

National Stock Exchange of India

Circular

Department: Investigation	
Download Ref No: NSE/INVG/63726	Date: September 03, 2024
Circular Ref. No: 374/2024	

To All NSE Members,

Subject: Hon'ble National Company law Tribunal (NCLT) order dt. 30.08.2024 in the matter of Pradeep Puri versus Union of India, Ministry of Corporate Affairs

This is with reference to NSE Circular no.NSE/INVG/39602 dated December 6, 2018 in respect of NCLT order no.CP/3638/241-242/MB/2018 dated December 5,2018 wherein Pradip Puri (PAN: AAAPP2182Q) was restrained from dealing with securities in any company till next date of hearing.

Now NCLT vide its order dated August 30, 2024 has issued following directions:

34. Having heard the Ld. Counsels for both the parties for a considerable length of time and after taking into consideration all the attendant circumstances and material on record placed before us, this Bench is of the considered view that to meet the ends of justice, while the enquiry may continue, the name of the Appellant from the list of party Respondents in CP 3638 of 2018 could be removed and restraint/freeze of assets also be vacated. In result, we allow the two appeals in the following manner:

(ii) The prayers (b) and (c) contained in Company Appeal (AT)(Ins) No. 102 of 2024 seeking removal of the Appellant as Respondent No. 316 in CP No. 3638 of 2018 and for removal of restraints placed on the Appellant regarding dealing with his movable and immovable properties are allowed and the impugned order dated 16.02.2024 in IA 176 of 2022 is set aside to that extent.

(iii) In the event it is found on conclusion of the ongoing inquiry, that there is substantial evidence for charge-sheeting the Appellant, it shall remain open to the Respondent to frame appropriate charges and launch prosecution

National Stock Exchange of India

The detailed order is available on NCLT website (<https://nclat.nic.in/display-board/judge>)

Further, the consolidated list of such entities is available on the Exchange website <http://www.nseindia.com> home page at the below mentioned link:

<https://www.nseindia.com/regulations/member-sebi-debarred-entities>

Members are advised to take note of the above and ensure compliance.

In case of any further queries, members are requested to email us at dl-invsg-all@nse.co.in

**For and on behalf of
National Stock Exchange of India Limited**

**Sandesh Sawant
Senior Manager**

ANNEXURE: Hon'ble National Company law Tribunal (NCLT) order dt. 30.08.2024 in the matter of Pradeep Puri versus Union of India, Ministry of Corporate Affairs

**NATIONAL COMPANY LAW APPELLATE TRIBUNAL
PRINCIPAL BENCH, NEW DELHI**

Company Appeal (AT) No. 102 of 2024

[Arising out of order dated 16.02.2024 passed by the Adjudicating Authority (National Company Law Tribunal, Mumbai Bench-I) in I.A. No. 176/2022 in C.A. 3428/2018 in C.P. (IB) No. 3638/MB/2018]

IN THE MATTER OF:

Mr. Pradeep Puri

Having Address at:

A-30, Westend,

New Delhi- 110021

Email: puri.pradeep@gmail.com

...Appellant

Versus

Union of India

Through Regional Director (Western Region)

Having Office at:

Everest, 5th Floor, 100, Marine Drive,

Mumbai- 400 002

Email: rd.west@mca.gov.in

...Respondent

Present:

For Appellant : Mr. Abhijeet Sinha, Sr. Advocate, Ms. Sumiti Yadava, Mr. Shashwat Shah, Ms. Hima Kochar, Advocates.

For Respondents : Mr. Aditya Sikka, Advocate for UOI.

WITH

Company Appeal (AT) No. 182 of 2024

[Arising out of order dated 10.04.2024 passed by the Adjudicating Authority (National Company Law Tribunal, Mumbai Bench-I,) in C.A. No. 233/2021 in C.P. (IB) No. 3638/MB/2018]

IN THE MATTER OF:

Mr. Pradeep Puri

Having Address at:

A-30, Westend,

New Delhi- 110021

Email: puri.pradeep@gmail.com

...Appellant

Versus

Union of India

Through Regional Director (Western Region)

Having Office at:

Everest, 5th Floor, 100, Marine Drive,

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Email: rd.west@mca.gov.in

...Respondent

Present:

For Appellant : Mr. Abhijeet Sinha, Sr. Advocate, Ms. Sumiti Yadava, Mr. Shashwat Shah, Ms. Hima Kochar, Advocates.

For Respondents : Mr. Aditya Sikka, Advocate for UOI.

