

Sanket Bipin Shah vs Union Of India, Ministry Of Corporate ... on 12 July, 2018

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NATIONAL COMPANY LAW APPELLATE TRIBUNAL, NEW DELHI
Company Appeal (AT) No. 103 of 2018

(Arising out of Order dated 2nd April, 2018 passed by the National Company Law Tribunal, Mumbai Bench, Mumbai in MA 180/2018, 182/2018, 183/2018, 184/2014, 217/2018, 218/2018 and 219/2018 In C.P. No. 277/241-242/NCLT/MB/MAH/2018)

IN THE MATTER OF:

Union of India, Ministry of Corporate Affairs ...Appellant

Vs

Gitanjali Gems Ltd. & Ors.Respondents

Present:

For Appellant: Mr. Sandeep Sethi, ASGI assisted by Mr. Shivam Goel, Advocate
Mr. Sanjay Shorey, JD(L), MCA, Mr. Rakesh Tiwari, JD, RD(WR), and Mr. Meghav Gupta, CP, MCA.

For Respondents: Mr. Arpan Behl and Mr. Priyank Mangal, Advocates for R-1 & 2.
Mr. Arunabh Chowdhary, Mr. Abhay Jadeja, Mr. K. Dorjee and Mr. Vaibhav Tomer, Advocates for R-3.
Mr. Ashish Prasad and Mr. Mehfooz Nazki, Advocates for R-5, 6 & 7.
Mr. Raghav Gupta, Advocate for Respondent No. 8.

With
Company Appeal (AT) No. 119 of 2018

(Arising out of Order dated 23rd February, 2018 passed by the National Company Law Tribunal, Mumbai Bench, Mumbai in C.P. No. 277/2018)

IN THE MATTER OF:

Union of India, Ministry of Corporate Affairs ...Appellant

Vs

Gitanjali Gems Ltd. & Ors.

....Respondents

Company Appeal (AT) Nos. 103, 119, 124 to 133 of 2018

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Present:

For Appellant: Mr. Sandeep Sethi, ASGI assisted by Mr. Shivam Goel, Advocate

Mr. Sanjay Shorey, JD(L), MCA, Mr. Rakesh Tiwari, JD, RD(WR), and Mr. Meghav Gupta, CP, MCA.

For Respondents: Mr. Arpan Behl and Mr. Priyank Mangal, Advocates for R-35 & R-38.
Mr. Upinder Singh and Mr. Ramanjit Singh, Advocate for R-42.
Mr. Arunubh Chowdhary, Mr. Abhay Jadeja and Mr. Vaibhav Tomer, Advocates for R-43
Mr. Dheeraj Nair, Mr. Mohit Bakshi and Mr. Kumar Kislay, Advocates for R-44, 51 & 53.
Ms. Charu Sharma, Advocate for R-64.
Mr. Vijay Aggarwal and Mr. Akhil Agarwal, Advocates for R-27, 33, 36, 48, 50, 57, 60, 64, 66 & 67.

With

Company Appeal (AT) No. 124 of 2018

(Arising out of Order dated 23rd February, 2018 passed by the National Company Law Tribunal, Mumbai Bench, Mumbai in C.P. No. 277/2018)

IN THE MATTER OF:

Suresh Kumar Bhutani

...Appellant

Vs

Union of India,
Ministry of Corporate Affairs

...Respondent

Present:

For Appellant: Mr. Sumesh Dhawan and Ms. Tannya Baranwal, Advocates.

Company Appeal (AT) Nos. 103, 119, 124 to 133 of 2018

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With

Company Appeal (AT) No. 125 of 2018

(Arising out of Order dated 23rd February, 2018 passed by the National Company Law Tribunal, Mumbai Bench, Mumbai in C.P. No. 277/2018)

IN THE MATTER OF:

Paresh Pravibhai Rathod

...Appellant

Vs

Union of India,
Ministry of Corporate Affairs

...Respondent

Present:

For Appellant: Mr. Mudir Jain, Advocate

With

Company Appeal (AT) No. 126 of 2018

(Arising out of Order dated 23rd February, 2018 passed by the National Company Law Tribunal, Mumbai Bench, Mumbai in C.P. No. 277/2018)

IN THE MATTER OF:

Haresh V. Rajlal Shah

...Appellant

Vs

Union of India,
Ministry of Corporate Affairs

...Respondent

Present:

For Appellant: Mr. Vijay Aggarwal, Advocate.

Company Appeal (AT) Nos. 103, 119, 124 to 133 of 2018

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With

Company Appeal (AT) No. 127 of 2018

(Arising out of Order dated 23rd February, 2018 passed by the National Company Law Tribunal, Mumbai Bench, Mumbai in C.P. No. 277/2018)

IN THE MATTER OF:

Ketan Chandrakant Solanki

...Appellant

Vs

Union of India,
Ministry of Corporate Affairs

...Respondent

Present:

For Appellant: Mr. Vijay Aggarwal, Advocate.

With

Company Appeal (AT) No. 128 of 2018

(Arising out of Order dated 23rd February, 2018 passed by the National Company Law Tribunal, Mumbai Bench, Mumbai in C.P. No. 277/2018)

IN THE MATTER OF:

Manish Lalit Dani

...Appellant

Vs

Union of India,
Ministry of Corporate Affairs

...Respondent

Present:

For Appellant: Mr. Vijay Aggarwal, Advocate.

Company Appeal (AT) Nos. 103, 119, 124 to 133 of 2018

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With

Company Appeal (AT) No. 129 of 2018

(Arising out of Order dated 23rd February, 2018 passed by the National Company Law Tribunal, Mumbai Bench, Mumbai in C.P. No. 277/2018)

IN THE MATTER OF:

Sanket Bipin Shah ...Appellant

Vs

Union of India,
Ministry of Corporate Affairs ...Respondent

Present:

For Appellant: Mr. Vijay Aggarwal, Advocate.

With

Company Appeal (AT) No. 130 of 2018

(Arising out of Order dated 23rd February, 2018 passed by the National Company Law Tribunal, Mumbai Bench, Mumbai in C.P. No. 277/2018)

IN THE MATTER OF:

Himanshu Pravinchandra Trivedi ...Appellant

Vs

Union of India,
Ministry of Corporate Affairs ...Respondent

Present:

For Appellant: Mr. Ashul Agarwal, Advocate.

Company Appeal (AT) Nos. 103, 119, 124 to 133 of 2018

With

Company Appeal (AT) No. 131 of 2018

(Arising out of Order dated 23rd February, 2018 passed by the National Company Law Tribunal, Mumbai Bench, Mumbai in C.P. No. 277/2018)

IN THE MATTER OF:

Jyoti B Vora ...Appellant

Vs

Union of India,
Ministry of Corporate Affairs ...Respondent

Present:

For Appellant: Ms. Tannya Mehta, Advocate.

With

Company Appeal (AT) No. 132 of 2018

(Arising out of Order dated 23rd February, 2018 passed by the National Company Law Tribunal, Mumbai Bench, Mumbai in C.P. No. 277/2018)

IN THE MATTER OF:

Sudhir Ambalal Mehta ...Appellant

Vs

Union of India,
Ministry of Corporate Affairs ...Respondent

Present:

For Appellant: Mr. Abhimanyu Bhandari, Advocate.

Company Appeal (AT) Nos. 103, 119, 124 to 133 of 2018

With

Company Appeal (AT) No. 133 of 2018
(Arising out of Order dated 23rd February, 2018 passed by the National
Company Law Tribunal, Mumbai Bench, Mumbai in C.P. No. 277/2018)

IN THE MATTER OF:

Chandrakant Kanu Karkare

...Appellant

Vs

Union of India,
Ministry of Corporate Affairs

...Respondent

Present:

For Appellant: Mr. Sumesh Dhawan and Ms. Tannya Baranwal,
Advocates

JUDGMENT

SUDHANSU JYOTI MUKHOPADHAYA, J.

