

Reserved on : 12.02.2024
Pronounced on : 16.02.2024



IN THE HIGH COURT OF KARNATAKA AT BENGALURU

DATED THIS THE 16TH DAY OF FEBRUARY, 2024

BEFORE

THE HON'BLE MR. JUSTICE M. NAGAPRASANNA

WRIT PETITION No.4268 OF 2024 (GM - RES)

BETWEEN:

EXALOGIC SOLUTIONS PRIVATE LIMITED
A COMPANY REGISTERED UNDER
THE COMPANIES ACT, 2013,
HAVING ITS REGISTERED OFFICE AT
NO.343, 9TH MAIN ROAD,
HSR LAYOUT, SECTOR-7,
BENGALURU – 560 102
REPRESENTED BY ITS DIRECTOR,
MS. VEENA T.,
AGED ABOUT 41 YEARS.

... PETITIONER

(BY SRI ARVIND DATAR, SR.ADVOCATE A/W
SRI MANU PRABHAKAR KULKARNI,
SRI MRINALSHANKAR, SRI DHARMENDRA CHATUR AND
SMT.ISHA PRAKASH, ADVOCATES)

AND:

1 . THE DIRECTOR,
SERIOUS FRAUD INVESTIGATION OFFICE
2ND FLOOR, PANDIT DEENDAYAL
ANTYODAYA BHAVAN,

CGO COMPLEX, LODIROAD,
NEW DELHI – 110 003.

2 . UNION OF INDIA
MINISTRY OF CORPORATE AFFAIRS,
KOTA HOUSE ANNEXE,
1, SHAHJAHAN ROAD,
NEW DELHI – 110 001
REPRESENTED BY
THE DIRECTOR GENERAL OF
CORPORATE AFFAIRS.

... RESPONDENTS

(BY SRI K.ARVIND KAMATH, ADDL.SOLICITOR GENERAL A/W
SRI H.SHANTHI BHUSHAN, DSGI)

THIS WRIT PETITION IS FILED UNDER ARTICLES 226 AND 227 OF THE CONSTITUTION OF INDIA PRAYING TO A) CALL FOR ALL RECORDS IN RELATION ORDER DATED 31/01/2024 BEARING NO. SFIO/INV/AOI/2023-24 PASSED BY THE R1 (AT ANNEXURE-A); b) QUASH THE ORDER DATED 31/01/2024 BEARING NO. SFIO/INV/AOI/2023-24 PASSED BY THE R1 (AT ANNEXURE-A) AS BEING ARBITRARY, ILLEGAL AND BAD IN LAW.

THIS WRIT PETITION HAVING BEEN HEARD AND RESERVED FOR ORDERS ON 12.02.2024, COMING ON FOR PRONOUNCEMENT THIS DAY, THE COURT MADE THE FOLLOWING:-

ORDER

The petitioner is before this Court seeking a direction to call for records and quash order dated 31-01-2024 passed by the 1st

respondent/Director, Serious Fraud Investigation Office ('SFIO' for short).

2. Shorn of unnecessary details, facts in brief, as borne out from the pleadings, are as follows:

The petitioner claims to be a one person company incorporated in the year 2014, under the provisions of the Companies Act, 2013 (**'the Act'** for short) with the Registrar of Companies, Bangalore (hereinafter referred to as **'the Registrar'** for short). The petitioner, is represented through its Director – Share Holder. On 28-07-2020, the 2nd respondent/Ministry of Corporate Affairs, Union of India addressed a communication to the petitioner/Company observing that a complaint has been received by it in respect of certain alleged incorrect address mentioned in Form No.10 filed by the petitioner/Company with Registrar. The communication never reached the petitioner. A show cause notice also comes to be issued against the petitioner, invoking Section 12 of the Act for the alleged non-maintenance of the registered office at the address mentioned in Form No.10 filed before the Registrar. The petitioner appears to have given its reply contending that

owing to COVID-19 pandemic engulfing the nation, the Company began to work from home and, therefore, the registered office of the petitioner had been shifted. This results in another notice dated 19-08-2020 issued by the Registrar directing the petitioner to file adjudication application under Section 454 of the Act for the alleged non-maintenance of the office. The petitioner then submits an adjudication application before the Registrar who initiates adjudication proceedings against the petitioner for the alleged violation under Section 12 of the Act, with regard to non-intimation of change in address of the registered office as mandated under Section 12(4) of the Act. An order was later passed on 09-02-2021 imposing a penalty of ₹1,00,000/- each on the petitioner and the Director for the alleged violation of Section 12 of the Act. The petitioner prefers an appeal against the said order, which results in reduction of the amount of penalty to ₹20,000/-. The issue in the subject *lis* does not concern the aforesaid proceedings initiated under Section 12 of the Act.

3. On 29-01-2021 the Registrar addresses a communication of enquiry under Section 206 of the Act to the petitioner in respect

of certain transactions between the petitioner and another company in the name and style of 'Cochin Minerals and Rutile Limited' ('**CMRL**' for short). The petitioner was directed in the communication to furnish various documents and details and annual reports, audited bank statements for the years 2014-15 to 2019-20 of the transactions of the aforesaid Companies. The petitioner, in response to the said communication, is said to have furnished all the documents sought for, which results in another communication being issued by the Registrar alleging that the copy of the trial balance furnished by the petitioner was not proper and further directed submission of several documents. It is said that the petitioner has from time to time furnished all the documents that were being sought by the Registrar through several communications.