J U D G M E N T

(Hybrid Mode)

Per: Barun Mitra, Member (Technical)

The present two appeals filed under Section 421 of Companies Act, 2013 by the Appellant arises out of the Orders dated 16.02.2024 & 10.04.2024 (hereinafter referred to as '**Impugned Order**') passed by the National Company Law Tribunal, Mumbai Bench-I in I.A. No.176 of 2022 in CA No.3428 of 2018 and C.A. No. 233 of 2021 in CP (IB) No. 3638 of 2018 respectively. By the impugned order dated 16.02.2024, NCLT dismissed I.A. No.176 of 2022 and by the impugned order dated 10.04.2024 it dismissed C.A. No. 233 of 2021. Aggrieved by the impugned orders, the present appeals have been preferred by the Appellant.

2. The factual matrix of both the appeals primarily stems out of CP (IB) No. 3638 of 2018, the salient points of which are as outlined below:-

- The Respondent-Union of India (UOI) had filed C.P. No 3638 of 2018 under Sections 241 & 242 of the Companies Act, 2013 against IL&FS and group companies alleging mismanagement in the company leading to indebtedness of IL&FS.
- The Serious Fraud Investigation Office (**'SFIO'** in short) in its Interim Investigation Report dated 30.11.2018 identified the coterie of individuals constituting the 'will and mind' of the IL&FS and its Group Companies whose fraudulent conduct led to a debt burden of IL&FS group in excess of Rs 99,000 cr. According to the SFIO Interim Report, the Appellant was a part of this coterie.
- On an application filed by the UOI, basis the SFIO Interim Report, the NCLT in C.P. No. 3638 of 2018 vide order dated 03.12.2018 had inter-alia directed impleadment of the present Appellant-Shri Pradeep Puri as Respondent No.316. Vide the same orders, the NCLT had also restrained the Appellant from mortgaging or alienating movable and immovable properties owned by him including dealing with the securities in any Company.
- Following the passing of order dated 03.12.2018, the Appellant had moved I.A. No. 3138 of 2019 seeking permission to withdraw an amount of Rs 5 lakhs as one-time measure which was allowed on 27.09.2019.
- The Appellant vide a subsequent Application No. 3428 of 2019 sought modification of the order dated 27.09.2019 seeking permission for withdrawal of Rs 5 lakhs per month.

- On 18.12.2020, the NCLT allowed C.A. No. 3428 of 2019 filed by the present Appellant as Respondent No.316 permitting him to withdraw Rs. 3 lakh only per month w.e.f. December, 2020.
- SFIO in the meantime submitted its Final Report on IFIN and ITNL on 28.05.2019 which report did not include the name of the Appellant as a part of the coterie of individuals controlling the 'will and mind' of IL&FS and its Group Companies.
- On 03.02.2021, the Appellant filed CA No. 233 of 2021 in CP No. 3638 of 2018 before the NCLT seeking modifications to its order dated 18.12.2020 and take on record certain facts referred to therein.
- Following the submission of SFIO Final Report dated 28.05.2019, the Appellant filed I.A. No. 1041 of 2020 seeking that the Appellant be discharged and removed from being Respondent No.316 in C.P. No. 3638 of 2018 and also in other proceedings pending before the NCLT on the grounds that he was no longer identified as a member of the coterie that controlled the decision making in the IL&FS and its Group Companies.
- On 24.12.2021, the Respondent submitted three status notes of SFIO dated 22.05.2020, 23.09.2020 & 06.10.2020 to NCLT which Reports indicated that SFIO investigation was still underway.
- The NCLT on hearing I.A. No. 1041 of 2020 privately perused the three Status Notes of SFIO which indicated that investigation was still underway. The NCLT in its orders dated 24.12.2021 did not allow the prayer for discharge of the Appellant from C.P. No. 3638 of 2018. The NCLT however observed that three years had already elapsed and that investigations could not continue endlessly. SFIO was directed by the

NCLT to complete the investigations expeditiously in four months' time.

The NCLT in the same order allowed the bank account of the Appellant to be de-frozen by Rs. 8 lakhs every month w.e.f. 05.08.2020.

- On 09.11.2022, the Appellant filed I.A. No. 176 of 2022 in CA No. 3428 of 2018 in C.P. No. 3638 of 2018 before NCLT. The prayers contained in I.A. 176 of 2022 reads as under:

“a. Discharge the Applicant-Respondent as a respondent in the present proceedings of Company Application 3638 of 2018 before this Hon’ble Tribunal;

b. Pass any other order(s) as deemed fit and proper under the circumstances by the Hon’ble Tribunal.”

On 16.02.2024, the NCLT dismissed I.A. No. 176 of 2022 as premature.