In all these appeals as common question of law is involved and common orders are under challenge, they were heard together and disposed of by this common judgment.

2. The Union of India, Ministry of Corporate Affairs, filed an application under Sections 221, 222, 241, 242, 246 read with Section 339 of the Companies Act, 2013, being Company Petition No. 277 of 2018 against 'Geetanjali Gems Ltd. & Ors.', including the Companies and partnership firms and individual Directors and all employees on the ground that the affairs of the 1st Respondent Company ('Geetanjali Gems Ltd.'), its group Company Appeal (AT) Nos. 103, 119, 124 to 133 of 2018 companies and LLPs have been/being conducted prejudicial to the public interest and on the ground that the Union of India, being custodian of the subjects of the country, sought the interim reliefs as follows:

a) That the Petitioner be permitted to serve the Respondents through post, publication in newspapers, email, WhatsApp messaging, wherever required, in order to ensure due service of notice to all Respondents, present in India or overseas.

b) That the Respondents be directed to disclose their moveable and immovable properties/assets, including bank accounts, owned by them in India or anywhere in

the world.

c) That the Respondents be restrained from mortgaging or creating charge or lien or third-party interest or in any way alienating, the movable or immovable properties owned by them and further, direct attachment of the all said properties and hand them over to the Petitioner. Petitioner be allowed to execute such orders through the Indian Missions, stationed overseas, for the immoveable and moveable properties in existence abroad.

d) That the Bombay Stock Exchange (BSE), National Stock Exchange (NSE) and Securities and Exchange Board of India (SEBI) be directed to restrain the trading of securities of Respondent No.1.

e) That the Respondent Nos. 2, 3, 7, 8, 9, 22 and 23 be restrained from mortgaging or creating charge or lien or third-party Company Appeal (AT) Nos. 103, 119, 124 to 133 of 2018 interest or in any way alienating the securities issued by the said Respondents.

f) That Central Depository Services Ltd. (CDSL) and National Securities Depository Ltd. (NSDL) be directed that securities owned/held by the respondents in any company be freezed and details thereof be shared with the Petitioner.

g) That the Central Board of Direct Taxes (CBDT) and the Central Board of Excise and Customs (CBEC) may be directed to disclose information about all assets of the Respondents, in their knowledge or possession, for the purpose of attachment and restraint on alienation of such assets.

h) That the Reserve Bank of India (RBI) and the Indian Banks Association (IBA) be directed to facilitate disclosure of the details of bank accounts, lockers owned by the Respondents and attach the same on behalf of the Petitioner.

i) That the State Governments and Administrators or Union Territories be directed to identify and disclose all details of immoveable properties owned/held by the Respondents.

j) That the Petitioner be permitted to take possession, after due inventory, of all moveable and immoveable properties of the Respondents that have been attached as per the orders of this Hon'ble Tribunal, though Official Liquidators.

k) The Petitioner seeks the leave of the Hon'ble Tribunal to enlarge the scope of the reliefs sought and prayers made in this petition Company Appeal (AT) Nos. 103, 119, 124 to 133 of 2018 by filing any other documents or applications in view of the extraordinary nature of the circumstances pertaining to the present petition.

l) That the Petitioner may be permitted to file copies of the interim and/or final investigation reports of the Serious Fraud Investigation Office (SFIO), as and when the same are submitted by the concerned inspectors to the Central Government, in order to supplement/enlarge/amend/modify the present petition, based on the findings of the interim/final report, including addition to the array of Respondents, as per the NCLT Rules.

3. The cause of action for filing this case by the Union of India was that the Union of India has identified a group of companies, LLPs, Trusts and individuals that prima facie appeared to be involved in financial fraud of approximately Rs. 11,400 crores that has been perpetuated on Punjab National Bank (PNB) by one Mr. Nirav Modi (Respondent No.11 before Tribunal), Mr. Nishal Modi (Respondent No. 12), Mrs. Ami Nirav Modi (Respondent No.13) and Mr. Mehul Chinubhai Choksi (Respondent No. 14) through various companies and LLPs directly or indirectly maintained by them. It is shown as most of the companies are primarily engaged in the business of diamond trading, but whereas by seeing the Petition it appears that these Respondents and their group companies in the name of diamond business, according to the Union of India, committed mega fraud by conniving with some of the Officers of PNB routing money of a public sector Company Appeal (AT) Nos. 103, 119, 124 to 133 of 2018 Bank through issuance of letter of undertakings to their benefit without making any entries in the trade finance module of the Banks, i.e. Core Banking Service (CBS) system to avoid detection. The Union of India submits that the funds received under Buyer's credit from overseas banks were credited to Nostro Account of the Bank and subsequently utilized as per direction given by the conniving officer to repay imports/earlier Buyer's credit used by the firms. For issuance of fraudulent LCs, the conniving officer issued LCs by entering a small amount in trade module of Core Banking Service (CBS) system and generated the reference number and SWIFT messages were sent for the amount. Subsequently, without making any change in Trade Finance Module of CBS system, the conniving officer sent modified SWIFT message for the same reference to the beneficiary bank for enhanced amount unauthorizedly. By sending modified SWIFT message with the reference given for smaller amount, this enhancement would not come to the notice of CBS system. By doing so, according to the Union of India, the Respondents committed fraud of Rs. 11,400 crores against PNB.

4. The case of the Appellant- Union of India was that since the Respondent Companies and their directors having caused wrongful loss of rupees above Rs. 11,400 crores by fraudulent means and there being FIRs against many of the Respondents detailing how fraud has been committed, at least to realize the monies to the extent possible, it is essential to obtain restraint orders against the assets lying with various companies, LLPs, Trusts and individuals, in the backdrop of the factual scenario, it has Company Appeal (AT) Nos. 103, 119, 124 to 133 of 2018 become imperative upon this Bench to pass restraint orders before going into the technicalities and the procedural aspects in respect to the Company Petition, because the fact of the matter is, fraud has taken place, money of the bank has gone out. It was pleaded that if the Tribunal waits for details of each and every transaction, the liquid assets and other assets lying with these entities will be frittered away. Once that happened, the whole exercise of passing orders will become redundant.

5. The Petition were based on the events, which were noticed by the Tribunal, as quoted below: -

"on the events surrounding certain First Information Reports (FIR) filed by the Punjab National Bank (PNB), a public sector nationalized bank. FIR No. RCBSM2018E0001 dated 31/01/2018 filed with CBI, BS&FC, Mumbai, inter alia, states that Mr. Nirav Modi (Respondent No. 11), Mr. Nishal Modi (Respondent No.

12), Mrs. Ami Nirav Modi (Respondent No. 13), Mr. Mehul Chinubhai Choksi (Respondent No. 14), all partners of M/s Diamond R US (Respondent No. 6), M/s Solar Exports (Respondent No.4) and M/s Stellar Diamonds (Respondent No.5) in conspiracy with Mr. Gokulnath Shetty (Respondent No.15), Deputy Manager (retd), PNB, Mr. Manoj Hanumant Kharat (Respondent No. 16), SWO PNB and other unknown persons Company Appeal (AT) Nos. 103, 119, 124 to 133 of 2018 committed the offence of cheating against PNB to cause a wrongful loss of Rs. 280.70 Crores to PNB and pecuniary advantage to M/s Diamond R US (Respondent No.6), M/s Solar Exports (Respondent No.

4) and M/s Stellar Diamonds (Respondent- 5). Further FIR No. RCO2(E)/2018/CBI/BS&FC/Mum, dated 15/02/2018, filed with CBI, BS&FC, Mumbai, inter alia, states that the accused bank officials Mr. Gokulnath Shetty (Respondent No.15), Deputy Manager (retd.), PNB, Mr. Manoj Hanumant Kharat (Respondent No. 16), SWO PNB in connivance with the accused companies represented by its Directors and unknown others during 2017-18 defrauded PNB to the tune of an aggregate amount of USD 754.92 Million (equivalent to Rs.

