

**\* THE HON'BLE SRI JUSTICE A.RAJASHEKER REDDY**

**+ W.P.NOS.5024 AND 8997 OF 2020**

% 26.08.2020

**W.P.NO.5024 OF 2020**

# *KARVY STOCK BROKING LIMITED, REPRSENTED BY ITS VICE-PRESIDENT (LEGAL) MR. CH.VISWANATH.*

.. Petitioner

And

\$ *THE UNION OF INDIA, REPRESENTED BY ITS SECRETARY, MINISTRY OF CORPORATE AFFAIRS, NEW DELHI AND FIVE OTHERS.*

.. Respondents

**W.P.NO.8997 OF 2020**

# *KARVY STOCK BROKING LIMITED, REPRESENTED BY ITS VICE-PRESIDENT (LEGAL) MR. CH.VISWNATH.*

.. Petitioner

AND

\$ *THE UNION OF INDIA, REPRESENTED BY ITS SECRETARY, MINISTRY OF CORPORATE AFFAIRS, NEW DELHI AND FIVE OTHERS.*

.. Respondents.

! Counsel for the petitioner

: Sri S. Niranjan Reddy,  
learned Senior Counsel  
appeared for the learned  
counsel Sri Avinash  
Desai.

Counsel for respondents

: Sri N.Rajeshwar Rao,  
Learned Assistant  
Solicitor General.

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> Head Note :

? Citations:

1. 2018(1) ALD 734
2. 2016 SCC OnLine Bom 9276
3. 2000(1) ALD 388
4. (1966)1 SCR 466 = AIR 1966 SC 671
5. 1989 Supp. (2) SCC 462
6. (1996)4 SCC 69
7. (1966) Supp SCR 311

8. (1969)1 SCC 325
9. 2019 SCC Online Del. 6465

DATE OF JUDGMENT PRONOUNCED : 26.08.2020

**SUBMITTED FOR APPROVAL:**

**THE HON'BLE SRI JUSTICE A.RAJASHEKER REDDY**

1. Whether Reporters of Local Newspapers : Yes / No  
may be allowed to see the Judgments ?
2. Whether the copies of judgment may be : Yes / No  
marked to Law Reporters/Journals
3. Whether Their Lordship wish to : Yes / No  
see the fair copy of the Judgment ?

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A.RAJASHEKER REDDY,J



**THE HON'BLE SRI JUSTICE A.RAJASHEKER REDDY**

**W.P.NOS.5024 AND 8997 OF 2020**

**COMMON ORDER**

Since the issue involved in both the writ petitions is connected and the parties are same, they are heard together and are being disposed of by this common order.

2. The petitioner in both the writ petitions is M/s Karvey Stock Broking Limited and it is represented by its Vice President (Legal) Mr. Ch.Viswanath.

3. The 2<sup>nd</sup> respondent – Office of Director General, Ministry of Corporate Affairs, represented by its Joint Director, in exercise of jurisdiction under Section 212 (1) (a) and (c) of the Companies Act, 2013 (for short 'the Act'), ordered investigation into the affairs of the petitioner – company in the public interest, vide order No.07/341/2015-CL II (SER) dated 27-02-2020. In pursuance of the order dated 27.02.2020, the Investigating Officer issued notice dated 16.06.2020 under Section 217 of the Act calling for information, and vide communication dated 19.06.2020, intimated the petitioner to strictly comply with Section 217 of the Act, with a default clause.

4. Challenging the order passed by the 2<sup>nd</sup> respondent under Section 212 (1) (a) and (c) of the Act dated 27.02.2020, petitioner - company filed W.P.No.5024 of 2020, and challenging the consequential notices issued under Section 217 of the Act dated 16.06.2020 and 19.06.2020, W.P.No.8997 of 2020 has been filed.

5. Since the result in W.P.No.5024 of 2020 will have bearing on W.P.No.8997 of 2020, the former is taken up for adjudication.

6. The case of the petitioner - company, as per the averments made in the affidavit filed in support of the writ petition is that, it is involved in the

business of stock broking, commodities trading, depository, wealth management services and distribution of other financial produces.

7. As there were media reports stating that the petitioner – company is violating the regulations of Securities Exchange Board of India (SEBI), the 5<sup>th</sup> respondent – Ministry of Corporate Affairs, O/o the Registrar of Companies, through its Assistant Director – 6<sup>th</sup> respondent, vide letter in Ref:ROCH/KSBL/2019/2410 dated 03.12.2019, called for certain information from the petitioner – company with regard to current status of investigation by SEBI, and the action taken against the petitioner and its group of companies, and to submit a copy of the latest financial statement of the company. The petitioner - company, vide letter dated 13.12.2019, submitted a detailed reply with regard to information sought for by the 6<sup>th</sup> respondent.

8. Thereafter, the 6<sup>th</sup> respondent issued notice dated 14.01.2020 under Section 206(1) of the Act, calling upon the petitioner, to furnish some more information and documents within seven days of receipt of notice. As the information sought for by the 6<sup>th</sup> respondent is voluminous, petitioner vide letter dated 22.01.2020, sought four weeks time. But, without considering the request made by the petitioner vide letter dated 22.01.2020, the 6<sup>th</sup> respondent issued notice dated 24.01.2020 under Section 206(3) of the Act, to produce original documents/ registers maintained by the company on 27.01.2020, in pursuance thereof, the officials of the company were physically present on 27.01.2020, and submitted a preliminary reply, and sought further time for producing some more documents and for personal hearing.

09. As the respondents are proceeding with undue haste, petitioner filed W.P.No.3143 of 2020, alleging that the respondents, without giving adequate time to respond to the notice dated 14.01.2020 issued under Section 206(1) of the Act, have issued further notice dated 24.01.2020 under Section 206(3) of the Act, as such the same is illegal and arbitrary.

10. In the said writ petition, the learned Assistant Solicitor General represented before the court that the respondents would take into consideration the explanation submitted by the petitioner on 03.02.2020, and proceed with the inquiry in accordance with law, after giving opportunity to the petitioner and considering the above representation of the learned Assistant Solicitor General, this court, vide order dated 14.02.2020, disposed of W.P.No.3143 of 2020, directing the respondents to proceed with the inquiry initiated against the petitioner under Section 206(1) of the Act, by duly taking into consideration the explanation submitted by the petitioner – company, and conclude the same as expeditiously as possible, preferably within a period of six months from the date of receipt of that order.

11. It is stated that as per the above directions of this court, the petitioner approached the respondents vide letter dated 25.02.2020, to give opportunity of hearing before the 6<sup>th</sup> respondent, but there was no response.

12. Petitioner also filed W.P.No.4742 of 2020 aggrieved by the action of the respondents is not responding to its letter dated 25.02.2020. During the hearing of the said writ petition, the Standing Counsel informed the court that based on the inquiry report dated 24.02.2020 submitted by the 5<sup>th</sup> respondent – Registrar of Companies (ROC), under Section 208 of the Act, the Joint Director of the 2<sup>nd</sup> respondent – Office of Director General, Ministry of Corporate Affairs, New Delhi, passed the impugned order dated 27.02.2020, directing investigation into the affairs of the company under Section 212(1)(a) and (c) of the Act. 14. The Chairman and the Managing Director of the petitioner – company, vide email dated 20.02.2020, to the Secretary of Ministry of Corporate Affairs, also gave the gist of the issues with SEBI, and requested for a personal hearing. In response to the same, vide email dated 27.02.2020, it was intimated that the petitioner could meet the Secretary, Ministry of Corporate Affairs on 05.03.2020 at noon. In view of the same, the said writ petition has become infructuous. Therefore, challenging the order dated 27.02.2020, the present writ petition is filed.

