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

+ **W.P.(C) 13984/2021**

**SAHARA HOUSING INVESTMENT CORPORATION LIMITED
AND ORS. Petitioners**

Through: Mr. S.B Upadhyay, Senior Advocate
with Mr. Simranjeet Singh, Ms. Neha Gupta and
Ms. Rhea Dube, Advocates.

versus

UNION OF INDIA AND ORS. Respondents

Through: Mr. Chetan Sharma, Additional
Solicitor General with Mr. Anurag Ahluwalia,
Central Government Standing Counsel (UOI) with
Mr. Syed Hussain Adil Taqvi, Government
Pleader with Mr. Amit Gupta, Mr. Danish Faraz,
Mr. Vinay Yadav, Mr. Akshya Gadeock, Mr. Rishav
Dubey, Mr. R.V. Prabhat and Mr. Sahaj Garg,
Advocates.

**CORAM:
HON'BLE THE CHIEF JUSTICE
HON'BLE MS. JUSTICE JYOTI SINGH**

ORDER

% **13.12.2021**

CM APPL.44118/2021 (exemption)

Allowed, subject to all just exceptions.

Application is disposed of.

W.P.(C) 13984/2021 & CM APPL.44117/2021 (stay)

1. Issue notice.
2. Mr. Anurag Ahluwalia, learned Central Government Standing Counsel accepts notice on behalf of the Respondents and seeks time to file

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Signature Not Verified

AMIT NARAYAN
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Location:
Signing Date: 15.12.2021
22:37:00

counter affidavit.

3. Time as prayed for is granted.

4. Let counter affidavit be filed, within three weeks from today. Rejoinder thereto, if any, be filed within one week thereafter.

5. At the outset, learned Additional Solicitor General appearing on behalf of the Respondents raises a preliminary objection to the maintainability of the present petition on the ground that a writ petition seeking similar reliefs, more particularly, challenge to the order dated 27.10.2020 is pending before the Lucknow Bench of the Allahabad High Court, being W.P.(C) No.20785/2020 and another writ petition laying a challenge to the look-out circulars, being W.P.(C) No.9942/2021, is pending before the Single Bench of this Court.

6. Responding to the preliminary objection raised by the learned Additional Solicitor General, learned Senior Counsel appearing for the Petitioners submits that the writ petitions referred to by the Learned ASG, pending before the Lucknow Bench of the Allahabad High Court or before the learned Single Bench of this Court have not been filed by the Petitioners herein and thus the present petition is maintainable.

7. Arguing on behalf of the Petitioners for grant of interim relief, learned Senior Counsel urged the following points :-

(i) *Vide* the impugned order dated 31.10.2018 (Annexure P-1) passed on the basis of a report dated 14.08.2018 rendered by ROC, Mumbai, investigation was directed into the affairs of three Companies, which are as follows :-

(a) Sahara Q Shop Unique Products Range Limited,

(b) Sahara Q Gold Mart Limited, and

- (c) Sahara Housing Investment Corporation Limited.
- (ii) It was categorically mentioned in para 4 of the said order that the Investigation Report shall be submitted by the Inspectors to the Central Government within a period of three months from 31.10.2018. However, no such report was rendered within three months and in fact even today, despite passage of more than three years, the investigation is still ongoing. Section 212(3) of the Companies Act stipulates that where the investigation into the affairs of a Company has been assigned by the Central Government to SFIO, it shall submit its report to the Central Government within such period as may be specified in the order, which in the present case was three months, in the order dated 31.10.2018. Thus, there is a clear violation of statutory mandate in the present case by Respondents No.3 and 4 in continuing the investigation after lapse of the period of three months commencing from 31.10.2018.
- (iii) Perusal of the order dated 27.10.2020 reveals that no reason has been assigned in the said order as to why it was considered necessary that an investigation be made against the six Companies mentioned therein, which includes Petitioners No.2 and 3 herein. The following six Companies find part of the order dated 27.10.2020 (**Annexure P-2**):-
- (a) Aamby Valley Limited
- (b) Qing Amby City Developers Corporation Ltd.
- (c) Sahara India Commercial Corporation Limited.
- (d) Sahara Prime City Ltd.