4886.72 Crores @ Rs. 64.00 per USD) in the matter of issuance of unauthorised and fraudulent Letters of Undertaking in favour of Foreign Branches of different Indian-based Banks and purported Foreign Branches of different Indian-based Banks and purported Foreign Letters of Credits (FLCs) in favour of foreign suppliers of the accused companies. The FIR dated 15/02/2018 states that the accused companies. The FIR dated 15/02/2018 states that the accused include the companies belonging to the Gitanjali Group promoted by Company Appeal (AT) Nos. 103, 119, 124 to 133 of 2018 Mr. Mehul Choksi (Respondent No.14). A copy of the FIRs dated 31/01/2018 and 15/02/2018 as shown in Annexure P-2 (collectively) filed by the petitioner."

6. The Union of India had given description of various companies to which money has gone through modus operandi described above, and from these companies, those monies being shown as gone to their Partners and Trusts maintained by Mr. Nirav Modi. It was pleaded that the Appellant- Union of India deserved orders to be passed under Section 221 of the Companies Act, 2013 so as not to let the assets of any of these companies, other entities mentioned in the petition frittered away, including the details of the Companies, LLPs, Trust, individuals and assets showing in the record of PNB, which are as follows:

"Nirav Modi Group (Firestar) Companies prima facie beneficiary of fraud:

i) Nirav Modi Group/ Associates/ Subsidiaries/ firms having exposure with PNB:

Name

Directors/ Partners/ Trustees/

Firestar International Ltd.	Beneficiaries
	Mr. Nirav Deepak Modi (Promoter)
	Mr. Haresh Vrajlal Shah, Professional
	Mr. Suresh Chandra Senapaty, Professional
	Mr. Gautam Mukkavilli, Professional
Firestar Diamond	Mr. Sanjay Rishi, Professional
	Mrs. Angelina Nguyen, Professional
	Mr. Nirav Deepak Modi (Promoter)

Company Appeal (AT) Nos. 103, 119, 124 to 133 of 2018 International P Ltd Mr. Haresh Vrajlal Shah, Professional Mr. Suresh Chandra Senapaty, Professional Firestar Diamond FZE Mr. Nirav Deepak Modi (Ultimate (Dealing with DIFC Beneficiary Owner) Dubai) Mr. Bankim Mehta, Professional Director Firestar Diamond Ltd. Mr. Bankim Mehta, Professional (Dealing with BO : Hong Director Kong)

ii) Nirav Modi Group/ Associates/ Subsidiaries/firms where suspected fraud has taken place:

Name	Partners
M/s Stellar Diamonds	Nirav Family Trust*
	Nirav Modi Family Trust*
M/s Solar Exports	Nirav Family Trust*
	Nirav Modi Family Trust*
M/s Diamond R US	Sh Nirav Deepak Modi
	M/s NDM Enterprises Pvt. Ltd. #
	M/s. ANM Enterprises Pvt. Ltd. #

*Details of Trustees are as under:

	Nirav Family Trust	Nirav Modi Family Trust
Settler	Purvi Mayank Mehta	Deepak Keshavlal Modi
Trustees	- Nirav Deepak Modi	- Nirav Deepak Modi
	- Ami Nirav Modi	- Ami Nirav Modi
	- Neeshal	- Neeshal
	- Deepak Modi	- Deepak Modi
Beneficiaries	- Deepak Keshavlal Modi	- Purvi Mayank Mehta
	- Ami Nirav Modi	- Ami Nirav Modi
	- Neeshal Deepak Modi	- Neeshal Deepak Modi
	- Nehal Deepak	- Nehal Deepak

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- Rohin Nirav Modi - Rohin Nirav Modi

- Ananya Nirav - Ananya Nirav Modi Modi

- Apasha Nirav - Apasha Nirav Modi Modi # Directors (as per ROC search dated 08.12.17) are as under:

M/s NDM Enterprises Pvt. M/s ANM Enterprises Pvt. Ltd. Ltd.

- Hemant Dahyalal Bhatt - Ramesh Madhavdas Assar

- Ramesh Madhavdas Assar - Ketan Chandrakant Solanki

iii) Other Group/Associates/Subsidiaries/firms, where PNB has no exposure A. Companies/ LLP in which Nirav Modi is Director Name of Company/ Firm Directors/ Partners Radashir Jewelry Mr. Nirav Deepak Modi Company Private Ltd. Mr. HemantDahyalal Bhat Jewelry Solutions Mr. Nirav Deepak Modi International Private Mr. HemantDahyalal Bhat Ltd. (Amalgamated) Firestar Diamond Pvt. Mr. Nirav Deepak Modi Ltd. Mr. HemantDahyalal Bhat Neeshal Enterprises LLP Mr. Nirav Deepak Modi Mr. HemantDahyalal Bhat Paragon Jewellery LLP Mr. Nirav Deepak Modi Mr. HemantDahyalal Bhat Paragon Merchandising Mr. Nirav Deepak Modi LLP Mr. HemantDahyalal Bhat Panchajanya Diamonds Mr. Nirav Deepak Modi LLP Mr. HemantDahyalal Bhat B. Corporate guarantors in the M/s Firestar International Ltd. and also enterprises owned or significantly influenced/ controlled by key management personnel or their relative:

Company Appeal (AT) Nos. 103, 119, 124 to 133 of 2018 Name of Company/ Firm Directors/ Partners Firestone Trading Pvt. Mr. HemantDahyalal Bhat Ltd. Mr. PareshPravinbhaiRathod Neeshal Trading (P) Ltd. Mr. HemantDahyalal Bhat Mr. Ramesh Madhavdas Assar Firestar Diamond Mr. Nirav Deepak Modi (Promoter) International P Ltd. Mr. HareshVrajilal Shah, Professional Mr. Suresh Chandra Senapthy, Professional Bently Properties P. Ltd. Mr. Ramesh Madhavdas Assar Mr. KetanChandrakant Solanki MAK Business Mr. Ramesh Madhavdas Assar Enterprises Pvt. Ltd. Mr. Manish Lalit Dani Mr. PareshPravinbhaiRathod Paundra Enterprises Mr. Ramesh Madhavdas Assar Private Limited Mr. Manish Lalit Dani (Formerly Knoen as Mr. PareshPravinbhaiRathod Aimeka Developers Pvt.

Ltd.) ANM Enterprises P. Ltd. Mr. Ramesh Madhavdas Assar Mr. KetanChandrakant Solanki NDM Enterprises P. Ltd. Hemant Dahyalal Bhat Ramesh Madhavdas Assar Details of guarantors in the account Firestar Diamond International P Ltd. (FDIPL)

Name of Guarantor Relationship with borrower Nirav Modi Promoter Director
Firestar International Group Company Ltd.

