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

Reserved on: 10th September, 2025

Pronounced on: 27th November, 2025

+ CRL.M.C. 1510/2023 & CRL.M.A. 5742/2023

MR. NAMIT ARORA & ANR.

.....Petitioners

Through: Mr. Mahesh Jethmalani, Senior Advocate with Mr. Jagat Rana, Mr. Subhash Jadhav, Ms. Gunjan Mangia, Mr. Chandan Singh Shekhawat, Mr. Pranav Sarthi, Ms. Apoorva Singh, Mr. Ayush Raj, Ms. Prachi Dhingra, Advocates.

versus

SERIOUS FRAUD INVESTIGATION OFFICE

.....Respondent

Through: Ms. Shivalakshmi, CGSC with Mr. Madhav Bajaj, Mr. Divyanshu Bhardwaj, Advocates.

CORAM:

HON'BLE MR. JUSTICE AMIT SHARMA

JUDGMENT

AMIT SHARMA, J.

1. The present petition under Section 482 of the Code of Criminal Procedure, 1973¹, seeks the following prayers:

“Considering the afore-mentioned facts and circumstances, this Hon’ble Court may be pleased to exercise its jurisdiction under Section 482 of the Code of Criminal Procedure and pass following orders:

¹ For short, ‘CrPC’



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a. Allowing the present petition seeking and pass order(s) thereby quashing/setting aside the Impugned Order dated 22.09.2022 passed by the Learned. Addl. Sessions Judge – 03/Special Judge (Companies Act), Dwarka Court, New Delhi in CC No. 300/2019 ("Complaint") for the offence's punishable u/s Sections 68, 221 r/w 209, 628, 542 of the Companies Act, 1956 and under Section 449 of the Companies Act, 2013 and Summons dated 13.10.2022 received on 12.12.2022 and 11.12.2022 respectively qua the Petitioners.

b. Grant such other or further relief(s) as this Hon'ble Court may deem fit and proper in the facts of the case."

2. The present petition is preferred by Mr. Namit Arora, *i.e.*, petitioner no. 1 and Mr. Rahul Raisurana, *i.e.*, petitioner no. 2, and they are hereinafter referred to as the "petitioners".

3. The case of the prosecution as per the complaint filed by the respondent/SFIO is as under: -

(i) Genesis of the complaint lies in the order dated 10.02.2016, passed by this Hon'ble Court in Co. Pet. No. 267/2014, titled as "Bharat Bhushan Bansal v. Bush Foods Overseas Pvt. Ltd.", whereby Serious Fraud Investigation Office/Respondent (hereinafter referred to as "SFIO") was directed to investigate into the affairs of Bush Foods Overseas Private Limited (hereinafter referred to as "BFOPL");

(ii) Upon completion of the investigation, SFIO submitted its investigation report dated 19.07.2018, under Section 210(3) read



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with 233(1) of the Companies Act, 2013 to the Central Government;

- (iii) Pursuant thereto, the Central Government, *vide* its letters F. No. 5/1/2018/SFIO/CL-II dated 05.09.2018 and F. No. 5/1/2018/SFIO/CL-II dated 03.10.2018 issued necessary instructions and sanctions to SFIO for the purposes of initiating prosecution against the accused named in the said investigation report. On basis thereof, a complaint was filed before the learned Special Judge (Companies Act), Dwarka Courts, New Delhi, giving rise to Complaint Case No. 300/2019;
- (iv) During the course of investigation, it was found that BFOPL was originally constituted as a partnership firm in the year 1992. Subsequently, BFOPL was incorporated as a private limited company on 29.07.2005. BFOPL was primarily engaged in the business of manufacturing, processing and exporting *basmati* rice, ready-to-eat meals, spices etc.;
- (v) One Mr. Virkaran Awasty was the founder/original promoter and the Managing Director-cum-Chairman of BFOPL, while one Ms. Ritika Awasty functioned as Joint Managing Director. One Mr. Vinod Sirohi served as the Director and Chief Financial Officer and one Mr. B.D. Kayshap acted as Deputy CFO. The



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management and day-to-day affairs of BFOPL were found to be under their control;