- CA No. 233 of 2021 in CP No. 3638 of 2018 filed by the Appellant on 03.02.2021 was also dismissed on 10.04.2024. The prayers contained in C.A. 233 of 2021 are as extracted below:

- That it be taken on record that the Applicant was only a non-executive director of ITNL and the said order dated 18.12.2020 be deemed to stand modified accordingly to include reference to the said fact.*
- That it be taken on record that the Applicant was not a member of the Board of Director or in any manner the management of IL&FS and the said Order dated 18.12.2020 be deemed to stand modified accordingly to include reference to the said fact.*
- That it be taken on record that the SFIO Final Report on IFIN dated 28.05.2019 does not name the Applicant as a member of the alleged “coterie” that controlled that affairs of IL&FS and its group companies and the said order dated 18.12.2020 be deemed to stand modified accordingly to include reference to the said fact.*
- That it be taken on record that the SFIO Charge Sheet filed before the designated special court pursuant to the SFIO Final Report on IFIN dated May 28, 2019 does not name the Applicant as an accused and no prosecution proceedings have been initiated against the Applicant and the said order dated 18.12.2020 be*

deemed to stand modified accordingly to include reference to the said fact.

- v. That the second sentence of Para 8 be deleted from Order dated 18.12.2020 and Para 8 of the said Order stand modified accordingly;*
 - vi. That the third sentence of Para 8 be deleted from Order dated 18.12.2020 and Para 8 of said order stand modified accordingly;*
 - vii. That in light of the fact that SFIO Final Report on IFIN dated 28.05.2019 does not name the Applicant as part of the alleged coterie that controlled IL&FS and in light of the fact that no prosecution has been initiated by SFIO against the Applicant, the restraints against the movable properties of the Applicant (i.e. bank accounts, mutual funds, fixed deposits etc.) be removed.*
 - viii. Pass any other order(s) as deemed fit and proper under the circumstances by the Hon'ble Tribunal.”*
- Aggrieved by the impugned orders dated 16.02.2024 and 10.04.2024, the Appellant has preferred Company Appeal(AT)(Ins) No. 102 of 2024 and Company Appeal(AT)(Ins) No. 182 of 2024 respectively.

3. We have heard Shri Abhijeet Sinha, Ld. Sr. Counsel for the Appellant and Shri Aditya Sikka, Ld. Counsel representing Respondent.

4. Before we proceed to enter into the rival submissions of the two parties, we need to take notice of the prayers contained in Company Appeal(AT)(Ins) No. 102 of 2024 and Company Appeal(AT)(Ins) No. 182 of 2024 which are as extracted hereunder:

CA (AT)(Ins) No. 102 of 2024

- (a) That the Impugned Order dated 16.02.2024 of the Hon'ble National Company Law Tribunal, Mumbai in I.A. No. 176/2022 in C.A. 3428/2018 be set aside;*
- (b) That the Appellant be removed as Respondent No. 316 in CA 3638/2018;*
- (c) That all restraints on the Appellant dealing with his movable and immovable properties be removed;*
- (d) That the Appellant in the present facts cannot be considered to be part of any “cabal” or “coterie” that governed the “will and mind” of IL&FS*

and its group of companies as the Appellant was not a director of IL&FS and was only a non-executive director in ITNL, the only major subsidiary holding company for vertical identified by SFIO in its 2018 Interim Report and had ceased to be a non-executive director of ITNL on 20.11.2017 itself;

(e) Pass such other and/or further orders against the Respondent and in favour of the Appellant as this Hon'ble Appellate Tribunal deems fit in the facts and circumstances of the present case.

CA (AT)(Ins) No. 182 of 2024

(a) That the Impugned Order dated 10.04.2024 of the Hon'ble National Company Law Tribunal, Mumbai in C.A. No. 233/2021 in C.P. No. 3638/MB/2018 be set aside and prayers sought in the said application C.A. No. 233/2021 before Hon'ble National Company Law Tribunal, Mumbai be allowed; and

(b) That all restraints on the Appellant regarding dealing with his movable and immovable properties be removed; or

(c) Pass such other and/or further orders against the Respondent and in favour of the Appellant as this Hon'ble Appellate Tribunal deems fit in the facts and circumstances of the present case.

5. Making his submissions, the Ld. Sr. Counsel for the Appellant submitted that the order passed by the NCLT in CA No. 3428 of 2019 dated 18.12.2020 was fraught with factual inaccuracies which were proving prejudicial to the interest of the Appellant. Hence, the Appellant had sought modification of the NCLT order dated 18.12.2020 besides seeking removal of restraint against movable properties of the Appellant and for this purpose filed C.A. 233 of 2021 in CP No. 3638 of 2018 which has now been erroneously dismissed by the NCLT. It was vociferously contended that the NCLT order of 18.12.2020 had wrongly implicated the Appellant based on the SFIO Interim Report. The impleadment had been wrongly done on the erroneous basis by holding the Appellant to be a "Director and COD Member of ITNL" as per the SFIO Interim

Report and treating him as a member of the coterie controlling the “will and mind” of IL&FS group.