13. Counter affidavit is filed on behalf of respondents 1, 2, 4, 5 and 6. In the counter affidavit, the business activities of the petitioner – company, is not denied. It is stated that the petitioner is the company registered with the 5<sup>th</sup> respondent – ROC, doing the business as a registered stock broker and as a depository participant. On 22.11.2019, the National Stock Exchange (NSE) reported to Securities Exchange Board of India (SEBI), the findings of an inspection and forensic audit conducted by NSE on the activities of the petitioner, which revealed many misconducts on the part of the petitioner – company, including unauthorised pledging of client securities and transfer of funds raised from the above, to related parties, stock lending scheme carried out by the company, and deletion of files and emails from the systems of Mr.C.Parthasarthy, Chairman and Managing Director of the company as well as certain other employees, using anti-forensic tools.

14. The SEBI vide its *ex parte ad interim* order dated 22.11.2019, has issued various directions relating to petitioner company, which include:

“Prohibiting the Karvy Stock Broking Limited from taking new clients for broking activities.

Depositories namely NSDL and CDSL are not to act upon on the instructions of KSBL in pursuance of Power of Attorney.

Restrictions of transfer of securities from one DP account of KSK.”

15. That there were investor complaints and continuous reporting in press and visual media about the fraudulent activities of the company. All the above has caught the attention of the respondents, and thus resulted in the inquiry under Section 206 of the Act by respondent No.5 – ROC.

16. That based on the reports of fraud, which appeared in the newspaper with regard to violation of SEBI regulations, the 4<sup>th</sup> respondent – Regional Director, vide letter dated 27.11.2019, directed the 5<sup>th</sup> respondent – ROC, to submit a report. In pursuance of the said direction, the 5<sup>th</sup> respondent, vide letter dated 03.12.2019, called for preliminary information and the petitioner replied to the same on 13.12.2019. Subsequently, the 2<sup>nd</sup> respondent – Office of the Directorate General, vide letter dated 09.12.2019, directed the 5<sup>th</sup> respondent to examine the matter

and submit report for further course of action. Accordingly the office of the 5<sup>th</sup> respondent submitted status report dated 02.01.2020, seeking sanction to conduct enquiry under Section 206(1) of the Act. The 4<sup>th</sup> respondent – Regional Director, vide letter dated 02.01.2020, directed the 5<sup>th</sup> respondent to carryout the enquiry under Section 206 of the Act, and hence the petitioner was issued notice dated 14.01.2020 under Section 206(1) of the Act on the basis of SEBI order, media reports and balance sheet as on 31.03.2019, seeking its reply.

17. While so, the Director General of Company affairs, vide letter No.07/341/2015/CL.II(SER) dated 10.01.2020 conveyed the 5<sup>th</sup> respondent, the approval of the Central Government to carryout the full-fledged inquiry under Section 206(4) of the Act. The said letter was received by the 5<sup>th</sup> respondent on 16.01.2020 and on 17.01.2020, the 5<sup>th</sup> respondent submitted preliminary report under Section 206(4) of the Act.

18. That, to the notice dated 14.01.2020 issued by the 5<sup>th</sup> respondent under Section 206 (1) of the Act, though the petitioner – company, vide letter dated 22.01.2020, sought four weeks time, it has not provided any information. Therefore, the 5<sup>th</sup> respondent caused notice under Section 206(3) of the Act to furnish documents on 27.01.2020. On the said date, the officials of the company submitted some soft copies of the original documents and certain information, and sought further time to provide remaining details, the same was denied. On 03.02.2020, the company filed a detailed reply to the notice dated 14.01.2020. On 06.02.2020, meeting of the Oversight Committee of Ministry of Corporate Affairs, New Delhi was held, and in the meanwhile, the respondents received a copy of the order of this court in W.P.No.3143 of 2020.

19. In compliance with the directions of this court in W.P.No.3143 of 2020 dated 14.02.2020, the 5<sup>th</sup> respondent – ROC, taking into consideration the reply of the petitioner - company dated 03.02.2020, submitted report dated 24.02.2020 under Section 208 of the Act.

20. On 25.02.2020 meeting of the Oversight Committee of the Ministry of Corporate Affairs was held to examine the report submitted by 5<sup>th</sup> respondent on 24.02.2020 under Section 208 of the Act, and the said Committee recommended for investigation into the affairs of the petitioner - Company and its group of companies. In view of these circumstances, 2<sup>nd</sup> respondent, considering the said report and forming an opinion with regard to necessity for ordering investigation into the affairs of the company, passed the impugned order dated 27.02.2020 under Section 212(1)(a) and ( c ) of the Act, ordering investigation into the affairs of the company, as large public interest is involved.

21. In the counter affidavit refuting the allegations of the petitioner – company that provisions under Section 206 have not been followed and no opportunity of being heard as provided under Section 206(4) was given to the petitioner, it is stated that petitioner has given incorrect interpretation of Section 206 and understood that the procedure prescribed in the main portion of Section 206(4) of the Act is an essential complementary, and consequential action/requirement for any notices issued under Section 206(1) and (3) of the Act, which is totally misconceived understanding of the law and done with *mala fide* intentions. It is stated that Section 206(4) of the Act is an independent provision which describes the circumstances under which the ROC can *suo motu* decide to conduct an inquiry, and the procedure to be followed. The procedure to be followed under Section 206(4) include giving an opportunity of being heard for conducting inquiry under the said sub-section. But in the present case, the inquiry undertaken by the 5<sup>th</sup> respondent – ROC, was based on the orders of the Central Government, and hence as per the first proviso to Section 206(4) of the Act, there is no mandate for issuance of any notice and opportunity of being heard, since the 5<sup>th</sup> respondent, does a non-invasive inquiry, and sends report under Section 208 of the Act. However, as per the directions of this court in W.P.No.3143 of 2020 dated 14.02.2020, the reply filed by the petitioner on 03.02.2020 in pursuance of the notice under Section 206(1) of the Act, was considered, and final report was submitted.



22. To the averment made in the writ affidavit that to the e-mail addressed by the Chairman and Managing Director of the petitioner – company to the Secretary, Ministry of Corporate Affairs giving a basic gist of the issue with SEBI and requesting for personal hearing, petitioner received a response on 27.02.2020 requiring to meet the Secretary, Ministry of Corporate Affairs on 05.03.2020 at noon; it is stated that the company, through its officials, instead of meeting the Secretary, Ministry of Company affairs on 05.03.2020, filed W.P.No.4742 of 2020, and by that time, as the impugned order was passed, the said writ petition has become infructuous.

23. That consequent to the impugned order, the Serious Fraud Investigation Office (SFIO), designated inspectors for investigation, and the petitioner instead of co-operating with the investigation, is filing writ petitions on the very same subject matter. That the authorities that deal with the Inquiry, Inspection or Investigation under the Ministry of Corporate Affairs are altogether different from the procedure that is required to be adopted by another regulator i.e., SEBI, and the petitioner is misleading this court by way of clubbing both the matters.

24. That SEBI is a statutory body dealing with the listed companies and intermediaries in capital market and is concerned with illegal activities of the companies in the capital market, and it has already issued directions against the company restricting its functions as stock broker and as depository participant. The respondents herein are empowered and more concerned with the reported fraud committed by the company by availing loans on the basis of the pledge of client securities without their knowledge or consent and transfer of funds so availed to their related parties. Therefore, as the authorities under the Act, are different from the authorities under the SEBI, the petitioner cannot seek to stall the present investigation initiated under Act 18 of 2013, till the conclusion of the investigation by SEBI.