Details of guarantors in the account Firestar Diamond FZE, Dubai:

Name of Guarantor	Relation-ship with borrower
M/s. Firestar Holdings Ltd. (formerly Firestone Holding Ltd)	Holding Co.
M/s. Firestar International Pvt. Ltd.	Holding Co.
Mr. Nirav Modi	Group Prmoter

Company Appeal (AT) Nos. 103, 119, 124 to 133 of 2018 Firestar Diamond Ltd,
Honkong:

Name of Guarantor	Relationship with borrower
Nirav Modi	Promoter Director
Firestar Diamond International Pvt. Ltd.	Group Company

C. Related parties of Firestar International ltd.
Subsidiaries companies

- Firestar Group Inc, USA
- Firestar Holding Limited, Hongkong

Step down Subsidiaries Company: -

- Firestar Group Inc, USA
- Firestar Holding Limited, Hong Kong
- Firestar Diamond Inc., USA

- Firestar Diamond International Inc., USA

- Firestar Jewelry Limited, Hong Kong

- Firestar Diamond BVBA, Belgium

- Firestar Diamond LLC, Armenia

- FS Diamond Ply Ltd, South Africa

- Fantasy INC, USA

- Firestar Jewelry INC, USA

- Nirav Modi Jewels BVBA, Belgium
- Nirav Modi Limited, Hongkong
- Nirav Modi Limited, London
- Nirav Modi Limited, Russia
- Nirav Modi Limited, Macau
- Nirav Modi Limited, France
- Firestar Diamond PTE Limited, Singapore
- Firestar Diamond and Jewelry FZCO, UAE
- Firestar Diamond Ltd, Russia
- Synergies Corporation
- Camelot Enterprises Private Limited
- Rohin Trust Company Appeal (AT) Nos. 103, 119, 124 to 133 of 2018
- A Jaffe INC., USA
- Nipur BVBA
- Islington International Holdings PTE Ltd.

Some of the properties movable including immovable properties details available with us:-

Firestar international Ltd :-

A. Movable:

First pari-passu charge by way of hypothecation of stocks lying at factory premises as well as outside on job-order basis, Receivables and other current assets (present and future of the Company) and receivable with other consortium banks.

B. Immovable: (Mortgaged to the Consortium on pari -

passu basis)

S N	Security Description	Area in Sq M Ownership or Sq Ft
1	1110, 11th floor, Prasad Chambers, Opera House, Mumbai	630 Sq. ft Firestar Carpet Area international Pvt. Ltd.
2	1111, 11th Floor, Prasad Chambers, Opera House, Mumbai	715 Sq. Ft Firestar Carpet Area international Pvt. Ltd.
	Mansion CHSL, J.S.S. Rd., Opera House, Mumbai 04	Carpet Area international Pvt. Ltd.
	Nagindas Mansion CHSL, J.S.S. Rd., Opera House, Mumbai 04	Carpet Area international Pvt. Ltd.
	Grosvenor House,	Carpet Area Modi

Company Appeal (AT) Nos. 103, 119, 124 to 133 of 2018 Peddar Rd., Mumbai-

	524, 526, 528 at 5th Floor, Belgium Towers, Surat	Carpet Area international Pvt. Ltd.
7	6th floor, 238, Block-III, Mafatlal Centre, Nariman Point, Mumbai 400 021	15645 Sq. Ft. Firestar international Pvt. Ltd.
8.	Unit No.2001 & 2002, 20th Floor, Tower 'B' Peninsula Business Park, C.S. No.243 Of Lower Parel Division, Ganpatrao kadam Marg, Lower Parel, Mumbai - 400 013	Unit No.2001 : MAK 15,071 Sq. Ft. Business Unit No.2002: Enterprises 15,387 Sq. Ft. Pvt. Ltd.
		Attached with Car Parking Unit No.2001: 14 Nos. Unit No.2002:
9	HCL House Basement + Ground + 4 upper floors of the Building along with Land bearing C.S. No. 360 of Vile Parle Division, Village Marol,	Documented Plot Area : 30,127 Sq. Ft. Buildup Area of known as Building : Aimeka
		Paundra Enterprises Private Limited (Formerly

	Opp. Sugun Hospital, Old Military Road, Andheri (East), Mumbai 400 059	33,400 Sq. Ft.	Developers Pvt. Ltd.).
11	& 395 at Sachin, SEZ, Surat Plant & Machinery - FIPL		International Firestar International Pvt. Ltd.

Exclusive Security with the PNB :

S	Security Description	Area in Sq M or Ownership Sq Ft	
N			
1	Office Premises	2058 sq. ft.	Firestar

Company Appeal (AT) Nos. 103, 119, 124 to 133 of 2018 No.AE4050 on 4th floor International at Bharat Diamond Pvt. Ltd.

Bourse Complex, C-28, G Block, Bandra Kurla Complex, Bandra East, Mumbai-400051 2 Land and building at 1000 sq. m. Firestar Plot No.26 located in land and International SURSEZ, Sachin, dist, 12900 sq. ft. Pvt. Ltd.

Surat-26 building Firestar diamond International Pvt. Ltd. (FDIPL) :-

A. Movable:

First pari-passu charge by way of hypothecation of stocks lying at factory premises as well as outside on job-order basis, Receivables and other current assets (present and future of the Company) and receivable with other consortium banks.

B. Immovable: (Mortgaged to the Consortium on pari -

passu basis)

Security Description	Area in SqM Ownership or Sq Ft	
Unit No.23, 3 floor, B rd wing, Tower No.2, Kohinoor City mall along with 10 covered car spaces bearing No.61, 62, 63, 64, 64A, 65, 65A, 66, 66A and 67 in the lowest basement of	15133.7	Firestar Diamond International Pvt. Ltd. (FDIPL)

Kohinoor City, Opp. Don	
Bosco School, Kirol	
Road, Off. LBS Marg,	
Kurla (W), Mumbai - 70	
Unit No.24, 4th floor, B 15133.7	Firestar
Wing, Tower No.2,	Diamond
Kohinoor City mall along	International
with 10 covered car	Pvt. Ltd.
spaces bearing No.67A,	(FDIPL)

Company Appeal (AT) Nos. 103, 119, 124 to 133 of 2018 71, 71A, 72, 73, 74, 75, 76, 77 and 78 in the lowest basement of Kohinoor City, Opp. Don Bosco School, Kirol Road, Off. LBS Marg, Kurla (W), Mumbai-70 Factory/ Works address:

Firestar Diamond International Private Limited

1. Surat - Plot No. 18, 19, 20 & 67, SEZ, Sachin, Surat - 394221
2. Kurla - Unit No.23 & 24, Tower II, Wing B, Kohinoor City, Kirol Road, Off: LBS Marg, Kurla West, Mumbai - 400070.
3. Mumbai Store : ITTS House, Saibaba Road, Kalaghoda, Fort, Mumbai - 400001.
4. Delhi Store : D-33, Varun Marg, Shiniwas Puri, Block D, Defence Colony, New Delhi - 110024.
5. Andheri : Army Navy Press Bldg., Plot No.118, Road 18, MIDC, Andheri East, Mumbai 400093, India.
6. Unit No.26, Ground Floor, Tower No.2, Kohinoor City Mall, Kirol Road, Off : LBS Marg, Kurla West, Mumbai - 400070 Firestar International Limited 1 518-522, 5th floor, Belgium Tower, Opp : Linear Bus Stand, Ring Road, Surat 395003, India
2. G-1-181, SEZ-II, Sitapura Indl. Area, Jaipur - 302022
3. 2nd Floor, Trade Point Building Kamala Mills Compound, Lower Parel (West), Mumbai - 400093.
4. Army Navy Press Building, Plot No.118, Road No.18, MIDC, Andheri (East), Mumbai - 400093.
5. Plot no.26, Road 13, Surat SEZ Sachin, Surat, Gujarat 394230
6. Bharat Diamond Bourse, Tower A (East) - 4050, BKC, Bandra East, Mumbai - 400 051.

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7. Kurla - Unit No.23 & 24, Tower II, Wing B, Kohinoor City, Kirol Road, Off : LBS Marg, Kurla West, Mumbai - 400070.

In addition to above, covered under insurance are listed below:

8. 2nd Floor, Trade Point Building, Kamala Mills Compound, Lower Parel (West), Mumbai - 400013 (bound warehouse).

9. 1110, Prasad Chambers, Opera House, Mumbai - 400004

10. 8,5, & 16, 15-B Nagindas Mansion, 61, JS Road, Opera House, Mumbai 400004.

11. 15/A 4th floor, Bansilal Building, C/o Sangeeta Kala Bhawan, J S S Road, Mumbai - 400004.