6. It was also contended that after the submission of SFIO Final Report, the SFIO had filed criminal complaint/chargesheet against 30 persons on 30.05.2019 in which the name of the present Appellant did not figure. It was also vehemently contended that when there are no adverse findings against the Appellant for over five years and the SFIOs Final Report had excluded the Appellant from the coterie which represented the ‘will and mind’ of IL&FS and its Group Companies, there was no justification for impleadment in C.P.No.3638 of 2018 and for continuing the restraint order against the Appellant. Making further submissions it was submitted that imposition of restraints on Appellant was discriminatory when no restraints were placed on 23 out of 30 Respondents against whom charge-sheet had been filed on 30.05.2019. It was therefore asserted that the Appellant should be permitted to deal with and manage his properties. When the very foundation for the Appellant’s impleadment as party Respondent in CP 3638 of 2018 contained in the SFIO Interim Report had already been replaced by SFIO Final Report where the Appellant is not named as an accused, it was wrong on the part of the NCLT to continue with the freeze of the assets of the Appellant.

7. It was further submitted that the very basis of impleadment of the Appellant as Respondent No.316 in CP No. 3638 of 2018 had already been negated by the SFIO Final Report of 28.05.2019 which had dropped the Appellant from being considered as part of the controlling coterie. It was also contended that the patently wrong submission made by the present

Respondent that SFIO had initiated prosecution against the Appellant in a designated Special Court following the SFIO Final Report is recorded in the NCLT order of 18.12.2020. The SFIO Final Report and the subsequent charge-sheet related to ITNL did not contain any adverse finding against the Appellant. The NCLT had, therefore, wrongly failed to vacate the order of restraint against the Appellant by taking a misplaced view that the Appellant has not been discharged so far in the matter by the criminal court at a time when the Appellant had not been charge-sheeted. It has also been pointed out that NCLT erroneously took a view while adjudicating in IA No. 176 of 2022 in CP No. 3638 of 2018 that the Appellant had made withdrawal of lookout circular against him as the basis of discharge while in fact several other convincing and persuasive grounds had been raised for discharge.

8. Refuting the submissions made by the Appellant, the Ld Counsel for the Respondent contended that the impleadment of the Appellant as party Respondent in C.P. No. 3638 of 2018 had been ordered by the NCLT as early as on 03.12.2018. The Appellant did not challenge the said order of 03.12.2018 and the same had attained finality. The Appellant therefore continues to remain a necessary and proper party in C.P. No. 3638 of 2018. It was further submitted that the NCLT had again considered the prayer of the Appellant in C.A. No. 3428 of 2018 to delete/discharge the Appellant from the array of parties. However, the NCLT had disposed of C.A. No. 3428 of 2018 on 18.12.2020 by disallowing the plea of the Appellant for deletion/discharge. The NCLT again disallowed the Appellant's plea for deletion/discharge while disposing of I.A. No. 1041 of 2020 on 24.12.2021. Yet the Appellant is once again seeking deletion/discharge from the array of Respondents in I.A. No. 176 of 2022
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though this matter has become final. Since the issue of impleadment of the Appellant as a necessary and proper party had been decided by NCLT way back on 03.12.2018 and there is no change in the circumstance or fresh facts since then, prayers contained in I.A. No. 176 of 2022 stood barred on the principles of res judicata.

9. It has been contended by the Respondent that the suspended Board of Directors of IL&FS and its key subsidiaries which included the Appellant had abused their powers and increased the debt burden across IL&FS group besides unjustly enriching themselves by giving themselves unreasonably high remunerations. The SFIO Interim Report had highlighted the illegalities and fraudulent conduct of business by the IL&FS entities and in para 12 already named the Appellant as part of the coterie controlling the “mind and will” of the company which perpetrated the fraud. Since the Appellant was a Director on the Board of various key subsidiaries of IL&FS group which were under investigation, the impleadment of the Appellant in C.P. No. 3638 of 2018 was in order.

10. While admitting that the SFIO Final Report in respect of IFIN or ITNL did not name the Appellant as a member of the coterie, it was submitted that simply because the Appellant was not charged in respect of ITNL and IFIN, the proceedings against the Appellant cannot be dropped since he was a Director on the Board of six other companies in the IL&FS group during different time-periods. It was also contended that it is settled law that dismissal of a proceeding or deletion of defendant from a proceeding amounts to a decree/final order. Thus, while investigation is on-going and there are findings

on record against the Appellant before the NCLT, discharge/dismissal of the Appellant would tantamount to exoneration of the Appellant from the liability.