- (e) Sahara India Financial Corporation Limited
 - (f) Sahara India Real Estate Corporation Limited.
- (iv) Section 219 of the Companies Act, 2013, deals with power of an Inspector to conduct investigation into the affairs of related Companies. It is not disclosed in the order dated 27.10.2020 as to on what basis investigation into the affairs of the six Companies was directed by the Central Government and which of the conditions of Section 219(a) to 219(d) were met. It is also not clear from the order as to what was the material brought forth by the Investigating Officer, while investigating into the affairs of the three Companies, mentioned in the order dated 31.10.2018, which led to the necessity of investigating into the affairs of these six Companies.
- (v) Even a plain reading of the provisions of Section 219 (a) to (d) leaves no doubt that there must be some affiliation between the Company under investigation and other Body Corporate during the relevant time. Order dated 27.10.2020 is completely vague and silent on the affiliation between the six Companies sought to be investigated into and the earlier three Companies under investigation, pursuant to order dated 31.10.2018. Petitioners have clearly averred in para 26 of the writ petition that the six Companies, have never been, at any relevant time, the Subsidiary Companies or the Holding Companies of the three Companies already under investigation. It is also categorically denied by the Petitioners that these six companies were ever managed by any person as Managing Director/Manager, who is

or was, at the relevant time, the Managing Director/Manager of any of the three Companies under investigation. It is further denied that the Board of Directors of any of the said six Companies are or were comprised of nominees of any of the three Companies, whose affairs are being investigated into, pursuant to the order dated 31.10.2018. Therefore, the investigation initiated pursuant to the impugned order dated 27.10.2020 (**Annexure P-2** to the memo of this writ petition), is *per se* illegal, being contrary to the statutory provision.

- (vi) Under the provisions of Section 212(1) of the Companies Act, Central Government is required to form an ‘opinion’, based on the material facts and circumstances, mentioned in the report of the Inspector or the Registrar, that investigation by the Serious Fraud Investigation Office (SFIO), is necessary into the affairs of a Company. It is only once the ‘opinion’ is formed that the Central Government can assign the investigation, into the affairs of the Company, to the SFIO. In the present case, the impugned order does not reflect any material or reason/circumstance, based on which an opinion was formed by the Central Government for ordering investigation by the SFIO. Forming an opinion, based on cogent material, which is a pre-condition and *sine qua non* for ordering investigation, is lacking in both the impugned orders. The impugned orders are thus passed in violation of provisions of Section 212 of the Companies Act, 2013. Reliance has been placed upon the judgment rendered by the Hon’ble Supreme Court in ***Rohtas***

Industries Ltd. v. S.D. Agarwal, (1969) 1 SCC 325 and of the Division Bench of the Bombay High Court in the case of ***Parmeshwar Das Agarwal vs. Additional Director*** in ***W.P. No.2025/2016***, decided on 05.10.2016.

- (vii) As per the provisions of the Companies Act, 2013, only, the Securities and Exchange Board of India ('SEBI') has power to investigate and no other Authority, much less the Respondents have any power to investigate. On this ground also, operation of the impugned orders deserves to be stayed. Reliance is placed on the judgment of the Hon'ble Supreme Court reported in ***Sahara India Real Estate Corpn. Ltd. v. SEBI, (2013) 1 SCC 1***, especially paras 309, 310 and 326.4 onwards, for the proposition that only SEBI could have conducted the investigation, if at all, and the investigation sought to be conducted by SFIO against the Petitioners is wholly illegal and without jurisdiction.
- (viii) It is a settled law that statements made before Investigating Officers are not admissible in evidence. The statements recorded under undue pressure by Respondents/Investigating Officer, having police powers cannot be read in evidence. However, Section 217(5) of the Companies Act, 2013, confers powers of a Civil Court on the Investigating Officer, including the powers to take statements on oath under Section 217(4). These statements which are procured under undue pressure can thus be used as evidence in Court, which is a matter of grave and serious concern and therefore Section 217(5) of the

Companies Act be declared as *ultra vires* and unconstitutional.