4. On 24-06-2022, the Registrar issues a notice directing the petitioner to appear in person at the office of the Registrar. The petitioner is said to have represented through various representations along with all the documents and clarifications after which the Registrar had again directed the petitioner to be

personally present on the next date of hearing. The next date was on 14-07-2022 and the proceedings were on before the Registrar in terms of the aforesaid communication which began under Section 206 of the Act. It is the averment in the petition that despite the petitioner providing all the relevant documents and details, the Registrar issues a show cause notice on 11-08-2023 alleging *inter alia* that a related party transaction has appeared between the petitioner and Kerala State Industrial Development Corporation ('KSIDC' for short) which owns 13.4% share of the Company which had transaction with the petitioner.

5. Then comes a communication/notice to the Director of the petitioner/Company seeking details of several transactions were sought in respect of certain agreements with CMRL, the notice also indicated that failure of the petitioner to furnish all the details would become open to prosecution under Sections 447 and 448 of the Act. The petitioner is stated to have complied with all the necessities that were demanded in the show cause notice contending that KSIDC was a government Company functioning independently with

its Board of Directors and had nothing to do with the family members of the Director of the petitioner/Company.

6. The further averment in the petition is that the petitioner comes to know of a Writ Petition filed before the High Court of Kerala seeking a direction to the Central Government to initiate investigation into the affairs of the petitioner/Company, CMRL and KSIDC. The said writ petition is said to be pending before the High Court of Kerala, at Ernakulum. The petitioner then avers that it comes to know from various media and newspapers that an order under Section 210 of the Act is passed by the 2nd respondent directing initiation of investigation into the affairs of the entities – CMRL, KSIDC and the petitioner on the reports of the Registrar, Bengaluru and Registrar at Ernakulum. It is the case of the petitioner that no order to that effect is even served upon the petitioner. The narration again is that, the petitioner comes to know of the order dated 31-01-2024 passed by the 2nd respondent assigning the investigation to the SFIO under Section 212 of the Act. Pursuant to the impugned order, the petitioner receives a notice on 02-02-2024 and 06-02-2024, from the SFIO which is

constituted to investigate into the affairs of the petitioner and two other Companies. The notice directed the petitioner to provide details of several documents that were sought in the said notice. The petitioner, on the said date, replies seeking extension of time upto 15-02-2024, and has filed the subject writ petition on 08-02-2024.

7. Heard Sri Arvind Datar, learned senior counsel along with learned counsels Sri Manu Prabhakar Kulkarni, Sri Mrinal Shankar, Sri Dharmendra Chatur and Smt Isha Prakash appearing for the petitioner and Sri K.Arvind Kamath, learned Additional Solicitor General of India along with Sri H.Shanthi Bhushan, learned Deputy Solicitor General of India appearing for the respondents.

SUBMISSIONS:

Petitioner:

8. The learned senior counsel representing the petitioner, Sri Arvind Datar would contend that the proceedings, under Chapter XIV of the Act which deal with inspection, inquiry and investigation begin against the petitioner, after issuance of notice under sub-

Section (4) of Section 206 of the Act. The same results in an order being passed under Section 210 which deals with investigation into affairs of a Company. The documents are sought by the competent officer under Section 210 and the petitioner has submitted, all the necessary documents, the proceedings are yet to conclude. During the pendency of the proceedings under Section 210, the learned senior counsel would submit, the SFIO could not have been assigned with the investigation, under Section 212 of the Act. He would submit that only after a report is made under Section 210, it can perhaps lead to commencement of proceedings under Section 212 of the Act, as the circumstances that would warrant investigation by the SFIO are only four which are listed in clauses (a), (b), (c) and (d) of sub-section (1) of Section 212. He would submit that Section 210 also has the same conditions for initiation of investigation except clause (d) that is found in Section 212. Therefore, he would submit that in the name of public interest, the 2nd respondent cannot go on assigning investigation, to other entities when there is already an investigation pending under Section 210 of the Act. He would contend that it is gross misuse of power conferred, on the Government of India under the Act.

8.1. The learned senior counsel would further submit that the basis of invoking the power under Section 212 should be formation of an opinion that it is necessary to have the investigation concluded into the affairs of the Company, there is no such opinion formed, in the case at hand, is the emphatic submission of the learned senior counsel. The other submission is that the petitioner is neither served with a copy of the order of the 2nd respondent dated 12-01-2024 ordering investigation under Section 210 of the Act, nor is made aware of the assignment of investigation to the SFIO under Section 212 of the Act. Therefore, the order suffers from violation of principles of natural justice, as well as, malice in law. In effect, the following are the submissions of the learned senior counsel:

- (i) *Once having commenced investigation under Section 210 of the Act, the investigation midway cannot be changed/ordered to be assigned under Section 212 of the Act to SFIO;*
- (ii) *Formation of opinion to invoke Section 212 is imperative. No such opinion is formed or notified. Therefore, the order suffers from non-application of mind;*
- (iii) *That no order either initiating investigation under Section 210 of the Act or assigning investigation to the SFIO under Section 212 of the Act is served upon*

the petitioner. Therefore, it is in violation of the principles of natural justice and resultantly, it is a product of malice in law.