11. It was also stated that the majority part of the investigation into the affairs of IL&FS Ltd. and its subsidiaries have been completed by SFIO and that the process of filing prosecution has been initiated and likely to be completed soon. Moreover, since the restraint order on the Appellant had been passed to protect public interest and that of the creditors, the same needs to continue. Hence, the NCLT by refraining from discharging the Appellant did not commit any error.

12. It has been further contended that in the guise of alleged factual inaccuracies, the Appellant in CA 233 of 2021 has tried to introduce new facts. It is the case of the Respondent that the Adjudicating Authority has correctly dismissed the prayers of the Appellant in CA No. 233 of 2021 since through this application the Appellant has essentially sought NCLT to exercise the power of review which is beyond its powers. It was submitted that though Section 420(2) of the Companies Act, 2013 empowers the NCLT to amend or modify its orders, it permits the same only for the purpose of rectifying any mistake apparent from the face of record. Furthermore, Rule 11 of the NCLT Rules confers inherent powers and Rule 154 confers powers to rectify clerical or arithmetical mistakes. However, the modifications/rectifications which were sought in CA 233 of 2021 were not merely clerical or arithmetical in nature. Instead, the Appellant had indirectly sought to interpret the SFIO Interim Report to suit its own interest in a manner which tantamount to deemed

inclusion of new facts. Hence, it was asserted that the NCLT had correctly refrained from modifying its order of 18.12.2020.

13. We have duly considered the rival contentions advanced by the Learned Counsel for both the parties and perused the records carefully.

14. The moot question before us requiring our consideration is whether there is sufficient justification for deletion of the Appellant as party Respondent in C.P. 3638 of 2018 and for removal of restraints on him with respect to his moveable and immovable property.

15. Before we dwell on the moot issue outlined in paragraph 14 above, we would like to address the issue raised by the Appellant that certain correct facts ought to have been taken on record since NCLT had issued restraint order basis certain inaccurate facts. The Respondent has contended that the Appellant is introducing new facts/documents and arguments at the appellate stage which is impermissible as it goes beyond the pleaded case before NCLT. Repelling this argument, it has been contended by the Appellant that the rectification sought was permissible under NCLT Rules since it was in respect of mistakes which were self-evident and apparent which did not require any further examination to be established. Moreover, such mistakes if not corrected were leading to miscarriage of justice.

16. We have no doubts in our mind that the power of the NCLT to rectify its own order is set out in Section 420 of the Companies Act and in Rules 11 and 154 of the NCLT Rules, 2016. Without feeling the need of reproducing the relevant statutory provision of the Companies Act, 2013 and the NCLT rule position, we are cognisant that NCLT has limited jurisdiction in this regard which is restricted to correction of mistakes or errors arising out of accidental
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slip or omission. The NCLT can at best only recall its order but does not have the power of review as no such power has been conferred expressly by the statutes. When we look at the impugned order of 10.04.2024, we find that the NCLT without accepting or discounting the facts referred to by the Appellant has merely observed at para 22 therein that *“the facts as pleaded are matter of record and can always be pleaded in subsequent proceeding with preciseness.”* Given the fact that SFIO investigations are still underway, we find that no infirmity has been committed by NCLT in refraining from adjudicating on the correctness or validity of the facts put forth by the Appellant in CA 233 of 2021 and leaving it open for pleading in subsequent proceedings.

17. It is the case of the Appellant that para 9 of the SFIO Interim Report identified the Executive Directors of IL&FS and its main subsidiaries. However, the Appellant did not hold any position in the Board of Directors of IL&FS. It has also been contended that the Appellant was only a non-executive Director of IL&FS Transport Networks Ltd (ITNL). The SFIO Interim Report, therefore, created a wrong impression that the Appellant could have been an Executive Director basis which NCLT order of 18.12.2020 had wrongly implicated the Appellant causing severe prejudice to his interests.