12. AE-4042, B Tower, Bharat Diamond Bourse, G Block, Bandra Kurla Complex, Bandra East, Mumbai - 400051.

13. PBW, Part B, Unit No.24, 4th floor, Tower II, Wing B, Kohinoor City Mall, Kirol Road, Opp. LBS Marg (West), Mumbai - 400070 (bound warehouse)."

7. The Tribunal while allowing the Union of India to file additional affidavit supporting the case mentioned in the Company Petition, passed the following orders on 23rd February, 2018:

"6. In the list given above, though Trusts and individuals are not being covered either u/s 221 of the Companies Act, 2013 or Section 43 of LLP Act, 2008, since there is a categorical statement from Union of India that funds were routed to those individuals and Trusts through the companies mentioned above, to make investigations meaningful to crack this fraud, restraint order is very much necessary against the assets lying Company Appeal (AT) Nos. 103, 119, 124 to 133 of 2018 with the individual and Trusts in addition to the companies and LLPs mentioned above. Since the Petitioner having said that the funds of the Bank have been routed through the companies and LLPs to the Trusts and individuals as well, investigation against other entities being incidental to the investigation ordered against the companies and LLPs, the whole exercise of investigation and passing orders by this Bench will become futile unless restraint order is passed against these individuals and Trusts thereof.

8. The Petitioner has candidly said that if notice has been given to the parties prior to hearing then there is every possibility of consuming time for effecting service in view of the exigency involved in this case, the Petitioner in view of the public interest has sought for ex-parte orders, for this Bench having noticed that the Petitioner has established prima facie case for asking ex-parte orders, this Bench has passed this ex-parte order.

9. In view of the same, this Bench, by invoking section 221 of the Companies Act, 2013 and section 43 of LLP Act, 2008, hereby injunct the Respondents and other companies, LLPs, Trusts and individuals mentioned above from removal, transfer or disposal of funds, assets Company Appeal (AT) Nos. 103, 119, 124 to 133 of 2018 and properties of the entities and individuals mentioned above until further orders.

10. As to other reliefs and for appearance of the Respondents, list this matter for hearing on 26.03.2018 with a direction to the Petitioner to serve notice to all Respondents within 15 days of this order."

8. The order dated 23rd February, 2018 is under challenge in Company Appeal (AT) No. 119 of 2018 and other appeals except Company Appeal (AT) No. 103 of 2018.

9. The appeal preferred by Union of India (Company Appeal (AT) No. 119 of 2018) against order dated 23rd February, 2018 having been filed after delay of seven days, a petition for condonation of delay has been filed, which was opposed by the Respondents. However, taking into consideration the facts that the same order dated 23rd February, 2018 is under challenge in other analogous appeals and the Union of India has explained the ground for condonation of delay and being satisfied, we condone the delay of seven days in preferring Company Appeal (AT) No. 119 of 2018.

10. Some of the contesting Respondents to the Company Petition, including individuals against whom the interim order was passed on 23rd February, 2018, preferred different Miscellaneous Applications to vacate the interim order passed on 23rd February, 2018. Those Miscellaneous Company Appeal (AT) Nos. 103, 119, 124 to 133 of 2018 Applications were taken up by the Tribunal and on hearing the other common impugned order dated 2nd April, 2018 was passed. By the said order, interim order of stay passed against following persons, namely-- Mr. Sujal Shah (Respondent No. 43); Mr. Gopal Krishnan Nair (Respondent No.

44); Mr. Suresh Senapathy (Respondent No. 51); Mr. Gautam Mukkavilli (Respondent No. 52) and Mr. Sanjay Rishi (Respondent No. 53) were vacated.

11. The following reason was shown to pass restraint order:

"24. But at the same time, it is the duty of this Court to see that innocent people are not burdened by this restraint order therefore as and when any innocent comes before this Bench saying that he has no involvement in the fraud spiralling from day to day, this Bench has to diligently respond to the reliefs sought by such people. Of course, it is true that this Bench cannot decide who is innocent and who is culprit, but to the extent order passed by this Bench, it should not become helpless to vacate that order if no material is found against whom this order is in force. In view of the same, for there being neither an averment nor any incriminating material placed against this applicant, this applicant deserves vacation of the restraint order in force against him, accordingly this MA is disposed of Company Appeal (AT) Nos. 103, 119, 124 to 133 of 2018 vacating the restraint order dated 23.02.2018 against this applicant."

12. In so far as the Respondents- Mrs. Nazura Yash Ajaney (Respondent No. 38) and Mr. Anil Haldipur (Respondent No. 35) are concerned, the order of restraint passed on 23rd February, 2018 was modified with following observations:

"41. In a scenario like this, relying on the discussion made in MA 182/2018, we hereby modify the order dated 23.2.2018 permitting this Respondent to the extent of withdrawing 1,00,000 per month from her Bank Accounts as to other assets are concerned it need not be reiterated that she is restrained from removal, transfer or disposal of funds, assets and properties of the entities and individuals until further orders. Accordingly, this application is hereby disposed of.

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45. For this Respondent being suspected to be involved in this fraud, this Bench is of the view that modification of order to the extent that is required is be- fitting relief in the light of the discussion made in other applications. Henceforth, the restraint order dated 23.02.2018 is hereby modified permitting this applicant to withdraw 2,00,000 per month from his Bank accounts, as to other assets of this Respondent is Company Appeal (AT) Nos. 103, 119, 124 to 133 of 2018 concerned, the order dated 23.2.2018 except to the extent of exemption given above, will continue as before until further orders. Accordingly, his application is hereby disposed of."

13. The Union of India has challenged the order dated 2nd April, 2018 in Company Appeal (AT) No. 103 of 2018.

14. Learned counsel appearing on behalf of the Union of India submitted that the Tribunal failed to appreciate that it was dealing with an application for vacating interim order and was not the final order. Therefore, the Tribunal was not competent to pass order which is final in nature so far it relates to Respondents-- Mr. Sujal Shah (Respondent No. 43); Mr. Gopal Krishnan Nair (Respondent No. 44); Mr. Suresh Senapathy (Respondent No.

51); Mr. Gautam Mukkavilli (Respondent No. 52) and Mr. Sanjay Rishi (Respondent No. 53).

15. The petition relates to FIR and complaints lodged by the PNB with the CBI alleging financial fraud by various Companies and Firms forming part of the 'Nirav Modi Group' & 'Choksi Group'; the value of the fraud exceeds Rs. 14,000 Crores. The promoters of the two Groups have already absconded from the Country and have not joined investigation either before the CBI or the Enforcement Directorate in proceedings under PMLA. Company Appeal (AT) Nos. 103, 119, 124 to 133 of 2018

16. It appears that the Central Government has already ordered SFIO to investigate under Section 212 read with Section 216 of the Companies Act, 2013. The promoters of both Groups have not joined investigation before the SFIO. The PNB has complained to the Department of Company Affairs that the Respondents are diverting their assets. It is in these circumstances that injunctive

Orders were sought inter alia for restraining Respondents from diverting, transferring or alienating assets.

17. Learned counsel appearing on behalf of Mr. Gopal Krishna Karunakaran Nair (Respondent No.44 before the Tribunal) submitted that the said Respondent was a Director of 'Gili India Pvt. Ltd.' (Respondent No. 2 before the Tribunal) and resigned from the Board of Directors as back as in the year 2009, now he has no association with the said Company. The Union of India has falsely stated that the said Respondent was a Key Managerial Person/Director of 'Gili India Pvt. Ltd.' when the alleged financial fraud was committed. Since the Respondent had resigned from the Board of Directors in the year 2009 itself and did not have any association with the said company, the Respondent has been wrongly arrayed as a Respondent in the Company Petition. The Tribunal taking into consideration the relevant fact held that the said Respondent is nowhere connected to Gitanjali Group Companies and thereby vacated the order of restraint dated 23rd February, 2018 against the said Respondent.