- (vi) During the financial year 2011-12, Standard Chartered Private Equity (Mauritius) II Ltd. and Standard Chartered Private Equity (Mauritius) III Ltd. (hereinafter collectively referred to as “SCPE II & III”) invested approximately INR 110 Crores in BFOPL, through a mix of equity capital and compulsory convertible debentures (CCDs). The said investment was formalised *vide* a Share Purchase and Shareholders Agreement (SPSSA) which was executed on 31.03.2011;
- (vii) On the same day, *i.e.*, 31.03.2011, the Board of Directors of BFOPL appointed the petitioners as nominee non-executive directors, representing SCPE II & III. The petitioners were employees of Standard Chartered Bank. It was found that both were seconded to Standard Chartered Private Equity Advisory (India) Pvt. Ltd. and functioned in a fiduciary capacity on behalf of the institutional investors;
- (viii) As nominee non-executive directors, the petitioners attended several board meetings between 31.05.2011 and 24.09.2012, during which various financial and operational matters were deliberated. The petitioners were also involved in preparation of BFOPL’s financial statements and in discussions on the



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Information Memorandum, due diligence reports, and related documentation prepared for potential investors;

- (ix) Subsequently, BFOPL entered into an agreement dated 06.08.2012 with KPMG Advisory Services Pvt. Ltd. (hereinafter referred to as “KPMG”) for preparation of an “Information Memorandum and Databook” for prospective investors. The said documents were to form the basis for valuation and presentation of BFOPL’s financial position before prospective acquirers;
- (x) Basis the aforesaid, Hassad Netherlands B.V. (hereinafter referred to as “Hassad”), a subsidiary of Hassad Food Company Q.S.C., Qatar, expressed its interest in acquiring majority stake in BFOPL. Before the acquisition, ‘Hassad’ conducted an extensive financial, legal and commercial due diligence through professional firms;
- (xi) An Offer Letter was addressed to BFOPL by ‘Hassad’, expressing its intent to acquire a majority stake in BFOPL. The offer envisaged acquisition of equity shares from the promoters and SCPE II & III, as well as subscription of new shares by ‘Hassad’;
- (xii) Under the said Offer Letter, a detailed framework was laid down by ‘Hassad’ for proposed investment, including its right to conduct comprehensive due diligence. The said Offer Letter was



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accompanied by a Term Sheet dated 23.12.2012, which provided the financial structure of the proposed transaction;

- (xiii) On 02.01.2013, a Mumbai based Chartered Accountant firm, *i.e.*, M/s G.M. Kapadia & Co., was appointed by 'Hassad', to conduct an independent physical verification of the inventory and stock position of BFOPL and to reconcile the figures shown in the financial statements by BFOPL, as on 30.09.2012. These verifications were to serve as a condition precedent for finalising the transaction;
- (xiv) On 09.03.2013, a Share Purchase Agreement (SPA) was executed between 'Hassad', the promoters of BFOPL, and SCPE II & III. Pursuant to the SPA, 'Hassad' purchased 40.5% shareholding from Mr. Virkaran Awasty and Ms. Ritika Awasty, and 29% shareholding from SCPE II & III, totalling to 69.5% shareholding in BFOPL. On 26.03.2013, 'Hassad' paid a total consideration of USD 97,224,582/- (INR 530 Crores approx.), out of which USD 47,737,768/- (INR 258 Crores approx.) was paid to Mr. Virkaran Awasty and Ms. Ritika Awasty, and USD 50,486,815/- (INR 272 Crores approx.) was paid to SCPE II & III. 'Hassad' also infused an additional USD 22,130,200/- (INR 120 Crores approx.) into BFOPL by way of fresh equity subscription, thereby acquiring an aggregate 69.5% stake in BFOPL;



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- (xv) Upon completion of the acquisition process, on 28.03.2013, an Employment Agreement was executed between BFOPL and Mr. Virkaran Awasty, whereby Mr. Virkaran Awasty was appointed as the Managing Director and Chief Executive Officer of BFOPL. On the same day, the petitioners tendered their resignations from the Board of Directors, with immediate effect. Thereafter, 'Hassad's representatives, namely Mr. Nasser Mohammad Al-Hajri, Mr. Khaled Abdulrahman, Mr. Fadi El-Jaouni, and Mr. Sai Chandrasekhar, were inducted on the Board of Directors of BFOPL;
- (xvi) On 16.02.2013, M/s Deloitte Haskins & Sells LLP (hereinafter referred to as "Deloitte"), the statutory auditors of BFOPL, issued an "Agreed Upon Procedures Report", certifying that during the period of October 2012 to December 2012, BFOPL had affected sales amounting to INR 291.89 Crores. Basis the said report, 'Hassad' agreed that the held-back portion of the sale consideration would be released only after it was confirmed that the sale proceeds had been received in BFOPL's bank accounts. Subsequently, Deloitte issued a certificate dated 11.03.2013, stating that the full amount of INR 291.89 Crores had been duly received in BFOPL's bank accounts;
- (xvii) After completion of the acquisition, 'Hassad' became the majority shareholder of BFOPL. Mr. Virkaran Awasty continued as the