8. Having heard learned Senior Counsel appearing on behalf of the Petitioners as well as the learned ASG and looking to the facts and circumstances of the present case, we are of the view that Petitioners have made out a *prima facie* case for grant of interim relief. Balance of convenience is also in favour of the Petitioners and if the interim relief, as prayed for, is not granted, irreparable loss shall be caused to the Petitioners for the following reasons:-

(i) Section 212(3) of the Companies Act stipulates that where the investigation into the affairs of the Company has been assigned by the Central Government to SFIO, it shall conduct the investigation in the manner provided for and shall submit its report to the Central Government within such period as may be specified in the order. Undisputedly, in the present case, a period of three months was granted by the Central Government for completing the investigation and submitting a report to the Central Government, which is evident from reading para 4 of the order dated 31.10.2018 (Annexure P-1). There was thus a clear mandate by the Central Government to complete the investigation within three months from the date of the issue of the order i.e. 31.10.2018. However, the investigation was not completed within the stipulated time and as asserted by the Petitioners, the same is still ongoing. Prima facie, there is violation of Section 212(3) and the direction of the Central Government.

(ii) So far as investigation into the affairs of the six Companies by

virtue of impugned order dated 27.10.2020 (**Annexure P-2** to the memo of this writ petition) is concerned, which includes Petitioners No.2 and 3 herein, in our *prima facie* view, there is violation of provisions of Section 219 of the Companies Act, 2013. There seems to be *prima facie* merit in the contention of the Petitioners that the Companies sought to be investigated under Section 219 ought to have an affiliation with the Company(s) under investigation, as provided for in the Statute. Petitioners have categorically averred in para 26 of the writ petition that the six companies listed in the order dated 27.10.2020 are neither the Subsidiary nor the Holding Companies and were never managed by the Managing Director of the earlier three Companies under investigation, pursuant to order dated 31.10.2018. Respondents, on a pointed query, were unable to rebut the said position. Therefore, in our *prima facie* view, there was no justification in initiating investigation against Petitioners No.2 and 3 vide the impugned order dated 27.10.2020 (**Annexure P-2**).

- (iii) There is also *prima facie* merit in the contention of the Petitioners that the impugned orders dated 31.10.2018 and 27.10.2020 do not indicate the reasons or circumstances that compelled the Central Government to form an opinion to order investigation by the SFIO into the affairs of the Petitioners. All that the orders reveal is that the Central Government has the power under Section 212 of the Companies Act to direct investigation into the affairs of a Company and that it has

formed an opinion to do so. Reading of Section 212(1) leaves no doubt that the Central Government is required to look into the facts and circumstances that emanate out of a report of the Registrar or Inspection furnished under Section 208 of the Companies Act, 2013 and then form a subjective opinion based on objective considerations. In our *prima facie* view nothing is discernible from the impugned orders as to what cogent material led to the formation of opinion by the Central Government that the affairs of the Petitioners were required to be investigated.

- (iv) In so far as the preliminary objection, raised by the learned ASG is concerned, suffice would it be to note for the present, that the Petitioners before the Lucknow Bench of the Allahabad High Court as well as in the writ petition before the learned Single Judge of this Court are different and the Petitioners herein are not parties to the said petitions. In view of this, we *prima facie* do not agree with the Respondents that the present petition deserves to be dismissed on account of pendency of other writ petitions. It bears repetition to state that in the present petition, challenge is laid to the orders dated 31.10.2018 and 27.10.2020 as well as to the Constitutional validity of Section 217(5) of the Companies Act.

9. For the aforesaid reasons, we hereby stay the operation, implementation and execution of the orders dated 31.10.2018 and 27.10.2020 (Annexures P-1 and P-2 to the memo of this writ petition), passed by the Respondents as well as subsequent actions and proceedings

initiated pursuant thereto, including coercive proceedings and look-out notices, qua the Petitioners herein, till the next date of hearing.

10. List on 18.01.2022.

CHIEF JUSTICE

JYOTI SINGH, J

DECEMBER 13, 2021

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