Company Appeal (AT) Nos. 103, 119, 124 to 133 of 2018

18. Challenging the maintainability of the Petition filed by the Union of India and restraint order passed on 23rd February, 2018, learned counsel appearing on behalf of 4th Respondent submitted that no interim order can be passed against the Respondent in a petition under Sections 241/242 of the Companies Act, 2013.

19. According to learned counsel appearing on behalf of 4th Respondent, Section 241(2) of the Companies Act, 2013 enables Central Government to file a Petition, only if it is of the opinion that the affairs of the company are conducted in a manner prejudicial to public interest. In the present case, the Central Government has miserably failed to demonstrate any material for it to form an opinion to trigger Section 241 of the Companies Act, 2013.

20. It was further submitted that the Central Government vide its letter dated 17th February, 2018, directed SFIO to investigate into the affairs of FDIPL and FIL, among other 114 entities. The investigation is currently undergoing. As such, as on date there is no basis either for the Central Government to file an application under Section 241 of the Companies Act, 2013 or for Tribunal to pass orders under Section 242(4), for want of material to form opinion.

21. Further, according to learned counsel, an Interim Order could be passed only under Section 242(4) for regulating the conduct of a company's affairs. Therefore, it is imperative that an interim order is to be restricted Company Appeal (AT) Nos. 103, 119, 124 to 133 of 2018 only to the persons responsible for conducting company's affairs and not any other individuals, who were not even associated with the Company during the period of alleged fraud.

22. It was further submitted that the said Section 221 does not vest the Tribunal with jurisdiction to freeze the personal assets of individuals. Under Section 221, the assets of the company can be frozen and not of an individual.

23. It was further submitted that Section 339 of the Companies Act, 2013 is not applicable in the present case as the Central Government has failed to bring to the notice of the Tribunal any facts constituting knowledge of the alleged fraud and not given any declaration under Section 339.

24. According to learned counsel for the Respondents, Section 339 fixes liability of such officers under whose direction a company is accustomed to act. Therefore, no liability can be fixed upon the Respondent in question as he ceased to have any association with 'Gilli India Pvt. Ltd.'.

25. It was submitted that once the investigation is initiated by the Central Government, it was bound to await and rely upon the report of investigation before proceeding under Sections 241 or 339 as the very purpose of an investigation is to collect evidence/incriminating material. In the absence of Company Appeal (AT) Nos. 103, 119, 124 to 133 of 2018 such report from SFIO, there is no material to proceed against the Respondents.

26. It was further submitted that no restraint order can be passed against the Respondent under the provisions of Chapter XIV of the Companies Act, 2013 and during the investigation by the SFIO. Therefore, simultaneous proceedings/actions by the Union of India through Ministry of Corporate Affairs under Sections 241, 213 and 212 of the Companies Act, 2013 are not maintainable.

27. According to him, the allegation against the Respondents is based upon conjectures and without any material to substantiate the allegation of oppression or prejudice to public interest attributable to the Respondent under Section 241 of the Companies Act, 2013.

28. Almost similar plea has been taken by the other contesting Respondents, including the Appellants who have challenged the order dated 23rd February, 2018.

29. The questions arise for consideration are as follows:

i. Whether in a petition under Sections 221, 222, 241, 242, 246 & 339 of the Companies Act, 2013, the Tribunal has jurisdiction to injunct the Respondents and other Companies, LLPs, Trusts Company Appeal (AT) Nos. 103, 119, 124 to 133 of 2018 and individuals' from removal, transfer or disposal of funds, assets and properties of the entities and individuals until further orders, as has been ordered on 23rd February, 2018?

and;

ii. Whether the impugned order dated 2nd April, 2018 vacating the order(s) of restraint dated 23rd February, 2018 in respect of Mr. Sujal Shah (Respondent No. 43); Mr. Gopal Krishnan Nair (Respondent No. 44); Mr. Suresh Senapathy (Respondent No.

51); Mr. Gautam Mukkavilli (Respondent No. 52) and Mr. Sanjay Rishi (Respondent No. 53) on the ground that there is no material to negate the statement made by the Respondents is legal or not?

30. Chapter XIV of the Companies Act, 2013 relates to "Inspection, Inquiry and Investigation".

Section 210 empowers the Central Government to investigate into the affairs of a Company/ (Companies), if it is of the opinion that such investigation is necessary for the reasons mentioned therein, including public interest. For the purpose of the said provision, the Central Government may appoint one or more persons as inspectors to investigate into the affairs of the Company and to report thereon in such manner as the Central Government may direct. The SFIO has been established under Section 211 of the Companies Act, 2013, which has jurisdiction to investigate into the Company/ (Companies), where the Central Government Company Appeal (AT) Nos. 103, 119, 124 to 133 of 2018 is of the opinion that it is necessary to investigate into the affairs of a Company by the SFIO for different reasons, including the public interest. Where any case has been assigned by the Central Government to the SFIO for investigation under the Act, no other investigating agency of the Central Government or any State Government can proceed with investigation in such case in respect of any offence under the Companies Act and other cases before such agency are required to transfer the relevant documents and records in respect of such offences under the Companies Act to the SFIO. Sub-section (8) of Section 211 empowers certain Officers of the SFIO to arrest any person, if on the basis of material in his possession there is reason to believe, which is to be recorded in writing, that any person has been guilty of any offence punishable under sub-section (6) of Section 212 of the Companies Act, 2013.

31. Investigation into Company's affairs in other cases can also be done under section 213 on an application made by the eligible members as mentioned in clause (a) of Section 213 or on an application made by any other person or otherwise, if it is satisfied that there are circumstances suggesting that the business of the Company etc. has been conducted with intent to defraud its creditors, members etc. as mentioned in clause (b) of Section 213, relevant portion of which reads as follows:

Company Appeal (AT) Nos. 103, 119, 124 to 133 of 2018 "Investigation into company's affairs in other cases.

213. xxx xxx xxx

(b) on an application made to it by any other person or otherwise, if it is satisfied that there are circumstances suggesting that□

(i)the business of the company is being conducted with intent to defraud its creditors, members or any other person or otherwise for a fraudulent or unlawful purpose, or in a manner oppressive to any of its members or that the company was formed for any fraudulent or unlawful purpose;

(ii) persons concerned in the formation of the company or the management of its affairs have in connection therewith been guilty of fraud, misfeasance or other misconduct towards the company or towards any of its members;or

(iii) the members of the company have not been given all the information with respect to its affairs which they might reasonably expect, including information relating to the calculation of the commission payable to a managing or other director, or the manager, of the company, order, after giving a reasonable opportunity of being heard to the parties concerned, that the affairs of the company Company Appeal (AT) Nos. 103, 119, 124 to 133 of 2018 ought to be investigated by an inspector or inspectors appointed by the Central Government and where such an order is passed, the Central Government shall appoint one or more competent persons as inspectors to investigate into the affairs of the company in respect of such matters and to report thereupon to it in such manner as the Central Government may direct:

Provided that if after investigation it is proved that--

(i) the business of the company is being conducted with intent to defraud its creditors, members or any other persons or otherwise for a fraudulent or unlawful purpose, or that the company was formed for any fraudulent or unlawful purpose; or

(ii) any person concerned in the formation of the company or the management of its affairs have in connection therewith been guilty of fraud, then, every officer of the company who is in default and the person or persons concerned in the formation of the company or the management of its affairs shall be punishable for fraud in the manner as provided in section 447."

32. From the aforesaid provisions, it is clear that the Tribunal on an application made to it or 'otherwise', if satisfied that there are circumstances suggesting that the business of the Company is being conducted with intent Company Appeal (AT) Nos. 103, 119, 124 to 133 of 2018 to defraud its creditors, members etc. as mentioned in clause (b) of Section 213, after giving a reasonable opportunity of being heard to the parties, direct the Central Government to investigate.