25. That upon submission of the final report under Section 208 of the Act, which was prepared considering the reply of the petitioner dated 03.02.2020, the Oversight Committee considered the same on 25.02.2020, and after considering all the facts, the 2<sup>nd</sup> respondent passed the impugned order directing investigation by SFIO under Section 212(1)(a) and (c) of the Act, and thereafter vide order No.SFIO/Inv/AOI/19580/2020 dated 03.03.2020, the Director, Ministry of Corporate Affairs appointed the inspectors to carryout the investigation into the affairs of the company.

26. The case of the respondents is that the inquiry or investigation under Section 212 of the Act, will in no way affect the functioning of the company or its employees and its reputation, as contended by the petitioner – company. It is stated that the petitioner instead of co-operating with the investigation for its early conclusion, is filing writ petitions on the same subject matter and is resorting to delay tactics and, therefore, the writ petitions are sought to be dismissed.

27. Counter affidavit is filed by the 3<sup>rd</sup> respondent. In the counter affidavit, the action initiated by the 3<sup>rd</sup> respondent in pursuance of the impugned order dated 27.02.2020 is stated.

28. Petitioner filed rejoinder in W.P.No.5024 of 2020, and while reiterating the averments made in the writ affidavit, the stand of the respondents that sub-section (4) of Section 206 is independent of other provisions under sub-section (1) to (3), and that since the 5<sup>th</sup> respondent conducted inquiry as per the directions of the Central Government under the first proviso to sub-section (4) of Section 206, there is no requirement of providing opportunity of being heard; is denied. That sub-section (4) is also an integral part of Section 206 and hence the 5<sup>th</sup> respondent – ROC is required to provide an opportunity of being heard before submitting report under Section 208 of the Act. That the communications/directions referred to in the counter affidavit between the official respondents, for initiating inquiry under Section 206(4) of the Act, is not referred in the notices issued to the petitioner, and they are also not made available to the petitioner.

29. That the letter dated 10.01.2020, where under the 2<sup>nd</sup> respondent conveyed the approval of the Central Government to carryout the inquiry under Section 206(4) of the Act, was not brought to the notice of this court while disposing of W.P.No.3143 of 2020 dated 14.02.2020. That even if the inquiry is conducted under the first proviso to sub-section (4) of Section 206 of the Act, before submitting report under Section 208, petitioner is required to be provided with opportunity of being heard. Even this court also directed the respondents to provide opportunity to the petitioner, but no such opportunity was provided. Therefore, the petitioner seeks for setting aside the impugned order.

30. Along with the rejoinder, counsel for the petitioner filed copy of the manual for conducting inquires under the Act, issued by the Ministry of Corporate Affairs, Government of India, which is meant for internal circulation of the Department.

31. Sri S.Niranjan Reddy, learned Senior Counsel appearing on behalf of Sri Avinash Desai, learned counsel for the petitioner, submits that to the notice dated 14.01.2020 issued by the 1<sup>st</sup> respondent under Section 206(1) of the Act, petitioner, vide letter dated 22.01.2020, sought time, as the information sought for, is voluminous. But the 5<sup>th</sup> respondent, without considering the request of the petitioner, issued notice dated 24.01.2020 under Section 206(3) of the Act for production of original documents/registers maintained by the petitioner - company. On 27.01.2020, the officials of the petitioner – company appeared and submitted preliminary reply and sought time, and also opportunity of being heard. But, further time and opportunity of being heard, were not given. Therefore, the petitioner was forced to file W.P.No.3143 of 2020.

32. Learned Senior Counsel further submits that during the course of hearing in W.P.No.3143 of 2020, learned Assistant Solicitor General, appearing for the respondents, has made a categorical representation that respondents would consider the explanation submitted by the petitioner on

03.02.2020, and proceed with the inquiry in accordance with law, after giving opportunity to the petitioner. Taking into consideration the said representation of the learned Assistant Solicitor General, this court, vide order dated 14.02.2020 disposed of the writ petition directing the respondents to proceed with the enquiry under Section 206(1) of the Act by duly taking into consideration the explanation submitted by the petitioner. But the 5<sup>th</sup> respondent while submitting the report dated 24.02.2020, under Section 208 of the Act, has not provided opportunity of being heard, and this is in violation of principles of natural justice, and such report, cannot form basis for ordering investigation.

33. Learned Senior Counsel further submits that the Chairman and Managing Director, addressed email dated 20.02.2020 to the Secretary, Ministry of corporate Affairs stating the gist of issues with SEBI, and sought for personal hearing. In response to the same, petitioner received email dated 27.02.2020 intimating the petitioner to meet the Secretary, Ministry of Corporate Affairs on 05.03.2020 at noon. But even by that date, the impugned order was passed on 27.02.2020 ordering investigation, based on the inquiry report dated 24.02.2020, and this is also another instance of violation of principles of natural justice. He submitted that until the filing of the counter affidavit in the present writ petition, the copy of the report dated 24.02.2020 was not made available to the petitioner.

34. He submits that the stand of the respondents is that while the inquiry under Section 206(1) is under progress, the 2<sup>nd</sup> respondent conveyed the approval of the Central Government to carryout the full-fledged inquiry under Section 206(4) of the Act and, therefore as the inquiry was ordered by the Central Government under the first proviso to sub-section (4) of Section 206, issuance of notice, and opportunity of being heard, are not required. He submits that this stand of the respondents cannot be accepted, since the main provision under Section 206(4) of the Act, mandates issuance of notice and opportunity of hearing, and even under the proviso, the Central Government, if satisfied that the circumstances warrant, is empowered to

direct the Registrar to carry out the inquiry under this sub-section i.e., sub-section (4) of Section 206 of the Act, which mandates issuance of notice and opportunity of hearing prior to conduct of inquiry. Therefore, the proviso does not carve out any exception to the main provision, and it only additionally empowers the Central Government to direct the Registrar of Companies to conduct inquiry by following the procedure under the sub-section.

35. Even otherwise, he submits that ordering investigation, will have serious affect on the prospects of the business of the company and its group of companies and also on the employees, therefore, issuance of notice and opportunity of being heard, which are the cardinal principles of natural justice, cannot be dispensed with. Moreover, as stated above, the learned Assistant Solicitor General has given a categorical undertaking before this court in W.P.No.3143 of 2020 that petitioner would be given an opportunity. Therefore, as the petitioner was not provided with opportunity of being heard, the report dated 24.02.2020, submitted by the 5<sup>th</sup> respondent under Section 208 of the Act, in violation of the principles of natural justice, cannot be relied upon.

36. Learned Senior Counsel further submits that the Central Government can direct the ROC to carryout the inquiry under the first proviso to sub-section (4) of Section 206 of the Act, but before such a direction is given, the Central Government has to *prima facie* satisfy that circumstances, as specified under sub-section 4, exist, and the basis for such satisfaction, has to be recorded in the order, and then only ROC can be directed to inquire into the matter. In the present case, the 2<sup>nd</sup> respondent, vide letter dated 10.01.2020 conveyed the approval of the Central Government to carryout the full-fledged inquiry under Section 206(4) of the Act. But the said communication does not disclose the circumstances based on which the Central Government formed its satisfaction for directing the ROC to inquire under sub-section 4 of Section 206 of the Act. Therefore non-recording of reasons, by the Central Government, is contrary to the provisions of the Act.

37. Learned Senior Counsel further submits that in the impugned order the 2<sup>nd</sup> respondent merely relying on the report dated 24.02.2020, stated that in exercise of the powers conferred under Section 212(1)(a) and (c) of the Act, the Central Government has formed an opinion that the affairs of the petitioner company and its group of companies needs to be investigated by SFIO to examine the serious nature of fraud committed, as large public interest is involved. He submits the 2<sup>nd</sup> respondent has not specifically stated the circumstances for forming of such an opinion. In other words, his contention is that the 2<sup>nd</sup> respondent, in a mechanical manner, and without application of mind independently, and without appreciating or referring the circumstances for formation of opinion for ordering investigation into the affairs of the company by SFIO, passed the impugned order.