The Union of India/SFIO:

9. *Per contra*, Sri.K.Arvind Kamath, the learned Additional Solicitor General of India would vehemently refute the submissions to contend that the SFIO is a multidisciplinary body. The investigation that began under Section 210 resulted in the Inspector who had taken up investigation submitting an interim report. The interim report necessitated assignment of investigation to the SFIO. Since it is a multidisciplinary body, it can call for information from any quarter which would ease completion of investigation against the petitioner. It is his contention, by taking this Court through the statement of objections that, it is not a case where ₹1.70 crores is the subject matter of investigation as is contended by the learned senior counsel for the petitioner but it is ₹ 135/- crores transaction between CMRL and the Company of the petitioner and others and those funds have been handed over to

the accounts of several political entities. It is, therefore, the investigation for assimilation of information is assigned to the SFIO.

9.1. The Additional Solicitor General would contend, the moment investigation under Section 212 of the Act commences, all other investigations pending preceding to the said assignment would cease to operate. Therefore, the submission that once Section 210 is invoked, Section 212 cannot be invoked, cannot be accepted. He would contend that no right of the petitioner is taken away and no prejudice is caused to her, as it is only an investigation conducted by different investigating entity within the Act. At the stage of investigation, it is no law that the appointment of Investigating Officer or assignment thereto should be made known to the person against whom the investigation is sought to be conducted or taken up. Natural justice, at this stage, would not be applicable to the fact situation. He would, therefore submit that the petition has to be dismissed on the ground that it projects no ground for entertaining the petition.

10. The learned senior counsel for the petitioner would join issue to contend that the SFIO was established in the wake of huge scams like the Sahara India or the Jet Airways. It is not a scam in the case at hand, but it is only alleged transactions of ₹1.70 crores, at this point in time. He would submit that he would have no objection for continuation of investigation under Section 210 of the Act, but and seeks quashment of investigation entrusted to the SFIO.

11. I have given my anxious consideration to the submissions made by the learned senior counsel and the learned Additional Solicitor General of India appearing for the respective parties and have perused the material on record.

12. The afore-narrated facts are not in dispute. The genesis of the problem is, as narrated hereinabove, but would require a little elaboration, as the issue that merits consideration is on the interpretation of the provisions of law.

THE PROTOGONISTS:

13. There are four protagonists in the *lis*. First is, the one person Company, registered under the Companies Act, before the Registrar of Companies, Karnataka. The petitioner/Company is represented through its Director-Share Holder. The second protagonist is one Cochin Minerals and Rutile Limited, having registered office in Kerala, a dormant protagonist. The third is the Union of India, Ministry of Corporate Affairs, in control of corporate affairs of companies coming within its ambit. The fourth protagonist is the Serious Fraud Investigation Office-SFIO, a multidisciplinary body, under the Ministry of Corporate Affairs, constituted under the Act for detecting and recommending prosecution of crimes by the Companies. The aforesaid are the four protagonists in the *lis*.

THE GENESIS:

14. The petitioner, as observed hereinabove, is a one person Company. This is a matter of record. The genesis of the issue appears to be that, on 28-07-2020 a communication comes about

from the Registrar at Bangalore to the Director of the petitioner/Company on the score that a complaint is received at the office of the Registrar in respect of incorrect address mentioned in Form No.10 filed by the petitioner/Company with the Registrar.

The communication reads as follows:

"No.ROCB/Complaint/EXALOGIC/2020, Date: 28-07-2020

To

Ms. Veena Thaikkandiyil
Pravik, Pandialamukku Pinarayi P.O.,
Thalassary,
KANNUR – 670 741,
KERALA
e-mail: veena@exalogic.in

Sub: Complaint dated 22-05-2020 received from
Mr. Vijay.J – in the matter of Exalogic Solutions
Pvt. Ltd (OPC) – reg.

Madam,

Whereas this office has received a complaint stating that the address of the subscriber/first director and in form 10 mentioned as "AKG Centre, Palayam, Thiruvananthapuram, Kerala-695 034". Letter dated 16-06-2020 was issued to the company at the registered address calling for the explanation. However, the letter addressed to the company returned unserved with remarks "Unclaimed, Return to sender". A copy of the said letter along with the complaint is enclosed herewith.

You are directed to offer your comments/ explanations on the complaint and also state as to why action should not be taken against the company and its director u/s 12 of the Companies Act, 2013 for non-maintenance of registered office at the address specified in the MCA portal, within 10 days hereof."

(Emphasis added)

The petitioner was directed to offer explanation on the complaint, as to why action should not be taken under Section 12 of the Act for non-maintenance of registered office at the address specified. The petitioner then submits its reply justifying the change of address or no address being maintained on the score that due to the onset of COVID-19 from March, 2020 and in terms of the notification issued by the Government of Karnataka, directing IT companies to work from home, the registered office of the petitioner was shifted to work from home. On 19-08-2020, the office of the Registrar directed the Company to file an adjudication application under Section 454 of the Act for non-maintenance of registered office of the Company.

