injury which must necessarily result to the University, and through it to the public from such acts if unrepressed. The University is injured, if through the evasion of its bye-laws, it is induced to declare that certain persons have fulfilled the conditions prescribed for Matriculation and are entitled to the benefits of Matriculation, when in fact, they have not fulfilled those conditions for the value of its examinations is depreciated in the eyes of the public if it is found that the certificate of the University that they have passed its examinations is no longer a guarantee that they have in truth fulfilled the conditions on winch alone the University professes to certify them as passed, and to admit them to the benefits of Matriculation."*

*Boddam, J., agreed with the learned Chief Justice and Benson, J. This decision accepts the principle laid down by Stephen, namely, that the intention to defraud is made up of two elements, first an intention to deceive and second the intention to expose some person either to actual injury or risk of possible injury; but the learned Judges were also inclined to hold on the analogy of the definition of "dishonestly" in*

*Section 24 of the Code that intention to secure a benefit or advantage to the deceiver satisfies the second condition.*"

Reliance is further placed upon ***R.K. Dalmia v. Delhi Administration***[60] wherein the Hon'ble Supreme Court has held as under:-

> *"50. Similarly, we do not see any reason to restrict the word "property" in Section 405 to "movable property" as held in Jugdown Sinha v. Queen Empress [ILR 23 Cal 372] . In that case also the learned Judges gave no reason for their view and just referred to the Bombay case [(1869) 6 Bom High Ct Rep (Crown Cases) 33]. Further, the learned Judges observed at page 374:*
> *"In this case the appellant was at most entrusted with the supervision or management of the factory lands, and the fact that he mismanaged the land does not in our opinion amount to a criminal offence under Section 408."*
> *xxxx*
> *76.On the other hand, a Full Bench of the Calcutta High Court took a different view in Nrigendro Lall Chatterjee v. Okhoy Coomar Shaw [21 WR (Criminal Rulings) 59, 61]. The Court said:*
> *"We think the words of Section 405 of the Penal Code are large enough to include the case of a partner, if it be proved that he was in fact entrusted with the partnership property, or with a dominion over it, and has dishonestly misappropriated it, or converted it to his own use."*
> *Similar view was expressed in Emperor v. Jagannath Raghunathdas [33 BLR 1518] Beaumont, C.J., said at P. 1521:*
> *"77. But, in my opinion, the words of the section (Section 405) are quite wide enough to cover the case of a partner. Where one partner is given authority by the other partners to collect moneys or property of the firm I think that he is entrusted with dominion over that property, and if he dishonestly misappropriates it, then I think he comes within the section."*
> *Barlee, J., agreed with this opinion.*"

89. Resultantly, this Court is not agreeable with the contentions raised by the learned APP Mr. Ajay Vikram Singh appearing for the State, learned

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[60] AIR 1962 SC 1821

counsel Mr. Satya Prakash Yadav appearing for respondent no.2, the respondent no.3 Mr. Rajiv Dawar appearing in person, ably assisted by learned counsel Mr. Sameer Dawar and learned counsel Mr. Rohit Kathuria appearing together for and on behalf of the respondent nos.3, 35 to 37 and 40 to 45, as the same are against the settled position of law. It is further clarified that with respect to the proposition of law laid down by a Co-ordinate Bench of this Court in ***S.P. Gupta (supra)***, the reliance thereon is misplaced, as the same was rendered on 24.03.2005, i.e., prior to coming into force of the 2013 Act wherein the SFIO was specifically brought in, in view of the changes happening from time to time, as elaborated hereinabove. Further, the reliance placed upon Section 26 of the General Clauses Act, is of no assistance, as the same cannot come to the aid of the aforesaid respondents, in view of what has been discussed and entailed hereinabove. Moreover, though various judgements were handed over by the aforesaid respondents during the course of arguments, but, since no reliance was placed on them, the same, are not being considered by this Court. Even otherwise, in the opinion of this Court, they have no applicability to the facts of the present case. The rest of the judgments cited by the aforesaid respondents are also of no assistance, as the facts and circumstances involved therein were different from what they are before this Court.