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Managing Director and Chief Executive Officer, while new directors representing 'Hassad', were appointed to the Board alongside, Mr. Vinod Sirohi and Mr. Sai Chandrasekhar;

- (xviii) After completion of the acquisition process, Mr. Virkaran Awasty transferred USD 1,000,000/- on 10.04.2013 and USD 1,500,000/- on 12.04.2013 to M/s Harin Ventures Limited, a company incorporated in Dubai, which was found to be under the control of Mr. Sai Chandrasekhar. Further, Mr. Virkaran Awasty, through his proprietary concern V & R Overseas, transferred INR 5 Crores on 02.04.2013 to one Mr. R.V. Gowda for the purchase of property on behalf of Mr. Sai Chandrasekhar. Additionally, amount of INR 1 crore each, was transferred in the names of Ms. Harti Nakshi Janadaran and Mr. C. Janadaran, the parents of Mr. Sai Chandrasekhar;
- (xix) In the meeting of Board of Directors of BFOPL, dated 04.04.2013, it was informed by Mr. Vinod Sirohi that the audit for the financial year 2012-2013 had commenced, and the scope of audit had been extended to 100% physical verification of the inventory. During that point of time, BFOPL had loans of about INR 650 Crores from a consortium of banks, led by the Bank of India. 'Hassad' had furnished a corporate guarantee of 70%, and the remaining 30% was provided by Mr. Virkaran Awasty in his personal capacity;



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- (xx) During the course of audit, the statutory auditor, *i.e.*, Deloitte, met with the representative of ‘Hassad’ on 23.09.2013 and 25.09.2013, and shared a draft audit report for financial year 2012-2013. The said audit report pointed out several lapses, such as lack of proper stock verification, inadequate insurance of inventory, weak purchase controls, etc. After taking note of these issues, ‘Hassad’ wrote a letter dated 10.10.2013, to Mr. Virkaran Awasty and Mr. Vinod Sirohi, asking them to submit a compliance report with respect to Clause 4.5.1 and Clause 9.1.1 of the SPA, which required timely completion of audits and submission of consolidated accounts;
- (xxi) On account of no satisfactory response from Mr. Virkaran Awasty, ‘Hassad’ suspended Mr. Virkaran Awasty from the post of Managing Director and Chief Executive Officer on 27.11.2013. Further, ‘Hassad’ sought explanation from him regarding various issues, including obtaining loan for BFOPL and providing loan to BFOPL without approval of the Board of Directors, etc.;
- (xxii) Subsequent thereto, ‘Hassad’ appointed Dr. Amin Controllers Pvt. Ltd. (hereinafter referred to as “Dr. Amin”) to independently verify the stock position of BFOPL. After the physical verification by Dr. Amin, a report dated 07.01.2014 was submitted, wherein it was found that the actual stock of paddy and rice was valued at



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only USD 2 to 3.5 Million (INR 18-20 Crores approx.), which was considerably less than what was recorded in BFOPL's books;

- (xxiii) In view thereof, 'Hassad' filed a complaint dated 06.01.2014 before the Economic Offenses Wing (EOW), Delhi, alleging cheating, criminal breach of trust, and falsification of accounts by the promoters and key managerial personnel of BFOPL. The complaint was duly registered and subsequently an FIR was lodged, bearing No. 136/2014, PS: EOW, under Section(s) 409, 420 and 120-B of the Indian Penal Code, 1860;
- (xxiv) Around the same time, several banks issued demand notices under Section 13(2) of the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002, (hereinafter referred to as "SARFAESI Act") for recovery of their dues. On behalf of BFOPL, 'Hassad' repaid dues amounting to INR 442.68 Crores to nine Indian banks and USD 8.14 Million to three foreign banks;
- (xxv) In an effort to revive its operations, the Board of Directors of BFOPL, in its meeting dated 09.09.2014, appointed Alvarez & Marshal India Pvt. Ltd. as restructuring consultants, and new directors were appointed in BFOPL;



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- (xxvi) It was revealed during the investigation that Mr. Sai Chandrasekhar, who was earlier employed as Staple Food Manager with Hassad Food Company Q.S.C., colluded and conspired with Mr. Virkaran Awasty and the petitioners, by providing vital insider information to Mr. Virkaran Awasty, including how to address the representations and warranties made in the transaction documents, and the names of entities to be shown for the purposes of physical verification of stock, thereby facilitating the sale of the majority stake in BFOPL to 'Hassad';
- (xxvii) During the course of investigation, it was revealed that the purported sales were fictitious and non-existent. The proprietors of two major purchasers, *i.e.*, M.H. Foods and Jai Hind Traders, deposed that they had merely issued bogus bills on commission basis, without undertaking any actual transactions. It was further revealed that BFOPL had been showing fake sales and purchases, in order to inflate its turnover and stock levels. These manipulations were mainly carried out by Mr. Virkaran Awasty, Mr. Vinod Sirohi, Mr. B.D. Kayshap, in connivance with Delhi based brokers, namely Mr. Yogender Kumar and Mr. Raj Sareen.