38. He submits that as the investigation into the affairs of the company by SFIO, will have serious repercussions, the procedure envisaged under the Act has to be strictly followed, and the 2<sup>nd</sup> respondent has to form an opinion independently taking into consideration the relevant facts. He further submits that the 2<sup>nd</sup> respondent has to not only form an opinion, but he has to examine the necessity of entrusting the investigation to SFIO. These aspects are lacking in the impugned order and hence, it cannot be sustained, and consequential notices issued by SFIO, also cannot be sustained.

39. In support of the above contention, learned Senior Counsel relied on the judgment of learned Single Judge of the High Court of Judicature at Hyderabad for the State of Telangana and the State of Andhra Pradesh in **MEDAK DIOCESE OF CHURCH OF SOUTH INDIA TRUST ASSOCIATION vs. UNION OF INDIA**<sup>1</sup> and the judgment of the Division Bench of the High Court of Bombay in **PARMESHWAR DAS AGARWAL v. ADDITIONAL DIRECTOR**<sup>2</sup>.

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<sup>1</sup> 2018(1) ALD 734

<sup>2</sup> 2016 SCC OnLine Bom 9276

40. On the other hand, Sri N.Rajeshwar Rao, learned Assistant Solicitor General appearing for the respondents, reiterating the averments made in the counter affidavit, would submit that based on SEBI order, media reports and also the balance sheet as on 31.03.2019 submitted by the petitioner, 5<sup>th</sup> respondent – ROC, issued notice dated 14.01.2020 under Section 206(1) of the Act and though initially time was sought for by the petitioner, the same was denied and however the petitioner filed a detailed reply on 03.02.2020. While the 5<sup>th</sup> respondent is in the process of scrutiny of documents relating to the petitioner - company, the 2<sup>nd</sup> respondent, vide letter dated 10.01.2020, conveyed the approval of the Central Government to carryout the full-fledged inquiry into the affairs of the petitioner – company under Section 206(4) of the Act. Learned Assistant Solicitor General submits that against the notice under Section 206(1) of the Act, petitioner filed W.P.No.3143 of 2020, and this court vide dated 14.02.2020, directed the respondents to consider the reply filed by the petitioner on 03.02.2020, and conclude the inquiry under Section 206(1) of the Act within a specified time. Accordingly, as per the directions of this court, the 5<sup>th</sup> respondent – ROC, considered the reply filed by the petitioner on 03.02.2020, and submitted a detailed report under Section 208 of the Act recommending investigation into the affairs of the company.

41. Adverting to the case of the petitioner that no opportunity of being heard as required under Section 206(4) of the Act was provided to the petitioner before submitting report dated 24.02.2020; learned Assistant Solicitor General submits that under Section 206(4) of the Act, if the Registrar of Companies, *suo motu* initiates inquiry under the said provision, he is required to issue notice and provide opportunity of being heard to the company. But in the present case, as already stated above, the Central Government ordered for full-fledged inquiry under Section 206(4) of the Act. When the Central Government, in exercise of its power conferred on it under the first proviso to Section 206(4) of the Act, orders an inquiry by Registrar of Companies, there is no requirement of issuance any notice, or providing

an opportunity of being heard, because the inquiry conducted by the 5<sup>th</sup> respondent at that stage, would be a non-invasive inquiry. However, as per the directions of this court in W.P.No.3143 of 2020 dated 14.02.2020, 5<sup>th</sup> respondent, taking into consideration the reply filed by the petitioner on 03.02.2020, submitted report under Section 208 of the Act on 24.02.2020, and based on said report, the 2<sup>nd</sup> respondent passed the impugned order, and hence no exception can be taken.

42. He further submits that the report of the 5<sup>th</sup> respondent was also considered by the Oversight Committee in its meeting held on 25.02.2020 and recommended for investigation into the affairs of the petitioner – company.

43. Learned Assistant Solicitor General submits that enough material is available with the respondents with regard to alleged fraudulent activities of the petitioner - company, therefore, the Central Government *prima facie* satisfied that the business of the petitioner - company is being carried on for a fraudulent or unlawful purposes and not in compliance with the provisions of the Act, and ordered for full-fledged inquiry under the first proviso to sub-section (4) of Section 206 of the Act, and though the satisfaction is not specifically reflected in the letter dated 10.01.2020 addressed by the 2<sup>nd</sup> respondent to the 5<sup>th</sup> respondent, as sufficient material is available with the respondents with regard to allegations against the petitioner, Central Government was satisfied that inquiry is to be ordered under Section 206(4) of the Act and hence, non-recording of reasons with regard to satisfaction, cannot be treated as fatal to the case of the respondents.

44. Learned Assistant Solicitor General further submits that the judgments relied on by the learned Senior Counsel appearing for the petitioner are not applicable to the facts of the present case, since in the said cases, the impugned order does not indicate forming of opinion on the necessity for investigation into the affairs of the company by SFIO. But in the present case, based on the report submitted by the 5<sup>th</sup> respondent, the 2<sup>nd</sup> respondent, formed an opinion that the affairs of the company needs to



be investigation by SFIO, to examine the serious nature of fraud alleged to have been committed by the petitioner – company.

45. With these submissions, the learned Assistant Solicitor General sought for dismissal of the writ petitions.

46. In view of the above pleadings and the contentions of the learned counsel, the following issues emerge for my consideration:

1. Whether the inquiry initiated by the Central Government and the report dated 24.02.2020 submitted by the 5<sup>th</sup> respondent – Registrar of Companies, is in conformity with Section 206(4) of the Act?
2. Whether the opinion formed by the 2<sup>nd</sup> respondent for ordering investigation into the affairs of the petitioner – company, is in consonance with Section 212(1) (a) and ( c ) of the Act?

47. **Issue No.1.** To consider this issue, it is necessary to examine Sections 206, 207 and 208 of the Act. The said provisions, to the extent relevant, are extracted as under:

**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 inadequate or if the Registrar is satisfied on a scrutiny of the documents furnished that an unsatisfactory state of affairs exist 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 explanation 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:

...

**Section 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 explanation 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.

.....

**Section 208. Report on inspection made:** - The Registrar or inspector shall, after the inspection of the books of account or an inquiry under Section 206 and other books and papers of the company under Section 207, submit a report in writing to the Central Government along with such documents, if any, and such report may, if necessary, include a recommendation that further investigation into the affairs of the company is necessary giving his reasons in support.

48. A reading of the above provisions makes it clear that sub-section (1) of Section 206 provides that on scrutiny of any document filed by the company or on any information received by him, the Registrar is of the opinion that further information, or explanation, or any further documents relating to the company are required, he may issue notice requiring the company to furnish such information or explanation and to produce such documents. Under sub-section (2) of Section 206, the obligation is cast on the company to furnish such information or explanation and to produce such documents sought by the Registrar. Under sub-section (3) of Section 206, if the Registrar is of the opinion that such information and documents provided by the company under sub-section (2), are inadequate, or that if he is satisfied, on scrutiny of the documents furnished, that an unsatisfactory state of affairs exists in the company and that they does not disclose a full and fair statement of the information required, he may, by another written notice, by recording reasons, call on the company to produce for his inspection such further books of account, books, papers and explanation as he may require. Section 207 deals with

conduct of inspection and inquiry and the obligation cast on the directors of the company or other officers or employees of the company to comply with the directions of the Registrar to produce records as called for under Section 206.

49. Under sub-section (4) of Section 206, the jurisdiction of the ROC is of *suo motu* in nature, because if he is satisfied based on the information available with him, or furnished to him, or on a representation by any person that the business of the company is being carried on for a fraudulent or unlawful purposes or not in compliance with the provisions of the Act, or if the grievance of the investors are not being addressed, he is empowered to issue notice specifying the allegations, and calling upon the company to furnish reply thereto, and carryout the inquiry, after providing the company a reasonable opportunity of being heard.