15. The petitioner then submits an application on 02-09-2020. Based upon the said application, the Registrar initiated adjudication proceedings for imposition of penalty for alleged violation of Section 12 of the Act. An order of penalty comes about on 09-02-2021 imposing penalty of ₹ 1,00,000/- each upon the Company and its Director for the aforesaid violation of Section 12 of the Act. The petitioner files an appeal before the Regional Director,

Ministry of Corporate Affairs assailing the aforesaid order of imposition of penalty. The Appellate Authority reduces the penalty from ₹ 1,00,000/- to ₹ 20,000/-. This is one set of proceeding against the petitioner.

16. Around the same time, a communication is sent by the Registrar on 29-01-2021 calling for information under Section 206 of the Act. Proceedings under Section 206 of the Act, therefore, was sought to be initiated against the petitioner. It did not spring from air, but it was due to the information received from the Enforcement Directorate regarding the transactions between CMRL and the petitioner. The communication sent to the petitioner on 29-01-2021 reads as follows:

"Sir,

*With reference to the above subject, I am to state that this office has received a reference from Directorate of Enforcement, Bengaluru regarding the transactions between COCHIN MINERALS AND RUTILE LTD. (CMRL) and EXALOGIC SOLUTIONS PRIVATE LIMITED. **Hence, in order to examine the matter to see the compliance of various provisions of the Companies Act, 2013, this office has decided to conduct inquiry u/s 206 (4) of the Companies Act, 2013.** In this connection, you are hereby directed to submit the following documents/information within 07 days hereof:*

01. *Certified copies of the printed Annual Reports/ financial statements since incorporation till date*

with Director's Report, Audit Report and notes to accounts (three sets).

02. *Details of all Bank accounts maintained by the Company with account numbers and name of the bank and branch address.*
03. *Bank statements till date for all the accounts.*
04. *Duly Certified copy of all the Statutory registers i.e., register of contracts with related party, register of charges, register of Loan & Guarantee given and received etc. maintained by the company as per Companies Act,, 2013,if any.*
05. *Copy of the party wise Trail balance showing opening balance, debit, credit closing balance for the year 2014-15 to 2019-20.*

Yours faithfully,
Sd/-
(B. BHUVANESWARI)
ASST. REGISTRAR OF COMPANIES
KARNATAKA"

(Emphasis added)

The petitioner replies to the same enclosing certain documents with regard to transactions between CMRL and the petitioner.

17. On 01-10-2021, the Competent Authority again communicates seeking information under sub-section (4) of Section 206 of the Act directing submission of complete trial balance

showing opening balance, debit and credit for the last five years.

The communication reads as follows:

"No.ROCB/INQ/ARBB/Exalogic/004243/2021/3037,

Date: 01-10-2021

To

Exalogic Solutions Private Limited (OPC),
No.21, 2nd Floor, PID 98-50-21,
New No. 020-W0181-40, 1st Main Road,
Hebbal Ganganagara Layout,
Bangalore-560 032
EK 761014705IN

Sir,

Sub: Inquiry u/s 206(4) of the Companies Act, 2013 in
the matter of **EXALOGIC SOLUTIONS PRIVATE
LIMITED (OPC)** – Reg.

Ref: 1) This office letter of even number dated 29.1.2021
2) Your reply dated 22.02.2021

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With reference to the subject cited, I am directed to state that the trial balance submitted by you alongwith your letter under reference (2) is not proper. You are requested to submit the Complete Trial balance with Opening balance, Debit and Credit and closing balances with all entries yearwise duly certified by the Statutory Auditors of the company for the last 5 years.

2. Please furnish the Minutes of the Board meetings and General Meetings since incorporation as required under Section 118 read with Section 173(2) of the Companies Act, 2013.

3. Please furnish the details with respect to the following points:-

(a) As per the financial statement for the year endings 2017-18, 2018-19 and 2019-20, the company has taken unsecured loan from Empower India Capital Investments Private Limited, a Kerala based company

in which Shri S.N. Sasidharan Kartha, is the Managing director and major shareholders.

Year	2015-16	2016-17	2017-18	2018-19	2019-20
Amount Received(Rs)	25,00,000	37,36,000	10,36,000	4,88,569	NIL

You are requested to furnish the details of loans taken from Empower India Capital Investments Private Limited or from its directors, purpose of loan, due date of repayment, interest paid, outstanding as on date. Further, from the bank statement, it could be seen that during the year 2016-17 only a sum of Rs.25 lakhs has been received from the said entity, however, as per bank statement no amount of Rs.12,36,000/- had been received. Please state whether the amount has been received in cash or cheque/online.

(b) The company has given donation of Rs.1,30,000/- in the year ending 31.03.2019, you are requested to furnish the break up details of such donation, name of the Donee, interest of the director, etc.

(c) From the Bank Statements produced, it could be seen that the company has been regularly (almost every month), receiving amount from various Charitable organizations, Institutions etc. Please state the name of the donor and amount received, yearwise and relationship between the company and donors.