ROLE OF THE PETITIONERS

- (xxviii) During the course of investigation, it was found that the petitioners were deeply involved in preparation and finalisation of the Information Memorandum Databook and Due Diligence



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Reports, prepared by KPMG and other professional advisors, that were presented to 'Hassad', prior to its investment in BFOPL;

- (xxix) The petitioners held numerous meetings with KPMG, auditors and other agencies, and provided detailed comments on draft financial presentations. Final documents and reports were finalised only after approval of Mr. Rahul Raisurana/petitioner No. 2. The petitioners had also influenced the due diligence process by closely monitoring and intervening with various agencies during meetings with 'Hassad';
- (xxx) It was further revealed that the petitioners, though describing themselves as non-executive directors, were present in key Board deliberations, including those relating to the appointment of auditors, enhancement of credit facilities, and adoption of accounts. The petitioners were also recipients of internal communications exchanged between Mr. Virkaran Awasty and Mr. Sai Chandrasekhar of 'Hassad', who allegedly disclosed confidential information of 'Hassad' to BFOPL;
- (xxxi) It was further alleged that SCPE II & III, through their nominee non-executive directors, *i.e.*, the petitioners, made wrongful gains of about INR 170 crores form the sale of their shareholding to 'Hassad', despite their knowledge of BFOPL's precarious financial condition and non-existent inventory. The petitioners are



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alleged to have colluded in continuation and concealment of fraudulent practices, misrepresented the financial position of BFOPL and made false statements under oath during investigation.

SUBSEQUENT INVESTIGATION AND PROSECUTION

- (xxxii) On the basis of complaint lodged by ‘Hassad’ with EOW, an FIR bearing No. 136/2014 was registered at PS: Mandir Marg, EOW, under Section(s) 409, 420, and 120-B IPC (hereinafter referred to as “EOW FIR”) against BFOPL, its directors, including the petitioners;
- (xxxiii) A Company Petition, bearing No. 267/2014, was preferred by Mr. Bharat Bhushan Bansal, a creditor of BFOPL, on account of failure of BFOPL to pay a sum of INR 6,94,61,376/-. It was alleged that cheques amounting to INR 6,94,00,000/- issued by BFOPL towards discharge of its liability were dishonoured upon presentation. The said petition was admitted by this Court and *vide* order dated 10.02.2016, in the said petition, this Court directed SFIO to investigate into the affairs of BFOPL;
- (xxxiv) Pursuant to lodging of the EOW FIR, the petitioners preferred a Crl. M.C. No. 1768/2015 before this Court, seeking quashing of the EOW FIR. *Vide* order dated 06.08.2018, the said petition was



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withdrawn, as no charge sheet *qua* the petitioners was submitted by EOW;

- (xxxv) First charge sheet dated 08.08.2016, was filed in the case bearing Case No. 2038277/2017, titled as “State v. Sai Chandra Shekhar”, before the learned ACMM, Saket Courts, New Delhi, *qua* the promoters and key managerial persons, namely Mr. Sai Chandrashekhar, Mr. Vinod Sirohi, Mr. Virkaran Awasty, Ms. Ritika Awasty and BFOPL. The petitioners were not charged with any offence, and the investigation *qua* the petitioners was kept open;
- (xxxvi) Subsequently, a supplementary charge sheet dated 29.06.2017 was submitted before the learned Trial Court, which reiterated that investigation *qua* the petitioner was on-going and if any incriminating material is found, the same would be brought through additional supplementary charge sheet;
- (xxxvii) After due investigation, the EOW filed the second supplementary charge sheet dated 17.07.2018, in which the petitioners were placed under Column 12, which read as “Particulars of persons not charge sheeted (suspect (Separate sheet for each suspect))”;
- (xxxviii) Basis the EOW FIR, the Enforcement Directorate (hereinafter referred to as “ED”) registered an ECIR bearing No.