33. Section 221 relates to "Freezing of assets of company on inquiry and investigation", which reads as follows:

"221. Freezing of assets of company on inquiry and investigation.□(1) Where it appears to the Tribunal, on a reference made to it by the Central Government or in connection with any inquiry or investigation into the affairs of a company under this Chapter or on any complaint made by such number of members as specified under sub-section (1) of section 244 or a creditor having one lakh amount outstanding against the company or any other person having a reasonable ground to believe that the removal, transfer or disposal of funds, assets, properties of the company is likely to take place in a manner that is prejudicial to the interests of the company or its shareholders or creditors or in public interest, it may by order direct that such transfer, removal or disposal shall not take place during such period not exceeding three years as may be Company Appeal (AT) Nos. 103, 119, 124 to 133 of 2018 specified in the order or may take place subject to such conditions and restrictions as the Tribunal may deem fit. (2) In case of any removal, transfer or disposal of funds,

assets, or properties of the company in contravention of the order of the Tribunal under sub-section (1), the company shall be punishable with fine which shall not be less than one lakh rupees but which may extend to twenty-five lakh rupees and every officer of the company who is in default shall be punishable with imprisonment for a term which may extend to three years or with fine which shall not be less than fifty thousand rupees but which may extend to five lakh rupees, or with both."

34. From the aforesaid provision, it is clear that the Tribunal has power to direct that the transfer, removal or disposal of funds, assets, or properties of the company shall not take place during such period not exceeding three years'. In case of any removal, transfer or disposal of funds, assets, or properties of the company in contravention of the order of the Tribunal under sub-section (1) of Section 221, the company is punishable with fine and imprisonment as prescribed under sub-section (2) of Section 221 of the Companies Act, 2013.

Company Appeal (AT) Nos. 103, 119, 124 to 133 of 2018

35. Section 337 of the Companies Act, 2013 deals with "Penalty for frauds by officers", which reads as follows:

"Penalty for frauds by officers.

337. If any person, being at the time of the commission of the alleged offence an officer of a company which is subsequently ordered to be wound up by the Tribunal.□

(a) has, by false pretences or by means of any other fraud, induced any person to give credit to the company;

(b) with intent to defraud creditors of the company or any other person, has made or caused to be made any gift or transfer of, or charge on, or has caused or connived at the levying of any execution against, the property of the company; or

(c) with intent to defraud creditors of the company, has concealed or removed any part of the property of the company since the date of any unsatisfied judgment or order for payment of money obtained against the company or within two months before that date, he shall be punishable with imprisonment for a term which shall not be less than one year but which may extend to three years and with fine which shall not be less than one Company Appeal (AT) Nos. 103, 119, 124 to 133 of 2018 lakh rupees but which may extend to three lakh rupees."

36. "Liability for fraudulent conduct of business" is punishable under Section 339 of the Companies Act, 2013, as quoted below:

"Liability for fraudulent conduct of business.

339. (1) If in the course of the winding up of a company, it appears that any business of the company has been carried on with intent to defraud creditors of the company or any other persons or for any fraudulent purpose, the Tribunal, on the application of the Official Liquidator, or the Company Liquidator or any creditor or contributory of the company, may, if it thinks it proper so to do, declare that any person, who is or has been a director, manager, or officer of the company or any persons who were knowingly parties to the carrying on of the business in the manner aforesaid shall be personally responsible, without any limitation of liability, for all or any of the debts or other liabilities of the company as the Tribunal may direct:

Provided that on the hearing of an application under this sub-section, the Official Liquidator or the Company Company Appeal (AT) Nos. 103, 119, 124 to 133 of 2018 Liquidator, as the case may be, may himself give evidence or call witnesses.

(2) Where the Tribunal makes any such declaration, it may give such further directions as it thinks proper for the purpose of giving effect to that declaration and, in particular,--

(a) make provision for making the liability of any such person under the declaration a charge on any debt or obligation due from the company to him, or on any mortgage or charge or any interest in any mortgage or charge on any assets of the company held by or vested in him, or any person on his behalf, or any person claiming as assignee from or through the person liable or any person acting on his behalf;

(b) make such further order as may be necessary for the purpose of enforcing any charge imposed under this sub-section.

(3) Where any business of a company is carried on with such intent or for such purpose as is mentioned in sub-section (1), every person who was knowingly a party to the carrying on of the business in the manner aforesaid, shall be liable for action under section 447.

(4) This section shall apply, notwithstanding that the person concerned may be punishable under any other Company Appeal (AT) Nos. 103, 119, 124 to 133 of 2018 law for the time being in force in respect of the matters on the ground of which the declaration is to be made.

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

(a) the expression "assignee" includes any person to whom or in whose favour, by the directions of the person liable, the debt, obligation, mortgage or charge was created, issued or transferred or the interest was created, but does not include an assignee for valuable consideration, not including consideration by way of marriage, given in good faith and without notice of any of the matters on the ground of which the declaration is made;

(b) the expression "officer" includes any person in accordance with whose directions or instructions the directors of the company have been accustomed to act."

37. In the present case, the Central Government by letter dated 17th February, 2018 has directed the SFIO to investigate into the affairs of the Respondent Company, among other 114 entities. The investigation is currently undergoing and as such, as on date, being satisfied if so required, it is always open to the Central Government to file application under Company Appeal (AT) Nos. 103, 119, 124 to 133 of 2018 Sections 241(2) read with Section 242 of the Companies Act, 2013 before the Tribunal.

38. In the interest of regulating the conduct of the Company's affairs the interim order cannot be restrictive to any particular or individual person, including the Company/companies, existing or erstwhile Officers and employees of the Companies if investigation for alleged fraud is pending.

39. For the purpose of passing interim order the Tribunal cannot fix the personal liability of delinquent Directors or Managers or Officers or other employees in absence of any specific evidence. Therefore, during the process of investigation and pendency of an application under Section 241(2) read with Section 242 of the Companies Act, 2013 and in view of powers conferred under Section 221, the Tribunal is not only empowered to pass appropriate interim order against the Company but also against any person or individual, including the order to desist.

40. Chapter XVI relates to "Prevention of Oppression and Mismanagement". An application to the Tribunal for relief in cases of oppression, etc. can be made by any eligible member(s) of the company under sub-section (1) of Section 241 of the Companies Act, 2013, who complains about the oppression and mismanagement as stipulated in clause

(a) & (b) of sub-section (1).

Company Appeal (AT) Nos. 103, 119, 124 to 133 of 2018

41. On the other hand, the Central Government, if it is of the opinion that the affairs of the company are being conducted in a manner prejudicial to public interest, it may itself apply to the Tribunal under sub-section (2) of Section 241 for an order under Chapter XVI of the Companies Act, 2013.

42. The power of Tribunal is wide enough as is evident from sub-section (1) of Section 242 in terms of which 'it may make such order as it thinks fit', with a view to bringing to an end the matters complained of.

43. Sub-section (2) of Section 242 is inclusive power without prejudice to the generality of the powers under sub-section (1), which includes regulation of conduct of affairs of the company in future; the purchase of shares or interests; restrictions on the transfer or allotment of the shares of the company; termination, setting aside or modification, of any agreement etc.

44. Sub-section (4) of Section 242 empowers the Tribunal, on the application of any party to the proceeding to make any interim order which it thinks fit for regulating the conduct of the company's affairs upon such terms and conditions as appears to it to be just and equitable.

45. From the aforesaid provisions, it is clear that on an application made by the Central Government alleging affairs of the Company are being conducted in a manner prejudicial to public interest, the Tribunal can pass Company Appeal (AT) Nos. 103, 119, 124 to 133 of 2018 any order in terms of Chapter XVI, which includes Section 242 and other provisions under the said Chapter.