(d) Further, the Bank Statement also revealed the following receipts from Cochin Minerals and Rutile Limited:

Date	Amount credited
04-05-2017	3,15,000
12-06-2017	3,15,000
10-07-2017	3,15,000
08-08-2017	3,24,000
11-09-2017	3,24,000
13-10-2017	3,24,000

07-11-2017	3,24,000
04-12-2017	3,24,000
06-01-2018	3,24,000
17-07-2018	3,24,000
20-09-2018	3,24,000
29-01-2019	3,24,000
06-06-2018	6,48,000
29-10-2018	6,48,000
18-05-2019	6,48,000
03-04-2019	3,24,000
03-10-2018	9,72,000

You are requested to furnish the details of transactions between the company, nature of transaction(s), purpose of the receipt of the amount, agreement or contracts entered into, terms and conditions, interest of the director.

(e) Submit partywise break up of trade payables and trade receivables as at 31-03-2017, 31-03-2018, 31.03.2019 and 31-03-2020.

(f) Please submit list of employees working in the office since 1-04-2017 and remuneration/salary paid to them (yearwise).

The hardcopy of reply to be submitted in 'QUADRUPLICATE' and also send the soft copy (word document) by email.

*Yours faithfully,
Sd/-1/10/2021
(B.BHUVANESWARI)
ASST.REGISTRAR OF COMPANIES
KARNATAKA"*

(Emphasis added)

In the said communication, transactions between CMRL and the petitioner were highlighted. The receipt of amount and agreement

of contracts between CMRL and the petitioner were directed to be furnished. The query was replied to by the petitioner on 17-11-2021 contending that donation of ₹1,30,000/- in the financial year 2018-19 was paid to the Chief Minister's Distress Relief Fund and the agreement between CMRL and the petitioner was in subsistence and was sought to be attached to the communication. This, after scrutiny of documents, results in a direction to the petitioner to appear in person before the Registrar. Proceedings go on. On 11-08-2023, on completion of scrutiny of financial statements, several violations are noticed. The **heads of violations** noticed are as follows:

1. "VIOLATION OF RULE 16 OF COMPANIES (ACCEPTANCE OF DEPOSITS RULES, 2014 R/W SECTION 73 OF THE COMPANIES ACT, 2013

... ..

2. VIOLATION OF SECTION 137 r/w 134(2) R/W OF THE COMPANIES ACT, 2013 FURTHER R/W RULE 12 OF COMPANIES (ACCOUNTS) RULES, 2014

... ..

3. VIOLATION OF SECTION 129 R/W SCHEDULE III OF THE COMPANIES ACT, 2013:

... ..

4. VIOLATION OF SECTION 134 COMPANIES ACT, 2013 R/W RULE 8A OF COMPANIES (ACCOUNTS) RULES, 2014:

... ..

5. VIOLATION OF SECTION 179 OF THE COMPANIES ACT, 2013:

... ..

6. VIOLATION OF SECTION 129 R/W SCHEDULE III OF THE COMPANIES ACT, 2013:

... ..

7. VIOLATION OF SECTION 118 OF THE COMPANIES ACT, 2013:

... ..

8. VIOLATION OF SECTION 143 OF THE COMPANIES ACT, 2013:"

(Emphasis added)

The allegations on the aforesaid heads of violations are narrated after indicating the transactions between CMRL and the petitioner. When things stood thus, noticing that it requires an investigation, the investigation under Section 210 of the Act would commence. Therefore, the proceedings under Chapter XIV *qua* Section 210 of the Act commenced by an order dated 12-01-2024. It reads as follows:

"GOVERNMENT OF INDIA
MINISTRY OF CORPORATE AFFAIRS
OFFICE OF DIRECTOR GENERAL OF CORPORATE AFFAIRS
CL-II-17/39/2023-O/o DGC&A-MCA

... ..
... ..

Date; 12-01-2024.

ORDER

Whereas the Central Government is empowered under Section 210 (1)(c) of the Companies Act, 2013 (the Act) to order an investigation into the affairs of company in Public Interest.

2. Whereas, on the basis of the complaint, an inquiry of EXALOGIC SOLUTIONS PRIVATE LIMITED was conducted by the ROC, Bangalore under the provisions of Section 206(4) of the Companies Act, 2013, which highlighted various violations and offences under the Act while recommending an investigation into the affairs.

3. Whereas, further, on the basis of the report of ROC, Ernakulam submitted to the Central Government, on the complaints, it emerged that either replies furnished by COCHIN MINERALS AND RUTILE LIMITED are vague and evasive in nature, to the allegations or the reply is not furnished by KERALA STATE INDUSTRIAL DEVELOPMENT CORPORATION LIMITED with respect to the notices issued by the ROC on the basis of the complaints.

4. Now, therefore, in exercise of powers conferred under Section 210(1)(c) of the Companies act, 2013 the Central Government has formed an opinion that the affairs of the COCHIN MINERALS AND RUTILE LIMITED (CIN L2429KL1989PLC005452), KERALA STATE INDUSTRIAL DEVELOPMENT CORPORATION LIMITED (CIN U45309KL1961SGC001937) AND EXALOGIC SOLUTIONS PRIVATE LIMITED (OPC) (CIN U72200KA2014OPC076509) are to be investigated.