18. It is further their case that there are no findings against the Appellant in the SFIO Final Report. The Appellant is not an accused in the SFIO Final Report. It is also their contention that para 1.10 of the SFIO Final Report for IFIN specifically identified the coterie of individuals who were controlling the affairs and decision making in the IL&FS group which clearly excluded the Appellant. Moreover, in the charge-sheet filed in pursuance of the SFIO Final Report, the Appellant has not been identified as an accused. Till date no charge

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of fraud or any other wrongful act has been brought out against the Appellant. The Respondent has also failed to disclose the details of any prosecution initiated against the Appellant. Yet a wrong impression has been created by the Respondent that the Appellant has been charge-sheeted and would be prosecuted shortly. It was also contended that though investigation is ongoing in some subsidiaries, these are not identified as major subsidiaries. Hence, when the Appellant was clearly not part of the controlling 'will and mind' of IL&FS and there are no specific imputations of wrong doing or illegality on the part of the Appellant, there was no basis to continue having the Appellant as party Respondent No. 316. There was no basis either for freezing the assets of the Appellant who is a senior citizen or continuing with the restraint order against the Appellant.

19. Per contra it is the contention of the Respondent that the SFIO Interim Report had found the present Appellant to be one of the Directors and a Member of the Committee of Directors of ITNL which was a wholly owned subsidiary of IL&FS. According to the SFIO Interim Report, the Appellant was a part of this coterie which controlled the 'will and mind' of the IL&FS and group companies which were responsible for decision-making which had led to mammoth fraud and debt-burdening. Basis the SFIO Interim Report, the NCLT in C.P. No. 3638 of 2018 vide order dated 03.12.2018 had, inter-alia, directed impleadment of the present Appellant.

20. It was further submitted by the Ld Counsel for the Respondent that SFIO is still conducting an investigation into the affairs of IL&FS and its subsidiaries which includes a number of companies and covers a number of complex

transactions. It was also pointed out that the Appellant was a Director on the Board of a number of subsidiaries of IL&FS. The SFIO Interim Report had highlighted the illegalities and fraudulent conduct of business by the IL&FS entities and in para 12 of the Report already named the Appellant as part of the coterie controlling the “mind and will” of the company which perpetrated the fraud. Given the Appellant’s position in the company, the removal of his name from the list of party Respondents at this stage, pending completion of SFIO investigation, would tantamount to exonerating the Appellant. Objecting to the removal of his name in a summary manner in spite of being a relevant party, it was vehemently contended that any such action would cause grave harm and prejudice to larger public interest and therefore would not be in order. While investigation is ongoing and findings in respect of the Appellant are contained in the SFIO Report, there is sufficient reason for the Appellant to continue to remain as Respondent No. 316. It was also denied that the Appellant has been subjected to burdensome restraints or any hardship since he has been allowed to draw Rs 8 lakhs per month.

21. When we look at the sequence of events, we find that the present Respondent had filed C.P. No 3638 of 2018 under Sections 241 & 242 of the Companies Act, 2013 against IL&FS and group companies. The Respondent had also ordered investigation into the affairs of IL&FS and group companies by SFIO. Subsequently, SFIO in its Interim Investigation Report dated 30.11.2018 identified a coterie of individuals constituting the ‘will and mind’ of the IL&FS and its Group Companies who were responsible for fraudulent conduct and found the Appellant to be a part of this coterie. In the background of this Interim Report, on an application filed by the Respondent, the NCLT in *Comp. App. (AT) Nos. 102 & 182 of 2024*

C.P. No. 3638 of 2018 vide order dated 03.12.2018 had inter-alia directed impleadment of the present Appellant as Respondent No.316 and imposed restraint on the Appellant in dealing with properties owned by him including dealing with the securities in any company. However, in the subsequent SFIO Final Report on IFIN dated 28.05.2019 and consequential SFIO criminal complaint before the Special Court dated 30.05.2019, the Appellant was no longer identified as a member of the coterie that controlled the decision making in IL&FS and group companies. Herein lies the bone of contention between the two parties. While the Appellant contends that in the light of the findings of the SFIO Final Report, he deserves to be discharged and removed from the list of Respondents in C.P. No. 3638 of 2018, it is the case of the Respondent that the SFIO Report dated 28.05.2019 cannot be viewed to have absolved the Appellant of his liability since this Report pertained to only one subsidiary of IL&FS and did not cover IL&FS and the entire Group of companies.

22. It is an undisputed fact that the SFIO Final Report had removed the Appellant from the list of persons who constituted the coterie governing IL&FS and its Group Companies. It is also undisputed that the Appellant is not named as an accused therein. Apart from there being no generic findings against the Appellant in the SFIO Final Report, there are no specific imputations either of wrong-doing or illegality on the part of the Appellant. There is also no dispute that in pursuance of the Final Report, charge-sheet was filed and prosecution proceedings commenced thereafter. However, no charge of fraud or any other wrongful act has been brought out against the Appellant. Clearly the Appellant had not been identified as an accused in the same charge-sheet.