50. Under the first proviso to sub-section (4) of Section 206, if the Central Government is satisfied that circumstances so warrant, direct the Registrar or the inspector appointed by it for the purpose, to carryout the inquiry under this sub-section.

51. Referring to letter dated 10.01.2020, where under the Central Government granted approval to carryout full-fledged inquiry under Section 206(2) of the Act, the contention of the learned Senior Counsel for the petitioner is that no reasons are reflected in the said letter that the Central Government is satisfied with the circumstances warranting inquiry, and hence it is fatal to the case of the respondents.

52. As contended by the learned Senior Counsel appearing for the petitioner, no reasons are recorded in the letter dated 10.01.2020, but sub-section (4) of Section 206 does not require recording of reasons, and it only mandates that Central Government should be satisfied.

53. As per the averments made in the counter affidavit, the circumstances i.e., the alleged frauds appeared in the news papers, SEBI order and the balance sheet submitted by the petitioner as on 31.03.2019, lead to the issuance of notice to the petitioner under Section 206(1) of the

Act and the while the scrutiny is in process is in progress, the 2<sup>nd</sup> respondent also through F.No.07/341/2015/CL-ii(SER) dated 10.01.2020, directed the office to carryout full-fledged inquiry under Section 206(4) of the Act. In the light of these circumstances, it cannot be said that there is no material before the Central Government for satisfying itself that circumstances mentioned in the sub-section, exist for directing the 5<sup>th</sup> respondent to carryout the inquiry under Section 206(4) of the Act. Therefore, non-recording of the reasons with regard to the satisfaction of existence of circumstances for ordering inquiry, cannot be said to be fatal to the case of the respondents, as that requirement is not envisaged under the statute. It is to be noticed that the issue is at the stage of issuing notice for inquiry, and there is no adjudication or formation of any opinion at this stage, and it is only at preliminary stage, and it is well settled that at each and every stage, principles of natural justice cannot be insisted upon, unless the violation of the same, results in infringement of any right conferred upon the person. Therefore, the contention of the petitioner in this regard is rejected.

54. Coming to the interpretation of the above provision under Section 206 of the Act, it could be seen that a combined reading of sub-section (4) of Section 206 and the first proviso to the said sub-section, makes it amply clear that the ROC, either under his *suo motu* jurisdiction under sub-section (4) of Section 206, or on the directions of the Central Government, under the first proviso to Section 206(4) of the Act, is required to inform the company about the allegations made against it in writing, and call on the company to furnish in writing any information or explanation on the matter specified in the notice, and carryout such inquiry, as he deems fit, after providing the company a reasonable opportunity of being heard. Whether the words 'opportunity of being heard' occurring in sub-section 4 of Section 206 of the Act, would necessarily mean a 'personal hearing', is an aspect required to be considered based on the precedents and the facts and circumstances of the case.

55. In **ANDHRA CEMENTS LTD. v. GOVERNMENT OF A.P.**<sup>3</sup>, Hon'ble Justice B.Sudersha Reddy, as he then was, while considering Rule 12 of the Mineral Concession Rules, 1960, which stipulates that *the State Government may, after giving an opportunity of being heard and for reasons to be recorded in writing and communicated to the applicant, refuse to grant or renew a prospecting licence over the whole or part of the area applied for*, held that "opportunity of being heard" does not contemplate oral and personal hearing. That the rejection the application of the petitioner therein for a prospective mining licence after issuing show cause notice and after considering the written explanation submitted by the petitioner was held to be valid, and it was further held that such decision cannot be challenged on the ground of denial of personal hearing. The learned Judge while relying on several Apex Court judgments in **MADHYA PRADESH INDUSTRIES LTD. v. UNION OF INDIA**<sup>4</sup>, **CARBORUNDUM UNIVERSAL LTD. v. CENTRAL BOARD OF DIRECT TAXES**,<sup>5</sup> and **UNION OF INDIA v. JESUS SALES CORPORATION**<sup>6</sup>, as well as foreign judgments, held thus:

50. Oral hearing is not an integral part of hearing, unless the circumstances are (*sic*) so exceptional that without oral hearing a person cannot put up an effective defence. The rule of *audi alteram partem* does not require full judicialisation in every case. An opportunity of being heard does not necessarily mean an opportunity of oral hearing is to be provided. It depends upon the nature of inquiry and the nature of right involved in a given case. An order or decision which may have the tendency to adversely affect the liberty to property rights may have to be preceded by a notice and oral hearing. In most of the cases where property rights or liberties are not involved, the type of hearing may depend upon variety of factors – whether oral hearing is necessary in such cases to large extent depend upon the view of the Tribunal or adjudicatory body. Oral hearing may not be necessary where there is no adjudication as such. Oral hearing as such may be necessary in cases where the decision takes away some existing right or possession."

56. Thus, from the principles laid down in the above case, it is clear that an 'opportunity of being heard' does not necessarily mean an opportunity of oral hearing is to be provided, and it depends upon the nature of inquiry and the nature of the rights involved in a given case. An order or decision which may have the tendency to adversely affect the liberty to property rights may have to be preceded by a notice and oral hearing and

<sup>3</sup> 2000(1) ALD 388

<sup>4</sup> (1966)1 SCR 466 = AIR 1966 SC 671

<sup>5</sup> 1989 Supp. (2) SCC 462

<sup>6</sup> (1996)4 SCC 69

that oral hearing is not necessary where there is no adjudication as such, and it largely depends upon the view of the Tribunal or adjudicatory body.

57. Keeping in the above principle in view, it is required to examine whether the 5<sup>th</sup> respondent has followed the procedure prescribed under Section 206(4) of the above before submitting report under Section 208 of the said Act.

58. The facts noted above goes to show that the 5<sup>th</sup> respondent – Registrar of Companies issued notice dated 03.12.2019 seeking information regarding certain media reports in connection with certain violations of SEBI regulations and the current status of the SEBI inquiry. The petitioner is stated to have submitted letter dated 13.12.2019 providing information sought for by the 5<sup>th</sup> respondent. Thereafter, the 5<sup>th</sup> respondent issued notice dated 14.01.2020 under Section 206(1) of the Act based on SEBI orders, media reports, investor complaints and balance sheet as on 31.03.2019.

59. While the matter is at the stage of issuance of notice under Section 206(1) of the Act, as per the averments made in the counter affidavit, on 16.01.2020 the 2<sup>nd</sup> respondent conveyed the approval of the Central Government vide letter dated 10.01.2020, to carry out a full-fled enquiry under Section 206(4) of the Act. This inquiry, as per the case of the respondents is under the first proviso to sub-section (4) of Section 206 of the Act. However, as discussed above, whether the ROC takes up inquiry *suo motu* under sub-section (4) of the Section 206, or under the first proviso to the said sub-section, he has to follow the procedure, while examining the circumstances enumerated under the said sub-section.

60. It is stated that in pursuance of the notice dated 14.01.2020, issued under Section 206(1) of the Act, petitioner, vide letter dated 22.01.2020, sought four weeks time. In the counter affidavit it is stated that as the documents sought for were not produced, 5<sup>th</sup> respondent issued notice dated 24.01.2020 under Section 206(3) of the Act directing the petitioner –

company to produce certain original documents/ registers on 27.01.2020 at 3-00 p.m. in his office.

61. The case of the petitioner is that on 27.01.2020, the officials of the company produced original documents and submitted a preliminary reply and requested time to submit further documents and opportunity of personal hearing. The time sought for was rejected. However, the petitioner submitted a detailed reply on 03.02.2020.

