

NATIONAL COMPANY LAW TRIBUNAL

NEW DELHI BENCH

(IB)-418(ND)2018

CORAM:

**PRESENT: MR. L. N. GUPTA
HON'BLE MEMBER(T)**

**MS. INA MALHOTRA
HON'BLE MEMBER (J)**

**ATTENDANCE-CUM-ORDER SHEET OF THE HEARING BEFORE NEW
DELHI BENCH OF THE NATIONAL COMPANY LAW TRIBUNAL ON
30.01.2020 .**

**NAME OF THE COMPANY: M/s. Alloys & Metals (INDIA) V/s. M/s.
Hindustan Paper Corporation Ltd.**

SECTION OF THE COMPANIES ACT: 271-272

S.NO.	NAME	DESIGNATION	REPRESENTATION	SIGNATURE
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Present: Mr. Vivek Sibal and Mr. Sushant Tomar, Advocates for the Liquidator
Ms. Bani Dikshit, Advocate and Mr. Ravi Prakash, CGSC for Department of Heavy Industries
Mr. Ashim Sood, Ms. Paval Chandra, Mr. Armaan Pratap Singh and Mr. Anuj Kumar, Advocates for SFIO

ORDER

CA 338/2020 has been filed by the applicant whose grievance is that his claim has not been considered by Ld. Liquidator on grounds of having being received belatedly. This Bench is of the opinion that till such time the actual assets of the Corporate Debtor are distributed, it would be open to the Liquidator to consider the claims of the applicant in this case as well as of any other applicant whose claim may otherwise be approved by him prior to actual distribution of assets.

CA 338/2020 is allowed with the aforesaid direction and stands disposed off.

CA 353/2020 has been filed by the Department of Heavy Industry praying for modification of order dated 25.11.2019. The grievance of the applicant is in respect of para 4 on page 3 of our order dated 25.11.2019, vide which we had observed that the sale is one of Govt.-to-Govt. transaction. This fact, though not disputed by Ld. Counsel for the applicant, it is prayed by her that same may be clarified as Govt.-to-Govt. transaction through the liquidator appointed in this case. This request is accepted. The same be read as Govt-

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to-Govt. transaction conducted on behalf of the Corporate Debtor through its liquidator. CA stands disposed off.

CA 842/2020 has been filed by way of a quarterly report for the period 1st October 2019 to 31st December 2019. The same is taken on record.

CA 959/2020 – Ld. Counsel appearing for the SFIO has impugned the directions given by this Bench on 04.04.2019 referring the matter to the SFIO to carry out the investigations and submit its report.

Ld. Counsel appearing for the SFIO has pointed that this court is not vested with the jurisdiction for endorsing investigation directly to the SFIO. Reliance has been placed on the decision of the Hon'ble NCLAT in Co. Appeal (AT) (Insolvency) No. 964/2019 in the matter of Union of India V/s. Maharashtra Tourism Development Corporation & Anr. which clarifies the proposition of law. The Hon'ble NCLAT had taken into consideration the provision of Section 212 the Company Act which can be resorted to for investigation; which are reproduced as under:-

“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 9 Company Appeal (AT) (Insolvency) Nos. 964 & 965 of 2019 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), [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: 11 Company Appeal (AT) (Insolvency) Nos. 964 & 965 of 2019 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 subsection (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 subsection (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.
- (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 14 Company Appeal (AT) (Insolvency) Nos. 964 & 965 of 2019 under the provisions of the Companies 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.”

The Hon'ble NCLAT further observed as under:-

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

32. Section 212 does not empower the National Company Law Tribunal or the Adjudicating Authority to refer the matter to the Central Government for investigation by the 'Serious Fraud



Investigation Office' even if it notices the affairs of the Company of defrauding the creditors and others.

33. However, investigation into affairs of company at the instance of the Tribunal has been prescribed under Section 213.

In view of the above, we are persuaded to agree with the submission made by the Ld. Counsel for the SFIO, that our order dated 04.04.2019 suffers from a jurisdictional infirmity and needs to be modified to the extent that the allegations of fraud should be referred to the Central Govt., which may endorse the same to any investigating Agency to scrutinise any financial irregularities, if deemed fit.

Copy of the order be sent to the Central Government (MCA). The Liquidator is also directed to follow up the matter.

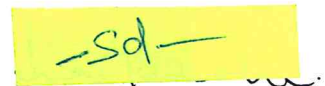
Be invested through investigation as provided under Section 212.

CA stands disposed off.

CA 100/2020 – in view of the order passed in CA 959/2020, Ld. Liquidator does not press his CA 100/2020 which has now become infructuous. Disposed off accordingly.



(L. N. Gupta)
Member (T)



(Ina Malhotra)
Member (J)