23. We also notice that the Respondent has failed to disclose the details of any prosecution initiated against the Appellant. We also find that it has been rightly contended by the Appellant that the Respondent in their reply to C.A. No. 233 of 2021 at para 7 had admitted that no prosecution has been initiated against the Appellant. The relevant para is as reproduced below:

7. Keeping the above in mind, with regard to the third sentence of paragraph 8 of the December 18 Order, it is submitted that the SFIO has not initiated prosecution against the Applicant in the matter of investigation report dated 28.05.2019 of IL&FS Financial Services Limited which is matter of record.

24. Given this backdrop, we hold that the NCLT clearly committed an error in observing at para 23 of the impugned order dated 10.04.2024 that the Appellant “*has not been discharged so far from the matter by the criminal court also.*” Since it is a matter of fact and record that there are no criminal proceedings pending against the Appellant, there was no question arising of discharge from such non-existing proceedings.

25. Now that we have satisfied ourselves that the Appellant has not been charge-sheeted so far nor any prosecution against him been initiated, we proceed to consider whether there is sufficient basis to continue with arraying of the Appellant as party Respondent No. 316 and subject him to restraint order freezing his assets.

26. At this stage, we may turn to the impugned orders dated 16.02.2024 and 10.04.2024 to see how it has treated the issues of deletion of the impleadment of the Appellant as party Respondent No.316 and vacating the restraint order on the Appellant with regard to his assets. The relevant extracts of the impugned orders are as follows:

Impugned order dated 16.02.2024

“4.1. On perusal of the Application, it is noted that the Applicant has made the withdrawal of lookout circular as the basis of discharge stating that after filing the investigation report in the ITNL, the said withdrawal was ordered. However, it is the case of Union that prosecution is still under Trial stage. Besides, the Applicant is Director under 6 other companies of IL&FS group and remains so far a period ranging from 1 to 3 years.

4.2. We also find the Union has already informed this Tribunal that after adoption of the SFIO report in ITNL case, the Respondents who are not found guilty of involvement in the investigation report shall be discharged by filing suitable application in so far as their involvement in affairs of ITNL is concerned. It is undisputed fact that a mammoth financial fraud had take place in the affairs of IL&FS and group companies and the Union of India had filed a Petition against the Directors of IL&FS and its group companies as well as persons having key role in the management of affairs of IL&FS group.

4.3. This Bench is of considered view that withdrawal of lookout circular is based on the cooperative conduct of the applicant in so far as the investigation is concerned and the decision to withdraw cannot be equated or tantamount to discharge from the allegations which are still under investigation.”

Impugned order dated 10.04.2024

“23. Since the restraint order was passed to protect the interest of the Creditors and public at large, and the applicant has not been discharged so far from the matter by the criminal court also, we do not find any merit in prayer for vacating the restraint order in place.”

27. It is the contention of the Ld. Sr. Counsel for the Appellant that the NCLT had erroneously denied discharge on ground that the Appellant had made withdrawal of lookout circular as the only basis of his discharge. Assailing the impugned order, it is contended by the Ld. Sr. Counsel for the Appellant that there were several other substantive grounds which justified the deletion of the Appellant as party Respondent No.316 in CP3638 of 2018 which the NCLT did not take due cognisance of. These grounds include the absence of any findings

in SFIO Final Report against the Appellant besides no chargesheet having been framed or criminal proceedings initiated against him. Withdrawal of lookout circular was only one other additional demonstrable proof that the Appellant was no longer a material or relevant party for impleadment. Attention was also adverted to decision of the Hon'ble Supreme Court in ***Neera Saggi Vs UOI 2021 SCC Online SC 239*** wherein it was held that there should be due application of mind while impleading Independent Directors in IL&FS proceedings before the NCLT. Following this judgement, the NCLT had discharged and deleted two erstwhile Independent Directors who were wrongly impleaded as Respondents in CP No. 3638 of 2018. In the present case too for the aforesaid reasons, it was asserted that the name of the Appellant ought to be deleted from the list of party Respondent and restraint on the assets be lifted.

28. It is the case of the Appellant that it was therefore erroneous for the NCLT to continue the restraints against the Appellant on the ground that the Appellant has not been discharged so far from the matter by the criminal court at a time when the Appellant has not been charged with any criminal proceedings. It was also stated that no explanation has been given as to why and how the Appellant, a senior citizen, could be restrained from dealing with his assets while those who were actually charge-sheeted and accused in criminal proceedings have no such restraints against them.