46. Section 246 is part of Chapter XVI, the provisions mentioned therein will be also covered by sub-section (2) of Section 241. Therefore, in an application made by the Central Government alleging conduct of the Company in a manner prejudicial to public interest, the provisions of Sections 337 to 341 will be also applicable mutatis mutandis to an application made to the Tribunal under Section 241 or Section 245.

47. We have noticed that Section 337 deals with "Penalty for frauds by officers" whereas Section 338 relates to "Liability where proper accounts not kept". On the other hand, Section 339 relates to the "Liability for fraudulent conduct of business". As per sub-Section (2) of Section 339, if any business of the company has been carried on with intent as mentioned in sub-section (1), any person who is or were parties carrying on of the business are also liable for action under Section 447 of the Companies Act, 2013.

48. Section 340 empowers the Tribunal to assess damages against delinquent Directors or any other person who has taken part in the promotion or formation of the company, or any person, who is or has been a Director, Manager, Company Liquidator or officer of the Company and has misapplied, or retained, or become liable or accountable for, any money or Company Appeal (AT) Nos. 103, 119, 124 to 133 of 2018 property of the company if found to be guilty of any misfeasance or breach of trust in relation to the company. The Tribunal, after inquiry into the conduct of such person(s), Director(s), Manager(s) etc. can order him to repay or restore the money or property or any part thereof.

49. The liability under Sections 339 and 340 also extend to partners or directors of firms or other companies in terms of Section 341.

50. Therefore, on an application under sub-section (2) of Section 241, the Tribunal can pass not only any order under Chapter XVI and if it is read with Section 246, it will be evident that Sections 339, 340 and 341 being applicable mutatis mutandis, in relation to an application made to the Tribunal under Section 241, the Tribunal can pass order in terms of those extended provisions.

51. This apart under Section 420, the Tribunal is empowered to pass such orders as it thinks fit after giving the parties to any proceeding before it, a reasonable opportunity of being heard. The Tribunal has also inherent powers to make such orders as may be necessary for meeting the ends of justice or to prevent abuse of the process of the Tribunal under Rule 11 of the NCLT Rules, 2016.

52. Therefore, if sub-section (4) of Section 242 is read with Sections 339 & 340 and Section 221, it is clear that apart from 'freezing of assets of Company Appeal (AT) Nos. 103, 119, 124 to 133 of 2018 company on inquiry and investigation', it is also open to the Tribunal to freeze the assets of any person, including other companies and individuals, even during inquiry and investigation of fraud under Section 212 of the Companies Act, 2013.

53. In so far as the order dated 2nd April, 2018 is concerned, we find that by the said order the Tribunal, while modified its earlier order dated 23rd February, 2018, practically exonerated Mr. Sujal Shah (Respondent No. 43); Mr. Gopal Krishnan Nair (Respondent No. 44); Mr. Suresh Senapathy (Respondent No. 51); Mr. Gautam Mukkavilli (Respondent No. 52) and Mr. Sanjay Rishi (Respondent No. 53) by holding that those Respondents had no complicity in the matter and they had no role to play in the financial fraud in question.

54. The Tribunal failed to appreciate that it was dealing with the question of vacating the interim order passed under sub-section (4) of Section 242 read with Sections 221, 241(2), 339 and 340 of the Companies Act, 2013. While considering the question of modification or vacating the interim order, it was not open to the Tribunal to pass an order which is final in nature, amounting to exonerating one or other Respondent particularly, when the allegation of fraud of this nature is pending investigation by the SFIO.

55. Though it was brought to the notice of the Tribunal that the Respondent Companies, individuals including existing and erstwhile Company Appeal (AT) Nos. 103, 119, 124 to 133 of 2018 Directors, partners, trustees, beneficiaries and their associates or subsidiaries and firms had exposure with the PNB and are prima facie found to be beneficiaries of the fraud, as noticed at paragraph no. 6 of this Judgment, without waiting for the report of the SFIO it was not open to the Tribunal to exonerate some of the Respondents from the charges.

56. For the reasons aforesaid, we set aside the impugned order dated 2nd April, 2018, so far as it relates to Mr. Sujal Shah (Respondent No. 43); Mr. Gopal Krishnan Nair (Respondent No. 44); Mr. Suresh Senapathy (Respondent No. 51); Mr. Gautam Mukkavilli (Respondent No. 52) and Mr. Sanjay Rishi (Respondent No. 53). In so far as Mr. Anil Umesh Haldipur (Respondent No. 35) and Mrs. Nazura Yash Ajaney (Respondent no. 38) are concerned, the Tribunal has already held that a prima facie case has been made out against them but while giving such finding, the Tribunal has modified the order dated 23rd February, 2018 permitting Mr. Anil Umesh Haldipur (Respondent No. 35) to withdraw Rs. 2,00,000/- (Rupees Two Lakhs only) per month and Mrs. Nazura Yash Ajaney (Respondent no. 38) to withdraw an amount to the extent of Rs. 1,00,000/- (Rupees One Lakh only) per month from their Bank accounts. Rest part of the order dated 23rd February, 2018 restraining them and others from removal, transfer or disposal of funds, assets and properties of the entities and individuals until further orders is continuing.

Company Appeal (AT) Nos. 103, 119, 124 to 133 of 2018

57. As aforesaid persons are entitled to withdraw certain amounts for their subsistence and of their families, we find no ground to interfere with the impugned order of modification dated 2nd April,

2018, so far it relates to Mr. Anil Umesh Haldipur (Respondent No. 35) and Mrs. Nazura Yash Ajaney (Respondent No. 38).

58. In so far as Mr. Sujal Shah (Respondent No. 43); Mr. Gopal Krishnan Nair (Respondent No. 44); Mr. Suresh Senapathy (Respondent No. 51); Mr. Gautam Mukkavilli (Respondent No. 52); Mr. Sanjay Rishi (Respondent No.

53); Mr. Suresh Kumar Bhutani (Appellant in Company Appeal (AT) No. 124 of 2018), Mr. Paresh Pravinbhai Rathod (Appellant in Company Appeal (AT) No. 125 of 2018), Mr. Haresh V. Rajlal Shah (Appellant in Company Appeal (AT) No. 126 of 2018), Mr. Ketan Chandrakant Solanki (Appellant in Company Appeal (AT) No. 127 of 2018), Mr. Manish Lalit Dani (Appellant in Company Appeal (AT) No. 128 of 2018), Mr. Sanket Bipin Shah (Appellant in Company Appeal (AT) No. 129 of 2018), Mr. Himanshu Pravinchandra Trivedi (Appellant in Company Appeal (AT) No. 130 of 2018), Ms. Jyoti B Vora (Appellant in Company Appeal (AT) No. 131 of 2018), Mr. Sudhir Ambalal Mehta (Appellant in Company Appeal (AT) No. 132 of 2018) and Mr. Chandrakant Kanu Karkare (Appellant in Company Appeal (AT) No. 133 of 2018) are concerned, we are of the view that they are also entitled to withdraw certain amounts for their subsistence and of their families, therefore, we allow each of the aforesaid Respondents/Appellants to withdraw a sum of Rs. 1,00,000/- (Rupees One Lakh Only) per month from Company Appeal (AT) Nos. 103, 119, 124 to 133 of 2018 any of their accounts. Except to the extent above, the restraint order passed by the Tribunal in regard to removal, transfer or disposal of funds, assets, moveable and immoveable properties of the entities and individuals as already ordered on 23rd February, 2018 shall continue until further orders.

59. Company Appeal (AT) Nos. 103 and 119 of 2018 are allowed; the Company Appeals (AT) Nos. 124 to 133 of 2018 stand disposed of with observations with directions. However, in the facts and circumstances of the cases, there shall be no order as to cost.

(Justice Bansi Lal Bhat)
Member (Judicial)

(Justice S.J. Mukhopadhaya)
Chairperson

NEW DELHI
12th July, 2018
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Company Appeal (AT) Nos. 103, 119, 124 to 133 of 2018