62. At that stage, petitioner filed W.P.No.3143 of 2020 challenging the notices dated 03.12.2019, 14.01.2020 and 24.01.2020 issued by the 5<sup>th</sup> respondent, and this court vide order dated 14.02.2020 directed the respondents to proceed with the inquiry initiated against the petitioner under Section 206(1) of the Act by duly taking into consideration the explanation submitted by the petitioner – company, and conclude the enquiry as expeditiously as possible, preferably within a period of six months, from the date of receipt of a copy of the order. The petitioners were satisfied with the directions of this court. Accordingly as per the directions of this court, the 5<sup>th</sup> respondent considered the detailed reply filed by the petitioner on 03.02.2020, and submitted the report dated 24.02.2020 under Section 208 of the Act.

63. Having regard to the above facts and circumstances of the case, and in the light of the principles laid down by the learned single Judge of the erstwhile High Court of Andhra Pradesh (6 supra), I am of the considered view that since the petitioner submitted a detailed reply dated 03.02.2020, and it has also invited an order of this court dated 14.02.2020 in W.P.No.3143 of 2020, directing the respondents to proceed with the inquiry under Section 206(1) of the Act by duly taking into consideration the explanation submitted by the petitioner - company on 03.02.2020, and the 5<sup>th</sup> respondent in compliance with the directions of this court submitted inquiry report under Section 208 by duly considering the detailed reply submitted by the petitioner; the said report cannot be challenged on the

ground of denial of opportunity of being heard, or procedure envisaged under Section 206(4) is not followed.

64. The issue No.1 framed is answered in the affirmative, in favour of the respondents.

65. **Issue No.2:** To consider the second issue, it is necessary to note the relevant provisions of the Act.

**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 Senior 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;
- © **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 office 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 in respect of such offences under this Act to Serious Fraud Investigating Office.

....”

66. Section 210 deals with the power of the Central Government to order investigation into the affairs of the company under the circumstances enumerated in the said section by the Inspectors to be appointed by the Central Government. Section 212 deals with investigation into affairs of the company by Serious Fraud Investigation Office. In the present case, the investigation is ordered under clauses (a) and (c) of sub-section (1) of Section 212 of the Act. A reading of the said provision makes it clear that without prejudice to Section 210, where the Central Government, on receipt of a report of the Registrar or inspector under Section 208; on intimation of a special resolution passed by a company that its affairs are required to be investigated; in the public interest or; on request from any Department of the Central Government or a State Government, is of the opinion that it is



necessary to investigate into the affairs of the company by the SFIO, it may, by order, assign the investigation into the affairs of the company to SFIO.

67. In other words, by considering the information received through sources referred to under sub-section (1) of Section 212, forming of 'opinion' by the Central Government with regard to necessity for ordering investigation into the affairs of the company SFIO, is paramount. Though the said section does not specifically state that reasons have to be recorded for forming an opinion, but it goes without saying that for forming of an opinion, the fundamental concomitant is existence of *prima facie* circumstances.

68. The contention of the learned Senior Counsel appearing for the petitioner is that before ordering investigation under Section 212(1)(a) and (c) of the Act by SFIO, 2<sup>nd</sup> respondent has not recorded the circumstances necessitating the investigation by SFIO and he has solely relied on the report of the 5<sup>th</sup> respondent dated 24.02.2020, and that he has not applied his mind independently for ordering investigating into the affairs of the company by SFIO, and hence the impugned order cannot be sustained.

69. The other submission on behalf of the petitioner is that since the matter is *sub judice* with SEBI, the present investigation cannot be proceeded with, and it has to await the result of the investigation by SEBI.

70. On the other hand, the learned Assistant Solicitor General submits that the impugned order is strictly in consonance with Section 212(1)(a) and (c) of the Act.

71. He further submits that authorities under the Companies Act are different from the authorities under the SEBI and hence the contention of the petitioner that the respondents cannot proceed with the investigation under Section 212(1)(a) and (c) of the Act and that they have to await the conclusion of the proceedings by SEBI, cannot be sustained, as the procedure adopted by the authorities are different.

72. Perusal of the impugned order discloses that the 2<sup>nd</sup> respondent considering the report submitted by the 5<sup>th</sup> respondent under Section 208 of the Act, formed an opinion that the affairs of the petitioner – company and its group of companies, needs to be investigated to examine the serious nature of fraud committed, as large public interest is involved and hence, ordered investigation into the affairs of the said companies by SFIO.

73. Section 237 of the 1956 Act deals with investigation of company's affairs by Central Government, and sub-section (b) of said provision requires the Central Government, to form an opinion for ordering investigation into the affairs of the company. The said provision, is akin to Section 213 of the Act of 2013. However, as it deals with the administrative jurisdiction of the Central Government for ordering investigation on forming an opinion in that regard, the judicial precedents in this regard, would be of considerable help in resolving the present controversy.

74. In Parmeshwar Das Agarwal's case (2 supra), a Division Bench of the High Court of Bombay, relying on the judgment of the Hon'ble Supreme Court in ***BARIUM CHEMICALS v. COMPANY LAW BOARD***<sup>7</sup> and ***ROHTAS INDUSTRIES v. S.D. AGGARWAL***<sup>8</sup>, held thus:

"40. Thus, the principle is that there has to be an opinion formed. That opinion may be subjective, but the existence of circumstances relevant to the inference as to the sine qua non for action must be demonstrable. It is not reasonable to hold that the clause permits the Government to say that it has formed an opinion on circumstances which it thinks exist. Since existence of circumstances is a condition fundamental to the making of the opinion, when questioned the existence of these circumstances have to be proved at least prima facie.

47. . . . However, by its very title, the investigation under Section 212 by the SFIO ought to be on the basis of the opinion of the Central Government that it is necessary to investigate into the affairs of the company by SFIO. That opinion has to be based on the report of the Registrar or Inspector under Section 208; on intimation of a special resolution passed by a company that its affairs are required to be investigated; in the public interest or; on the request from any department of the Central Government or the State Government. By Section 211, the SFIO is established to investigate frauds relating to a company. It is a very special office and headed by a Director and consists of such number of experts from the field enumerated in subsection (2) of Section 211 to be appointed by the Central Government from amongst persons of ability, integrity and experience. The wide powers that this office enjoys, as is set out in various sub-sections of Section 212, would denote as to how its involvement comes after the investigations are assigned to it by the Central Government. By their very nature the investigations into frauds relating to a company have to be assigned. They have to be of such magnitude and seriousness demanding involvement of experts enumerated in subsection (2) of Section 211. Therefore, while exercising the power under subsection (1) of Section 212, the Central Government ought to be not only forming

<sup>7</sup> (1966) Supp SCR 311

<sup>8</sup> (1969)1 SCC 325

an opinion about the necessity to investigation into the affairs of the company, but further that such investigations have to be assigned to the SFIO.”

75. A Division Bench of the High Court of Delhi in **SUNAIR HOTELS**

**LTD. v. UNION OF INDIA**<sup>9</sup> held as under:

“30. The Central Government is entrusted with the power in Section 212 of the Companies Act, 2013 to order an investigation by the SFIO if in its discretion such an investigation is necessary to safeguard public interest. It is true that the text of the statute does not contain an explicit right to challenge the opinion of the Central Government. However, this does not mean that the power confers absolute discretion over the decision and that its decision consequently attains unassailable finality. An order of investigation is an administrative order because, as explained in *Barium Chemicals* (supra) –

“The discretion conferred to order an investigation is administrative and not judicial since its exercise one way or the other does not affect the rights of a company nor does it lead to any serious consequences, as for instance, hampering the business of the company.”