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02/DZCR/2019, dated 26.02.2019, under Section 3 and 4 of the Prevention of Money Laundering Act, 2002, wherein a detailed complaint was filed before the learned Special Judge, PMLA, on 12.11.2020 against Mr. Sai Chandrasekhar, Mr. Virkaran Awasty, Ms. Ritika Awasty and BFOPL. The petitioners were not arrayed as accused in the said complaint. The case before the learned Special Judge, PMLA, is numbered as 534/2020. Pursuant to an application preferred by the ED, under Section 44(1)(a) & (c) of the PMLA Act, the case was transferred to the Court of learned ASJ, Special Judge, NDPS/ASJ South District, Saket Court, New Delhi on 09.03.2021;

(xxxix) Subsequently, on a complaint dated 07.10.2022, made by Mr. Alok Shankar, Assistant General Manager, Bank of India, New Delhi, before the Central Bureau of Investigation (hereinafter referred to as "CBI"), alleging commission of fraud by BFOPL and its officials, CBI lodged an FIR bearing No. RC2202023E0011, dated 18.04.2023, PS: EO-II, Delhi, under Section(s) 420/ 468/ 471/ 120-B of the IPC and 13(2) read with 13(1)(d) of the Prevention of Corruption Act, 1988. The said complaint alleged that BFOPL and its directors had induced the consortium of banks, led by Bank of India, to sanction and disburse various credit facilities, and thereafter diverted the loan proceeds and falsified their financial statements, thereby causing the consortium members a loss of INR 163.64 Crores;



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- (xi) The petitioners were exonerated by the CBI *vide* final closure report dated 28.11.2024, wherein the petitioners were not charge sheeted and instead were placed under column 12, which read as “Accused person not chargesheeted”;

SUBMISSIONS ON BEHALF OF THE PETITIONERS

4. Learned Senior Counsel appearing on behalf of the petitioners submits that the latter were merely Non-Executive Directors nominated on the Board of BOFL from March 31, 2011 to March 28, 2013 by Standard Chartered Private Equity entities, *i.e.*, SCPE II & III, who were minority financial investors of BFOPL, that held 29% stake in the company. It is submitted that the petitioners were employees of Standard Chartered Bank, India, *i.e.*, SCB and both, SCB and SCPE II & III, are ultimately owned by Standard Chartered Bank, United Kingdom. It is further submitted that the petitioners resigned from the Board on 28.03.2013, when SCPE II & III sold its stake in BFOPL to ‘Hassad’.

5. It has been contended by the learned Senior Counsel that the role of the petitioners, while they were the nominee Non-Executive Directors at the relevant period of time, was examined by 3 agencies in the following manner:

“Economic Offences Wing

Petitioners have previously been exonerated by EOW, New Delhi in an FIR (136 of 2014 or "EOW FIR") filed by Hassad. The EOW (under an investigation monitored by this Hon'ble High Court for cheating of Hassad), while charge sheeting BFOPL Promoters, exonerated the Petitioners by placing them in **Column 12**) *vide* its



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Second Supplementary Charge Sheet dated 17.7.2018 (“**Closure Report**”) filed before the relevant EOW Court (Closure Report placing the Petitioners under Column 12 is enclosed as Pg 197-214 of the petition). **The EOW exoneration of the Petitioners vide its Closure Report also received judicial acceptance vide relevant Court Order dated 10.11.2022** - Pg 226-227 Annexure P10 of the petition.

Enforcement Directorate

An ECIR dated 26.02.2019 based on the EOW predicate offence was registered by the Enforcement Directorate and a Complaint dated 20.11.2020 was filed before the PMLA Court wherein the Petitioners were **not** named as Accused. The Promoters of BOPL and others were arraigned as Accused. The case bearing Spl. Case No. 525 of 2024 is at the stage of Trial.

Central Bureau of Investigation

Most importantly, the CBI has exonerated the Petitioners (in an FIR no RC2202023E0011 dated 18.04.2023 filed by BOPL's Consortium of Banks) via CBI's final closure report ("CBI Closure Report") dated 28.11.2024 wherein the CBI has not charge sheeted the Petitioners and exonerated the Petitioners **by placing them in Column 12. It is pertinent to note that the SFIO complaint was part of and also formed the basis of the CBI FIR.**

6. Learned Senior Counsel appearing on behalf of the petitioners draws attention of this Court to an affidavit dated 18.11.2018 filed by ‘Hassad’ before the Court of learned ACMM, Saket Courts, New Delhi, in Case No. 2038277/2016, wherein, it was categorically confirmed that the petitioners had committed no criminality or were not complicit in the alleged offence. It is the case of the petitioners that by way of the aforesaid affidavit, ‘Hassad’ accepted the exoneration by EOW of the petitioners *vide* a Closure report dated 17.07.2018. It is also submitted that ‘Hassad’ *vide* a communication dated 19.11.2018 to respondent-SFIO had also enclosed the aforesaid



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affidavit stating that petitioners were not responsible in commission of any alleged offences and no action was required against them.