5. Further, the Central Government is empowered to appoint Inspectors u/s 210(3) of the Companies Act, 2013 to investigate into the affairs of the Company and to submit its report thereon to the Central Government.

6. Accordingly, in exercise of the powers conferred u/s 210(3) of the Companies Act, 2013 the Central Government hereby appoints following Inspectors:

<i>Sl.No.</i>	<i>Name of the Inspector(s)</i>	<i>Designation</i>

1.	Shri Varun BS	Dy.ROC, Karnataka
2.	Shri K.M. Shanker Narayan	Dy. Director, O/o RD (Chennai)
3.	Shri A.Gokulnath	ROC, Puducherry.

7. The Inspector(s) as appointed above, shall exercise all the powers available to them under the provisions of Companies Act, 2013. The Inspector(s) shall complete the investigation and submit the report to the Central Government within 4 months.

This order is issued for and on behalf of the Central Government."

(Emphasis added)

The order is passed under Section 210(1)(c) of the Act. It observes that there were several violations under Section 206(4) found, which are quoted *supra*, and in the light of those violations, a recommendation is made for an investigation into the affairs of the Company, as the justification of the Company was said to be vague and evasive. It was, therefore, observed that under Section 210(1)(c) of the Act, the Central Government had formed an opinion to get the issue investigated. A team of Inspectors were appointed, as found in the order *supra* and the Inspectors appointed were directed to complete the investigation and submit a report to the Central Government within 4 months. The investigation commenced.

18. During the course of investigation, it was found necessary to assign the investigation to SFIO under Section 212 of the Act on the basis of an interim report, is what is averred in the statement of objections, filed by Union of India. The relevant justification in the statement of objections is that an interim report was handed over to the Competent Authority by the Inspectors who were appointed under Section 210 of the Act. The interim report necessitated assignment of investigation to SFIO, as the submission of the learned Additional Solicitor General of India is that ₹135/- crores is given away to political entities without any accounting and the transactions are found when the documents of Income-Tax Interim Settlement Board, were noticed. According to the learned Additional Solicitor General of India, it is an offence grave in nature, which directly affects public interest and, therefore, it was handed over to SFIO. The decision of assigning the investigation to SFIO on 31-01-2024 reads as follows:

"No. SIFO/Inv/AOI/2023-24

Dated January 31, 2024.

ORDER

The Central Government has ordered (dated 31.01.2024) investigation u/s 212 (1)(a)&(c) of Companies Act, 2013 into the affairs of Exalogic Solutions Private Limited, Cochin Minerals and Rutile Limited and

Kerala State Industrial Development Corporation Limited and has assigned the same to Serious Fraud Investigation Office (SFIO).

2. And whereas the officers are required to be designated as Inspectors to carry out the investigation under Section 212(1) and Investigating Officer under Section 212(4) of the Companies Act, 2013.

3. Now, therefore, in exercise of powers conferred under Section 212(1) of the Companies Act, 2013, the following Officers are designated as Inspectors to carry out the investigation into the affairs of abovementioned companies and shall exercise all the powers available to them under the Companies Act, 2013.

*Shri Prasad Adelli, Additional Director,
Shri M.Arun Prasad, Dy. Director,
Shri K.Prabhu, Sr. AD
Shri A.Gokulnath, ROC,
Shri KMS Narayan, Deputy Director,
Shri Varun, B.S., Dy.ROC.*

4. And further in exercise of powers conferred under Section 212(4) of the Companies Act, 2013, Sri M.Arun Prasad, Dy.Director is appointed as Investigating Officer to carry out the above noted investigation. The Inspectors shall exercise all the powers available to them under the Companies Act, 2013.

5. The Inspectors and the Investigating Officer shall complete the investigation and submit their report within eight months to the Central Government.

*Sd/-
(Anuradha Thakur)
Director."*

(Emphasis added)

After the assignment to SFIO, a notice is issued on 02-02-2024 to the petitioner to produce several documents, as SFIO has been

assigned to investigate into the affairs of the petitioner/Company and Inspectors had been assigned for conduct of such investigation. It was directed that the notice be treated as a notice under Section 217(2) of the Act. It is then the Company on 7-02-2024 seeks time to produce documents and contends that it has not been served with an order of handing over investigation to SFIO. Immediately, thereafter i.e., the next day, the subject writ petition is filed before this Court, calling in question the order dated 31-01-2024, assigning the investigation to SFIO. In the light of the submissions made by the learned senior counsel for the petitioner, as quoted hereinabove, it becomes necessary to notice the statutory framework.

THE STATUTORY FRAME WORK:

19. Chapter-XIV of the Act deals with inspection, inquiry and investigation. It runs from Sections 206 to 229. What is germane to be noticed, in the case at hand is, Sections 206, 207, 210, 211 and 212 and they read as follows:

"206. Power to call for information, inspect books and conduct inquiries.—(1) Where on a scrutiny of any document filed by a company or on any information received by

him, the Registrar is of the opinion that any further information or explanation or any further documents relating to the company is necessary, he may by a written notice require the company—

(a) to furnish in writing such information or explanation; or

(b) to produce such documents,

within such reasonable time, as may be specified in the notice.