31. Being an administrative order, it is essential that the Government must form an opinion under the section and it has been repeatedly affirmed by the jurisprudence of courts that the certain defects in the formation of opinion is justiciable.”

47. In the present case Sunair has challenged the order as being arbitrary and illegal primarily on the ground that the Central Government did not make the order on the basis of sufficient material. On this basis they contend that the application of mind in order to form an opinion was defective. It needs to be first established that no order of investigation passed under Section 212 of the Companies Act, 2013 may be challenged on such grounds before examining the veracity of the factual basis of these grounds. To elaborate on the standard of review that courts may exercise in reviewing a decision to order an investigation into the affairs of a company, it is imperative to first understand the character of the ordering authority, nature of investigation that would be conducted and effects of such an investigation on the company.

48. In *Rohtas Industries* (supra), the majority judgment explained the substantial effect that investigations have on Companies in the following words:

“It may be noted that before the Central Government can take action under Section 235, certain preconditions have to be satisfied. In the case of an application by members of the company under clause (a) or (b) of Section 235, the same will have to be supported by such evidence as the Central Government may require for the purpose of showing that the applicants have good reasons for requiring the investigation, and the Central Government may, before appointing an Inspector, require the applicant to give security for such amount not exceeding Rs.1000, as it may think fit for payment of the costs of the investigation. From the provisions contained in Sections 235 and 236, it is clear that the legislature considered that investigation into the affairs of a company is a very serious matter and it should not/be ordered except on good grounds. It is true that the investigation under Section 237(b) is of a fact-finding nature. The report submitted by the Inspector does not bind anybody. The Government is not required to act on the basis of that report, the company has to be called upon to have its say in the matter but yet the risk – it may be a grave one – is that the appointment of a Inspector is likely to receive much press publicity as a result of which the reputation and prospects of the company may be adversely affected. It should not therefore be ordered except on satisfactory grounds.

49. Since an investigation into the affairs of a company is likely to have a serious impact on the confidence of its shareholders and of the general public, it is also vital that before such an investigation is ordered, the deciding authority must appraise itself of all the relevant facts.”

76. The quintessence of the above judgments is that under Section 212(1) of the Act, the Central Government, on the sources referred to under clauses (a) to (d) of the said sub-section, is required to form an

<sup>9</sup> 2019 SCC Online Del 6465

opinion that it is necessary to investigate into the affairs of the company by SFIO. It goes without saying that for formation of an opinion with regard to necessity for ordering investigation into the affairs of the company by SFIO, the necessary concomitant is existence of *prima facie* circumstances, which should be demonstrable before the court when questioned. As the investigation will have serious impact on the functioning of the company and its prospects, it is vital that before ordering investigation, the authority shall appraise itself all the relevant facts. Further, forming an opinion and ordering investigation, is an administrative act of the Central Government, and, therefore, it shall be on satisfactory grounds, and if the same are found to be defective, the action contemplated, is justiciable.

77. In the present case, the impugned order reads as under:

"Whereas the Central Government is empowered under Section 212 of the Companies Act, 2013 to order investigation into the affairs of any company in Public Interest and to appoint one or more competent persons as inspectors to investigate the affairs of the company.

2. AND whereas ROC, Hyderabad through RD (SER) has submitted Inquiry report dated 24.02.2020 to the Central Government under Section 208 of the Companies Act, 2013 and recommended investigation into the affairs of the Karvy Stock Broking Limited (KSBL), its Group of Companies and 9 other companies namely (i) Karvy Consultants Limited, (ii) Wizard Insurance Services Private Limited (iii) Zenith Insurance Services Private Limited (iv) Buoyant Insurance Services Private Limited (v) Nova Wealth Management Services Private Limited (vi) Vitalink Wealth Advisory Services Private Limited (vii) Classic Wealth Management Services Private Limited (viii) Champion Insurance Services Private Limited (ix) Pelican Wealth Advisory Services Private Limited.

3. Now, therefore, in exercise of powers conferred under Section 212(1) (a) & (c) of the Companies Act, 2013 the Central Government has formed an opinion that the affairs of the above referred companies need to be investigated to examine the serious nature of fraud committed as large public interest is involved and thereby orders investigation into the affairs of Karvy Stock Broking Limited (KSBL), its Group of Companies and 9 other companies namely (i) Karvy Consultants Limited, (ii) Wizard insurance Services Private Limited (iii) Zenith Insurance Services Private Limited (iv) Buoyant Insurance Services Private Limited (v) Nova Wealth Management Services Private Limited (vi) Vitalink Wealth Advisory Services Private Limited (vii) Classic Wealth Management Services Private Limited (viii) Champion Insurance Services Private Limited (ix) Pelican Wealth Advisory Services Private Limited, to be carried out by officers of the Serious Fraud Investigation Office as may be designated by Director, SFIO.

4. The Inspectors appointed by Director, SFIO to investigate into the affairs of the above mentioned company, shall exercise all the powers available to them under the Companies Act, 2013. The inspectors shall complete their investigation and submit the report to the Central Government.

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

78. A reading of the above order makes it clear that the Central Government, considering the report submitted by the 5<sup>th</sup> respondent – ROC dated 24.02.2020, which recommended investigation into the affairs of the petitioner – company and its group of companies, formed an opinion that the

affairs of the company needs to be investigated to examine the serious nature of fraud committed, as larger public interest involved, and ordered investigation into the affairs of the said companies by SFIO. Before ordering investigation, Oversight Committee was also appointed, which went into the report submitted by the 5<sup>th</sup> respondent and other material, and recommended for investigation into the affairs of the company by SFIO.

79. The source for forming of an opinion by the Central Government with regard to necessity for ordering investigation into the affairs of the company by SFIO is the report of the 5<sup>th</sup> respondent dated 24.02.2020 and also the recommendations of the Oversight Committee dated 25.02.2020.

80. As per the facts noted above, the petitioner – company is doing business as a registered stock broker and as a depository participant. As per the averments made in the counter affidavit, on 22.11.2019, National Stock Exchange has reported to Securities Exchange Board of India (SEBI) the findings of an Inspection and Forensic Audit conducted by NSE on the activities of Karvy Stock Broking Limited, which revealed many misconducts on the part of the petitioner – company, including unauthorized pledging of client securities and transfer of funds raised from the bank, to related parties, stock lending scheme carried out by the company and deletion of files and emails from the systems of Mr. C.Parthasarthy as well as certain other employees using anti-forensic tools. The SEBI, vide ad interim order dated 22.11.2019 prohibited the petitioner – company from taking new clients for broking activities, and the depositories namely NSDL and CDSL, were directed not to act upon the instructions of the petitioner – company in pursuance of power of attorney, and further the company was restricted from transferring securities from one DP account of KSBL. Further there are investors' complaints and continuous report in the press and visual media about the alleged fraudulent activities.

81. In the light of these allegations, the 5<sup>th</sup> respondent initiated inquiry under Section 206 of the Act and issued notices and the petitioner also filed a detailed reply dated 03.02.2020 and at during that stage, the

2<sup>nd</sup> respondent vide order dated 10.01.2020 directed the 5<sup>th</sup> respondent to conduct full-fledged inquiry under Section 206(4) of the Act and submit report. And this court vide order dated 14.02.2020 directed the respondents to conclude the inquiry under Section 206(1) of the Act by duly taking into consideration the reply submitted by the petitioner on 03.02.2020. Accordingly, the 5<sup>th</sup> respondent, by considering the reply of the petitioner dated 03.02.2020, concluded the inquiry under Section 206(4) of the Act and submitted report dated 24.02.2020, and this court, while considering the first issue, held that initiation of inquiry by Central Government and report submitted by 5<sup>th</sup> respondent are in conformity with sub-section (4) of Section 206 of the Act. The said report formed the basis for passing the impugned order dated 27.02.2020, ordering investigation by SFIO into the affairs of the company, and the investigation is also ordered in public interest.