7. It is further submitted that the impugned summoning order dated 22.09.2022, as well as the summons dated 11.12.2022 and 12.12.2022, suffer from a fundamental non-application of mind, and are *ex-facie* unsustainable in law. It was further contended that the learned Trial Court, failed to appreciate that no *prima facie* case was made out against the petitioners.

8. It has been contented by the learned Senior Counsel appearing on behalf of the petitioners that even though the complaint filed by SFIO indicts the petitioners for charges under Section(s) 68, 542 of the Companies Act, 1956 and 449 of the Companies Act, 2013, the impugned order indicts the petitioners of five charges, and then goes on to arraign the petitioners of six charges in the table of charges, being charges under Section(s) 68, 211, 209, 542, 628 of the Companies Act, 1956 and Section 449 of the Companies Act, 2013.

9. It is further submitted that the petitioners are again being prosecuted for the very same acts and transactions forming the subject matter of the earlier investigations with respect to BFOPL, in which the competent investigating authorities have already found no criminality attributable to the petitioners. It was urged that the complaint of SFIO itself suffers from infirmities, as the complaint filed by SFIO against the petitioners and 16 others does not name BFOPL as an accused.



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10. Learned Senior Counsel appearing on behalf of the petitioners submits that the case of the respondent is based on certain handpicked facts and the respondent completely ignored and suppressed the material facts necessary for just adjudication of the matter.

11. It is further submitted that the statutory audit report of Deloitte and the binding Term Sheet executed between 'Hassad', BFOPL, promoters of BFOPL and SCPE II & III, explicitly recognised that the petitioners were not part of the key management personnel, responsible for the company's day-to-day functioning. Attention of this Court is drawn to Form-32, filed with the Registrar of Companies, which also categorically shows the petitioners to be non-executive directors of BFOPL.

12. Learned Senior Counsel appearing on behalf of the petitioners further relies on the General Circular No. 1/2020 dated 02.03.2020, issued by Ministry of Corporate Affairs, which clarifies that non-executive, non-key managerial directors should not be subjected to prosecution in the absence of specific allegations indicating direct involvement. Reliance has been placed on the judgment of the Hon'ble Supreme Court in **S.M.S. Pharmaceuticals Ltd. v. Neeta Bhalla**², wherein it was held that there is nothing which suggests that simply by being a director in a company, one is supposed to discharge functions on behalf of a company.

² (2005) 8 SCC 89



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13. It was further submitted that the essential ingredients of the offenses alleged, are not disclosed against the petitioners. It was argued that the petitioners were merely non-executive directors in BFOPL, and under no circumstance, can they be considered to be in charge of day-to-day management of a company. It was further argued that the petitioners cannot be arrayed in any civil or criminal proceedings, in relation to the affairs of BFOPL, as they were not holding any key managerial positions in BFOPL.

14. Learned Senior Counsel further contended that the entire case of prosecution is misconceived, as the petitioners had been exonerated by all investigating agencies, including EOW, ED and CBI, and even 'Hassad' had acknowledged their innocence.

15. It is further submitted that the petitioners being only nominee non-executive directors on behalf of SCPE II & III in BFOPL, were required to participate in the board meetings and discussions to ensure that SCPE II & III's interest is safeguarded in accordance with the terms of SPSSA. The petitioners had only attended 8 board meetings, which they were statutorily required to do, and the same cannot be considered as an overt act.

16. It was further submitted that the summoning of the petitioners merely by reproducing the allegation from the SFIO complaint and without any independent reasoning, shows a mechanical exercise of jurisdiction by the learned Special Judge (Companies Act).



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17. Reliance was placed upon the decisions of the Hon'ble Supreme Court in **Sunil Bharti Mittal v. CBI**³, **GHCL Employees Stock Option Trust v. India Infoline Ltd.**⁴, and **Prashant Bharti v. State (NCT of Delhi)**⁵, and decision of this Court in **Har Sarup Bhasin v. Origo Commodities India Private Limited**⁶, to submit that continuation of proceedings against them would constitute abuse of process of Court and warranted quashing under Section 482 CrPC.