29. We have given thoughtful consideration to the entire matter while balancing public interest as canvassed by the Respondent with the rights of the Appellant. We are of the considered view that the very purpose of any

investigation is to collect evidence/incriminating material. Therefore, mere ground of delay in conduct of any investigation by itself cannot constitute sufficient ground for any investigation to be brought to an abrupt end. The investigation process is nevertheless expected to proceed with reasonable and optimal dispatch and should not be inordinately stretched and prolonged at the cost of fair play in action. In the interest of justice and equity, it is imperative to ensure that the delay does not violate or infringe the right of any party to be treated fairly, justly and reasonably.

30. When we see the facts of the present case through this prism, we notice that the investigation has been a rather longish, protracted affair. When the order of impleadment of the Appellant as party Respondent No. 316 was passed on 03.12.2018, it was passed with the intent to protect public interest in view of the mammoth nature of fraud which had been unearthed in IL&FS. It was not intended for investigation to go on indefinitely or to impose a prohibition on the Appellant for all times to come in seeking redressal.

31. Infact the NCLT on 24.12.2021 had itself taken adverse notice that three years had elapsed since the investigation had commenced and that the investigation cannot continue endlessly. It would be relevant to reproduce the observations made by the NCLT on 24.12.2021 which reads as below:

“This state of affairs cannot continue endlessly. Already over 3 years have elapsed and the report is still awaited and status report cannot form the basis to continue freezer endlessly looking at the age and hardships being faced by the applicant. Therefore SFIO is directed to complete the investigation of IL&FS expeditiously, especially the investigation of ITNL be completed in next four months.”

32. The NCLT after noting the inordinate delay had directed the investigation to be completed expeditiously within four months. It is an undisputed fact that

the investigation is yet to reach its logical end. It has been nearly three years since then and the investigations have not yet been concluded. It is nearly 4 years since the last of the SFIO status note dated 06.10.2020 was placed before the NCLT in sealed envelope. It is going to be 6 years since the submission of SFIO Interim Report and more than 5 years since submission of SFIO Final Report. We are compelled in the given circumstances to take the view that sufficient time has elapsed in spite of which the investigations are still underway and yet to reach its logical conclusion. The latitude of time given to the Respondent to complete the investigations cannot continue endlessly, an observation which was made by the NCLT itself more than two years back. Further, prima-facie, there is force in the contention of the Appellant that such inordinately delayed investigation and consequential freeze of assets has prejudicially affected the rights and interests of the Appellant causing agony to a senior citizen, more so, when no adverse findings specifically against the Appellant has come on record so far.

33. Pertinently, except for stating that majority part of the investigation has been completed and the process of filing prosecutions has been initiated, no explanation or grounds have been put forth by the Respondent to explain the delay. Be that as it may, the Respondent has not placed any further material on record or any supervening developments following the investigation exercise which particularises the culpability of the Appellant or implicates the Appellant in any manner. Neither any chargesheet has been framed against the Appellant from which the discharge is pending nor has any prosecution been initiated against the Appellant. From the corpus of available facts, we are also convinced that the Appellant cannot be blamed to have obstructed or delayed or hampered

the investigation in any manner and no such allegation has been raised by the Respondent. Yet we find that the Appellant continues to remain arrayed as Respondent No. 16 in CP No.3638 of 2018 and restraint order on the Appellant with regard to handling of assets by him continues to subsist though no incriminating evidence is found on record so far.

34. Having heard the Ld. Counsels for both the parties for a considerable length of time and after taking into consideration all the attendant circumstances and material on record placed before us, this Bench is of the considered view that to meet the ends of justice, while the enquiry may continue, the name of the Appellant from the list of party Respondents in CP 3638 of 2018 could be removed and restraint/freeze of assets also be vacated. In result, we allow the two appeals in the following manner:

(i) The prayer (b) contained in Company Appeal (AT)(Ins) No. 182 of 2024 seeking removal of restraints imposed on the Appellant regarding dealing with his movable and immovable properties is allowed and the impugned order dated 10.04.2024 in CA No.233 of 2021 is set aside to that extent.

(ii) The prayers (b) and (c) contained in Company Appeal (AT)(Ins) No. 102 of 2024 seeking removal of the Appellant as Respondent No. 316 in CP No. 3638 of 2018 and for removal of restraints placed on the Appellant regarding dealing with his movable and immovable properties are allowed and the impugned order dated 16.02.2024 in IA 176 of 2022 is set aside to that extent.

(iii) In the event it is found on conclusion of the ongoing inquiry, that there is substantial evidence for charge-sheeting the Appellant, it shall remain open to the Respondent to frame appropriate charges and launch prosecution

against the Appellant including freeze of assets and take other appropriate steps in accordance with law.

(iv) Parties to bear their own costs.

[Justice Ashok Bhushan]
Chairperson

[Barun Mitra]
Member (Technical)

Place: New Delhi/

Date: 30.08.2024

Abdul/Harleen