82. As the report dated 24.02.2020 is relied upon by the 2<sup>nd</sup> respondent to pass the impugned order, it is necessary to examine the said report, to see whether the 2<sup>nd</sup> respondent is justified in forming an opinion to order for investigation by SFIO. The said report is filed along with the material papers to the counter affidavit, and the relevant conclusions are as under:

**(14) CONCLUSION:**

(14.1) The company has filed its latest financial statements for the financial year 2018-19 only on 23.12.2019 and Annual Return on 31.12.2019. Further based on the media reports and directions from the Directorate and the Ministry letters have been issued to the company include the latest one issued under Section 206(1) dated 14.01.2020 for their comments within 7 days. The company has furnished its reply vide letter dated 03.02.2020, which has been examined in detail in the Tabular Statement attached as Annexure-IV. It may be seen that the company has not provided full details on specific details called for, as may be seen from the attached report.

(14.2) In view of the nature of allegations, the number of group companies involved which are under jurisdictions of various ROCs, the prima facie findings that the company has raised their loan capital by pledging shares of their clients and diverted the money to group companies using a power of attorney taken from the clients, which is meant to be used only at the time of the client's direction to sell the securities, with a criminal intent without the knowledge or consent of clients, discrepancies in charge documents in this office with that of the claims of bank revealed in SEBI orders, signing of standalone balance sheet by the continuing auditor and consolidated balance sheet by a different auditor appointed just before AGM i.e., 30.09.2019, the media reports about investor grievances and to protect investors money, this office suggests that the Ministry may consider an investigation into affairs of this company, Karvy group of companies and 9 companies having domain name of karvy.com and having common addresses in UGC records, as mentioned in SEBI order dated 22-Nov-2019 by an appropriate authority in a speedy and efficient manner for better protection of public interest."

83. The above conclusions recorded by the 5<sup>th</sup> respondent needs no reiteration, and they are self explanatory, and one of the allegations against the petitioner and its group of companies is that, those companies raised loans from the Bank, which is public money, in a fraudulent manner detailed above. Hence, there is sufficient amount of public interest involved in this case. In the light of these conclusions, the 5<sup>th</sup> respondent recommended for further investigation vide his report dated 24.02.2020.

84. Along with the counter affidavit, respondents filed the minutes of the Oversight Committee meeting held on 25.02.2020. The said minutes disclose that the Committee considering the allegations against the petitioner, direction of this court in W.P.No.3143 of 2020 dated 14.02.2020 and the report of the ROC dated 24.02.2020, conveyed its decision to the Central Government recommending investigation into the affairs of the petitioner – company. The decision of the Oversight Committee is extracted as under for ready reference:

"8. Decision of Oversight Committee:

8.1 In view of the presentation made by RD (SER) and the inquiry report, the oversight committee (OC) observed:

a) Interest of investors (more than 80,000), including retail investors, which are at stake as KSBL had prima facie abused its position as a Depository Participant.

b) KSBL had prima-facie borrowed fund from Banks & BFIs by citing false information.

c) There is a likelihood of diversion of public funds through related parties.

d) Specialized/Technical/Complex nature of the alleged fraud.

8.2 Taking into consideration all these factors, the Oversight Committee unanimously recommended investigation into the affairs of KSBL and their 9 companies mentioned in para 44 above, by SFIO under Section 212(1)(a) and (c) of Companies Act, 2013 by SFIO, in public interest.

85. Considering the report submitted by the 5<sup>th</sup> respondent dated 24.02.2020 and also the decision of the Oversight Committee dated 25.02.2020, I am of the considered view, that there are *prima facie* circumstances justifying the action taken by the 2<sup>nd</sup> respondent in forming opinion with regard to necessity for ordering investigation into the affairs of by the company by SFIO, as large public interest is involved.

86. In the judgments relied on by the learned Senior Counsel appearing for the petitioner in Medak Diocese of Church of South India Trust Association vs. Union of India (1 supra), the facts disclose that the impugned order therein does not disclose formation of opinion with regard to necessity for ordering investigation by SFIO. Therefore, the learned single Judge has remitted the matter back for passing fresh orders in exercise of jurisdiction under Section 212 of the Act.

87. Similarly in the order of the Division Bench of the High Court of Bombay in Parameshwar Das Agaral's case (2 supra), the learned judges after exposition of the law on Section 212 of the Act, on facts found that there is no material which can be termed as enough to warrant the exercise of power by the Central Government by resorting to Section 212(1) of the Act of 2013. The facts in the judgment of the Division Bench, are different from the facts of the present case, and hence except for the law laid down therein, it cannot be made applicable.

88. For the foregoing reasons, the issue No.2 is also answered in the affirmative.

89. The other contention of behalf of the petitioner is that as the matter is *sub judice* by SEBI, the present investigation has to await the result of inquiry by SEBI.

90. In the counter affidavit it is categorically stated that the authorities that deal with the inquiry, inspection or investigation under the Ministry of Corporate Affairs are altogether different and the scope of inquiry and the procedure that would be adopted by another regulator i.e., SEBI, is different, therefore, the case of the respondents is that the contention of the petitioner is incorrect and absolute false.

91. Sub-section (2) of Section 212 of the Act, mandates that where any case has been assigned by the Central Government to SFIO for investigation under this Act, no other investigating agency of Central



Government or the 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 proceed further with and the concerned agency shall transfer the relevant documents and records in respect of such offences under this Act to SFIO. In the light of sub-section (2) of Section 212, the contention of the petitioner in this regard is rejected.

92. Before parting with the case it is to be noticed that this court is not sitting in appeal over the decision of the Central Government in ordering investigation into the affairs of the company under Section 212(1)(a) and (c) of the Act, and scope of this court under Article 226 of the Constitution of India, with regard to judicial review, is limited to the examination of decision making process, and not the decision. In the preceding paragraphs, this court, on examining the said process, found that ROC has followed the procedure envisaged under Section 206(4) of the Act and submitted the report; and the said report and the order of this court, and also the other material available on record, was examined by the Oversight Committee, and vide its minutes dated 25.02.2020, recommended for investigation. Eventually, the 2<sup>nd</sup> respondent, considering the report dated 24.02.2020, and in exercise of his jurisdiction under Section 212(1)(a) and (c) of the Act, and forming an opinion with regard to necessity for ordering investigation into the affairs of the company by SFIO, ordered investigation vide the impugned, as large public interest is involved. In these circumstances, no exception can be taken to the impugned order.

93. For the foregoing reasons, I do not find any infirmity in the impugned order warranting interference of this court under Article 226 of the Constitution of India for exercise of power of judicial review, and in view of the same, W.P.No.5024 of 2020 is liable to be dismissed.

94. It is made clear that the present writ petitions are confined to the jurisdiction of the 2<sup>nd</sup> respondent in ordering investigation into the affairs of the company by SFIO under Section 212 of the Act, and this court has not expressed any opinion on merits, and the truth or otherwise of the

allegations are subject to the result of the investigation and the further proceedings as per law. Hence, the investigation and the proceedings thereafter shall be strictly in accordance with law and uninfluenced by observations or findings, if any, made in this order.

95. For the foregoing reasons, the impugned order dated 27.02.2020 is confirmed and the writ petition in W.P.No.5024 is dismissed, and consequently, W.P.No.8997 of 2020, which has been filed challenging the notices issued in pursuance of the impugned order, is also dismissed.

96. Miscellaneous petitions pending, if any, shall stand closed. No order as to costs.

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**A.RAJASHEKER REDDY,J**

DATE: 26--08--2020

AVS

Note:

Issue C.C. in three days.

LR Copy to be marked.

B/O