18. Learned Senior Counsel for the petitioners has also placed reliance on the following precedents:

- a) **State of Haryana v. Bhajan Lal**⁷ [Para(s) 88 and 102];
- b) **Rajiv Thapar v. Madan Lal Kapoor**⁸ [Para 30];
- c) **Madhavrao Jiwajirao Scindia v. Sambhajirao Chandrojirao Angre**⁹ [Para 7];
- d) **Mehmood Ul Rehman v. Khazir Mohammad Tunda**¹⁰ [Para(s) 9, 20, 22]

- e) **G. Vijayalakshmi v. SEBI**¹¹;
- f) **In re DENHAM & CO.**¹²;
- g) **Aneeta Hada v. Godfather Travels And Tours (P) Ltd.**¹³ [Para(s) 14, 51];
- h) **Pepsi Foods Ltd. v. Judicial Magistrate**¹⁴ [Para(s) 21, 22, 28];

³ (2015) 4 SCC 609

⁴ (2013) 4 SCC 505

⁵ (2013) 9 SCC 309

⁶ 2020 SCC OnLine Del 11

⁷ 1992 Supp (1) SCC 335

⁸ (2013) 3 SCC 330

⁹ (1988) 1 SCC 692

¹⁰ (2015) 12 SCC 420

¹¹ (2000) 100 Comp Cas 726

¹² [L.R.] 25 Ch.D. 752

¹³ (2008) 13 SCC 703



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- i) **Sunil Bharti Mittal v. CBI**¹⁵ [Para(s) 41, 46, 48, 53];
- j) **Pradeep Kumar Kesarwani v. State of U.P.**¹⁶ [Para(s) 16, 17, 20].

SUBMISSIONS ON BEHALF OF THE RESPONDENT

19. *Per contra*, learned CGSC on behalf of SFIO submits that the latter had taken up the investigation into the affairs of the company in pursuance of the order dated 10.02.2016 passed by the learned Co-ordinate Bench of this Court in CO.PET.267/2014 titled as ‘Bharat Bhushan Bansal Vs. Bush Foods Overseas Pvt. Ltd. & Ors.’ It is further submitted that after completion of the investigation it was revealed that the Officers of the company in question had falsified the books of accounts by generating fictitious/bogus transactions to show an inflated turnover on one hand and bogus inventory on the other hand maintaining profitability and improving the company’s net worth to attract investments and enjoy higher credit limits from various banks and investors and ultimately caused wrongful gains to themselves. It was submitted that the present petitioners who although were Non-Executive Directors, but were involved in day-to-day affairs of the company.

20. It is the case of the prosecution that both the petitioners were fully aware of BFOPL’s misconduct and colluded with other Directors of the said company to continue the fraudulent practices in order to protect their own interest/investment. It is pointed out that the present petitioners failed to exercise due diligence to stop the fraudulent practices of the company or

¹⁴ (1998) 5 SCC 749

¹⁵ (2015) 4 SCC 609

¹⁶ 2025 SCC OnLine SC 1947



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disclose the same to the concerned authorities and thereby, defrauding the financial institutions, trade creditors and other investors. It is further submitted that the learned Special Court *vide* its detailed order dated 22.09.2022 based on the contents of the Complaint and Investigation Report along with all its annexures, has been pleased to take cognizance and accordingly, issued summons to the present petitioners, *i.e.*, Mr. Namit Arora and Mr. Rahul Raisurana, for offences punishable under Sections 68, 211 read with Sections 209, 628, 542 of the Companies Act, 1956 and under Section 449 of the Companies Act, 2013.

21. It is further submitted by learned CGSC for SFIO that it is settled law that learned Special Court is empowered to add or alter any other charge apart from the ones mentioned in the Complaint/Chargesheet if it deems fit after perusal of the Complaint/Chargesheet. It has been held in **Rakesh Prasad Singh v. State of UP**¹⁷ and **Rajendra Prasad v. Bashir**¹⁸, that a Magistrate may take cognizance of an offence under a Section which has not been mentioned in the chargesheet. Thus, the same is not indicative of non-application of mind, and therefore, the ground taken by the petitioners is untenable. Furthermore, in **Pepsi Foods Ltd. v. Special Judicial Magistrate**¹⁹, it was held that a Magistrate has to apply his mind and carefully scrutinize evidence before summoning an accused.

¹⁷ 2010 (71) ACC 438 (Allahabad)

¹⁸ (2022) SCC Cri 21

¹⁹ (1998) 5 SCC 749



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22. It is further submitted that the instant case is separate and independent of the case filed by the EOW before the learned Special Judge, Saket. The instant case has been filed after proper investigation conducted by SFIO into the affairs of BFOPL and therefore, the exoneration of petitioners in the EOW matter has no bearing in the instant matter. SFIO starts investigation after receiving orders from the Central Government. The mandate and scope of investigation by SFIO is completely distinct and much broader than offences prescribed under IPC. SFIO is a specialized agency established for the purpose of investigating corporate frauds of complex nature and accordingly, employs its officers from a variety of disciplines/expertise such as banking, forensic audit, income tax, intelligence bureau and law. Hence, SFIO investigation has no collusion and stands on a completely different footing from the investigation done by the EOW.