*PART QUASHING:*

90. This Court on a perusal of the petition herein finds that although as many as 14 persons (including companies) have been named in the impugned FIR but since there is one petitioner i.e., Mr. Ashish Bhalla and considering the prayer in the present petition, the impugned FIR can only be quashed qua the petitioner herein. In any event it has been established by the Hon'ble Supreme Court that part quashing of a FIR is permissible under law. Reliance is placed upon ***Lovely Salhotra & Anr. vs State (NCT of Delhi) & Anr.*** [61] wherein the Hon'ble Supreme Court has held as under:-

> *"3. We have taken into account the facts of the matter in question as it appears to us that no cognizable offence is made out against the appellants herein. The High Court was wrong in holding that the FIR cannot be quashed in part and it ought to have appreciated the fact that the appellants herein cannot be allowed to suffer on the basis of the complaint filed by Respondent 2 herein only on the ground that the investigation against co-accused is still pending. It is pertinent to note that the learned Magistrate has opined that no offence is made out against Co-accused 2, 3, 4 and 6 prima facie. According to us, the FIR in question filed against the appellants herein by Respondent 2 is only an afterthought with the sole intention to pressurise the appellants not to prosecute their criminal complaint filed by them under Section 138 of the Negotiable Instruments Act, 1881."*

Reliance is further placed upon ***Hitesh Verma v. State of Uttarakhand***[62] wherein the Hon'ble Supreme Court has held as under:-

> *"This Court in a judgment reported as Ishwar Pratap Singh v. State of U.P. [Ishwar Pratap Singh v. State of U.P., (2018) 13 SCC 612 : (2018) 3 SCC (Cri) 818] held that there is no prohibition under the law for quashing the charge-sheet in part. In a petition filed under Section 482 of*

[61] (2018) 12 SCC 391
[62] (2020) 10 SCC 710

*the Code, the High Court is required to examine as to whether its intervention is required for prevention of abuse of process of law or otherwise to secure the ends of justice. The Court held as under : (SCC p. 618, para 9)*

*"9. Having regard to the settled legal position on external interference in investigation and the specific facts of this case, we are of the view that the High Court ought to have exercised its jurisdiction under Section 482 CrPC to secure the ends of justice. There is no prohibition under law for quashing a charge-sheet in part. A person may be accused of several offences under different penal statutes, as in the instant case. He could be aggrieved of prosecution only on a particular charge or charges, on any ground available to him in law. Under Section 482, all that the High Court is required to examine is whether its intervention is required for implementing orders under the Criminal Procedure Code or for prevention of abuse of process, or otherwise to secure the ends of justice. A charge-sheet filed at the dictate of somebody other than the police would amount to abuse of the process of law and hence the High Court ought to have exercised its inherent powers under Section 482 to the extent of the abuse. There is no requirement that the charge-sheet has to be quashed as a whole and not in part. Accordingly, this appeal is allowed. The supplementary report filed by the police, at the direction of the Commission, is quashed."*"

*FINDING:*

91. Consequently, coming to the end, *albeit*, before drawing final curtains to the present litigation and conclusions thereon, this Court would like to categorically express that after an overview of the aforesaid factual matrix and legal proposition discussed hereinabove, the investigation (to be) conducted by the EOW pursuant to registration of the subsequent impugned FIR is liable to be quashed as the prior ongoing investigation conducted in the form of SFIO proceedings is arising out of the 2013 Act, which being a Special Act will prevail over the General Act, the IPC.

Further due to commonality of the allegations involved, wherein, the subsequent allegations made in the impugned FIR are already subsumed and thus shall be considered by the SFIO during the proceedings conducted by it resulting from the first complaint dated 14.06.2021 made to the MCA.

92. Therefore, the discussions entailed hereinabove has led this Court to the conclusion that the second complaint dated 15.08.2021 to the EOW resulting in registration of the impugned FIR is not maintainable in the current form, moreover, whence the first complaint dated 14.06.2021 and the second complaint dated 15.08.2021 are verbatim and are involving the same set of facts and are against the very same individual(s) and are made by the same complainant i.e., respondent no.2. Further, in view of Section 212(17)(a) read with Section 212(2) of the 2013 Act and based upon all the contentions raised by the learned (senior) counsels for the parties coupled with the documents on record, in the considered opinion of this Court, the impugned FIR is liable to be quashed and transferred to the SFIO as the proceedings thereunder are not maintainable in the eyes of law.

*CONCLUSIONS:*

93. Accordingly, in view of the aforesaid legal and factual position, this Court is thus proceeding to quash the FIR No. 06/2023 dated 12.01.2023 registered under Section(s) 406/420/120-B IPC at P.S. EOW, New Delhi qua the petitioner i.e., Mr. Ashish Bhalla only. Further, in view of Section 212(17)(a) of the 2013 Act, all the documents available with the Investigating Officer, EOW shall be transferred to the Serious Fraud

Investigation Office Head Quarter, New Delhi, within a period of *four weeks* from today, which is already seized of the complaint and investigation thereof (ongoing) against WTC group of Companies ordered by the Ministry of Corporate Affairs *vide* order dated ***14.10.2021*** under Section 212 of the Companies Act, 2013.

94. Accordingly, in view of the above the petition stands disposed of alongwith pending applications, if any.

95. Copy of this order be sent to SFIO HQ, New Delhi and S.H.O., EOW, New Delhi.

**SAURABH BANERJEE, J.**

**SEPTEMBER 15, 2023/rr**