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

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

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

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

(4) If the Registrar is satisfied on the basis of information available with or furnished to him or on a

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

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

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

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

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

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

207. Conduct of inspection and inquiry.—(1) Where a Registrar or inspector calls for the books of account and

other books and papers under Section 206, it shall be the duty of every director, officer or other employee of the company to produce all such documents to the Registrar or inspector and furnish him with such statements, information or explanations in such form as the Registrar or inspector may require and shall render all assistance to the Registrar or inspector in connection with such inspection.

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

- (a) make or cause to be made copies of books of account and other books and papers; or
- (b) place or cause to be placed any marks of identification in such books in token of the inspection having been made.

(3) Notwithstanding anything contained in any other law for the time being in force or in any contract to the contrary, the Registrar or inspector making an inspection or inquiry shall have all the powers as are vested in a civil court under the Code of Civil Procedure, 1908 (5 of 1908), while trying a suit in respect of the following matters, namely:—

- (a) the discovery and production of books of account and other documents, at such place and time as may be specified by such Registrar or inspector making the inspection or inquiry;***
- (b) summoning and enforcing the attendance of persons and examining them on oath; and***
- (c) inspection of any books, registers and other documents of the company at any place.***

(4)(i) If any director or officer of the company disobeys the direction issued by the Registrar or the inspector under this section, the director or the officer shall be punishable with imprisonment which may extend to one year and with fine which

shall not be less than twenty-five thousand rupees but which may extend to one lakh rupees.

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

...

...

...

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

- (a) on the receipt of a report of the Registrar or inspector under Section 208;***
- (b) on intimation of a special resolution passed by a company that the affairs of the company ought to be investigated; or***
- (c) in public interest,***

it may order an investigation into the affairs of the company.

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

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

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 sub-section (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 2nd July, 2003 shall be deemed to be the Serious Fraud SFIO 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;**
- (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 SFIO shall be such as may be prescribed.

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 SFIO—

- (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 SFIO 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 SFIO 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:

Provided further that the Special Court shall not take cognizance of any offence referred to this sub-section 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 any officer not below the rank of 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 officer authorised under sub-section (8) shall, immediately after arrest of such person under such sub-section], 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 Special Court or 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 Special Court or 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.

(14-A) Where the report under sub-section (11) or sub-section (12) states that fraud has taken place in a company and due to such fraud any director, key

managerial personnel, other officer of the company or any other person or entity, has taken undue advantage or benefit, whether in the form of any asset, property or cash or in any other manner, the Central Government may file an application before the Tribunal for appropriate orders with regard to disgorgement of such asset, property or cash and also for holding such director, key managerial personnel, other officer or any other person liable personally without any limitation of liability.

(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 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."

(Emphasis supplied)

Section 206 deals with power to call for information, inspect books and conduct of inquiries. It is where on a scrutiny of any document filed by a Company or any information received, if the Registrar is of the opinion that further information is required, he may summon all such information or direct production of all documents. Sub-section (4) of Section 206 permits the Registrar, if he is satisfied, that there has been certain activities carried on which are fraudulent or unlawful purpose or not in compliance with the provisions of the Act, initiate such inquiry against the Company; **Section 207** deals with conduct of inspection and inquiry. Sub-section (3) of Section 207 permits the Registrar or Inspector making an inquiry to have certain powers akin to civil Court under the Civil Procedure Code; **Section 208** deals with mandate of the report of inspection that is made under Sections 206 and 207 of the Act. Section 209 deals with search and seizure; **Section 210** forms the first part of the fulcrum in the *lis*. It deals with the investigation into the affairs of the Company. Section 210 permits the Central Government, if it is of the opinion that it is necessary to investigate into the affairs of the Company, on three circumstances it may order investigation into the affairs of the said Company and

they are, (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 itself and (c) in public interest. For the purpose of investigation under Section 210, sub-section (3) permits the Government to appoint one or more persons as Inspectors to investigate into the affairs of the Company and to report thereon to the Central Government; **Section 211** deals with establishment of Serious Fraud Investigation Office which comes to be established in the year 2015.

20. **Section 212** completes the fulcrum of the *lis*, it deals with investigation into the affairs of a Company by the SFIO, on four circumstances. Investigation can be assigned to the SFIO – (a) *on receipt of a report of the Registrar or Inspector under Section 208, as is found in Section 210; (b) on intimation by the Company itself as is found in Section 210; (c) in public interest which is also found in Section 210 and what is in addition is, (d) a request from any department of the Central Government or a State Government to assign investigation to the SFIO.* What happens once investigation is handed over to the SFIO is also dealt with

under sub-section (2) of Section 212. Any investigation by any agency preceding such assignment will cease to operate. It is on the bedrock of the aforesaid statutory frame work, the issue in the *lis* needs to be considered.

21. What would unmistakably emerge from what is above analysed is, once investigation has commenced under Section 210, the statute does not render the Government of India powerless, to assign the investigation under Section 212 to the SFIO. It neither results in duplication of investigation, nor takes away any right of the petitioner. Sub-section (2) clearly mandates that once the SFIO is entrusted with investigation under Section 212, any other investigation already initiated shall not be proceeded further and further, those agencies who are/were conducting any investigation, shall transfer all the relevant documents and records in respect of those offences to the SFIO. The powers of SFIO is statutorily determined from sub-section (3) to sub-section (17) of Section 212 and for conduct of investigation there is procedure in place which need not require elaboration at this juncture.

22. The submission of the learned senior counsel for the petitioner is that when the proceedings under Section 210 are underway, assignment of investigation to the SFIO cannot take place. The strength on which the said submission is made is that there should a report under Section 210, as is directed, and only then the investigation can be handed over to the SFIO. The effect of such submission is that handing over of investigation to the SFIO, should precede a final report under Section 210. This submission is *sans* countenance as it travels on a slippery slope. Section 210 does speak of a report, the report can be either interim or final it need not be the final report only. During an investigation under Section 210, if the Inspectors, out of ***serendipity*** come across information that would *prima facie* touch upon ***skullduggery*** and thereon necessity emerges to assign the investigation to a multi-disciplinary body like the SFIO, created under the Act, this Court cannot put shackles on the hands of the Central Government, for such assignment. If it had been entrusted to any other agency outside the Act, it would have been a circumstance altogether different. It is entrusted to the SFIO which is created under the Act, i.e., in terms of Section 211 with elaborate functions under Section 212.

The protection to any Company from duplication of proceedings is kept tight under sub-section (2) of Section 212 and above all, and after all, **it is investigation.**

23. A bleak attempt is made by the learned senior counsel to submit that the phrase 'interim report' is found only in sub-section 11 of Section 212, and nowhere in Section 210 suffers from want of tenability, as observed hereinabove, the report under Section 210, can either be interim or final. The said report will not result in any penalty being imposed straight away against any Company. It is for the purpose of investigation. Investigation is for the purpose of unearthing the alleged unethical activities of any Company, in the case at hand, the petitioner/Company. The Apex Court, in plethora of cases, has observed that with the advancement of technology, economic offences have become a real threat to the functioning of the financial system of the country. Those offences become a great challenge for Investigating Agencies to detect and comprehend intricate nature of transactions, as also the role of persons involved therein. Plethora of minute exercise is expected to be undertaken

by any Investigating Agency. It is therefore, to unearth such intricate or minute details about the transactions it becomes necessary to hand it over to a multi-disciplinary body, like the SFIO. As submitted by the learned Additional Solicitor General, the multi-disciplinary body would bring about multi-departmental correspondence to arrive at any finding. Therefore, no fault can be found with the action of the Union of India, in entrusting the investigation to the SFIO.

24. The second submission is that no reasons are provided to invoke Section 212 of the Act and, therefore, it suffers from non-application of mind. This is again unacceptable, as this Court is projected with a problem of investigation being handed over. At this stage, application of mind to hand over the investigation, again in the considered view of the Court, need not form part of the said order. The statement of objections are, in defence of interim report necessitating assignment of investigation. If the Union of India has thought it fit to entrust the investigation to the SFIO, owing to certain factors which have emerged while conduct of investigation under Section 210 and in public interest, this Court in exercise of its

jurisdiction under Article 226 of the Constitution of India would not by a stroke of pen, annul such opinion of the Union of India, unless it is contrary to the statute or the action is demonstrably arbitrary. Neither of the two is present in the case at hand, as the projection of the two, by the learned senior counsel for the petitioner is *sans* acceptance. Therefore, there is no warrant to interfere at this stage.

25. Insofar as the judgments relied on by the leaned senior counsel in support of his submissions in the case of **MODERN DENTAL COLLEGE AND RESEARCH CENTRE v. STATE OF MADHYA PRADESH – (2016) 7 SCC 353** and in the case of **UTTAM DAS CHELA SUNDER DAS v. SHIROMANI GURDWARA PRABANDHAK COMMITTEE – (1996) 5 SCC 71** are inapplicable to the facts situation at this juncture. Reliance is placed on paragraph 60 of the judgment of the Apex Court in the case of **MODERN DENTAL COLLEGE AND RESEARCH CENTRE** which deals with doctrine of proportionality. It is the submission that the statute should be used only for the designated proper purpose. In the considered view of the Court, the statute is used for the

designated proper purpose. Proportionality is not what can be considered at this stage of the proceedings. The stage, as observed in the course of the order, is conduct of investigation and the Apex Court is clear that investigation process should not be interdicted or annihilated unless the grounds projected are in support of such interdiction. The grounds projected, in support of the petition, are held to be unacceptable. Therefore, the said judgment would not be applicable to the issue at this juncture. The other judgment in the case of **UTTAM DAS CHELA SUNDER DAS** is for the proposition that marginal note should be taken note of. The said judgment is again inapplicable to the facts of the case, as the statute is very clear. Reliance cannot be made on the marginal note if there is no ambiguity in the statute. There is no ambiguity as is analysed hereinabove. Therefore, the judgments relied on would not lend any support to the submissions of the learned senior counsel for the petitioner, in any manner. The action impugned does not suffer from any statutory aberration and therefore, the petition does not deserve any entertainment.

26. For the *praefatus* reasons, petition stands rejected.

Consequently, I.A.No.1 of 2024 also stands disposed.

**Sd/-
JUDGE**

bkp
CT:MJ