23. It is further submitted that the petitioners are trying to mislead the Court by relying on the Clause - 11 of SPSSHA entered between BFOPL and SPCE II & III. It is submitted that Clause 11 of the SPSSHA is only applicable with respect to civil liabilities and obligations promoters of BFOPL to indemnify monetary/civil losses incurred by the investors on account of breach of covenant or any material breach of law in conducting the business of Bush Foods. The aforesaid Clause - 11 has nothing to do with criminal liability of erstwhile Directors.

24. It is further submitted by learned CGSC for SFIO that Section 149(12) of the Companies Act, 2013 provides for the liability of Non-



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Executive/Nominee Directors and attention of this Court has been drawn towards the said provision which reads as under: -

“149. Company to have Board of Directors:

(12) Notwithstanding anything contained in this Act(z) an independent director;

(ii) a nonexecutive director not being promoter or key managerial personnel;

Shall be held liable, only in respect of such acts of omission of commission by a Company which had occurred with his knowledge, attributable through Board processes, and with his consent or connivance or where he had not acted diligently."

Therefore, in view of the provisions of Section - 149(12) of the Companies Act, 2013, the liability of the petitioners can clearly be invoked in view of their knowledge and role as mentioned in the foregoing paragraphs and their active involvement in the affairs of the Company. It is further submitted that the petitioners sat in eight (8) Board meetings where significant decisions were taken and they have been sending and receiving emails regarding the audit of the financials of the company and they were also actively involved in the preparation of the Information Memorandum of BFOPL which was submitted to ‘Hassad’ International for investing in BFOPL. This shows that they were not mere spectators but discharging the key functions.

25. It is submitted that Section 209 of the Companies Act, 1956 casts a duty upon all the officers as well as the employees of the Company for maintaining the books of accounts. A plain reading of clause (a) of Sub-



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Section 6 of Section 209 demonstrates that apart from the managing directors, all other officers and employees of the Company are equally liable. Similarly, under Section 211(7) of the Companies Act, 1956, punishment has been laid down for "all other officers and employees as provided under sub-Section (6) of Section 209. It is further submitted that this is an attempt by the petitioners to mislead this Hon'ble Court and also shows their dubious conduct.

26. It is further submitted that Section 542(3) of the Companies Act, 1956 provides as follows: -

"542. Liability for fraudulent conduct of business:

(3) Where any business of a company is carried on with such intent or for such purposes as is mentioned in subsection(1), every person who was knowingly a party to the carrying on of the business in the manner aforesaid, shall be punishable with imprisonment for a term which may extend to two years, or with fine which may to extend to [fifty] thousand rupees, or with both."

Thus, a bare reading of the provision makes it implicitly clear that the provision imputes liability on every person who was knowingly a party to the fraudulent carrying out of business. In the instant case as well, the petitioners were aware about the fictitious inventories due to bogus transactions and were also part of the Board meetings but never reported any such irregular transactions, thereby attracting their liability under Section 542 of the Companies Act, 1956.



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27. It is further submitted that the petitioners have misinterpreted the ingredients of Section 449 of the Companies Act, 2013, and it is pertinent to note that Section 449 provides for punishment for false evidence, and the same has been invoked against the petitioners for knowingly misrepresenting before the investigating authorities as they had constantly mentioned that Deloitte did not raise any objections during the audit of FY 2011-12 whereas the same is contrary to the what has been mentioned in the statement of Jaideep Bhargava, statutory auditor and the email correspondences between them. Therefore, rightly invoking their liabilities under Section 449 of the Companies Act, 2013.

28. It is further submitted that the Company, *i.e.*, BFOPL, is not arraigned as an Accused because the Company was under liquidation when the instant Criminal Complaint was filed. It is submitted so as to not hamper the liquidation proceedings of BFOPL by way of filing the Criminal Complaint, the Complaint did not arraign the Company as an accused and the Complaint was filed only against the Directors. Furthermore, the Petitioners are arraigned as accused in view of their individual roles. It is submitted that as per the scheme of the Companies Act, 1956 the same does not prescribe for mandatory arraignment of the Company as an accused and therefore the Directors were arrayed as the accused.

29. Furthermore, it is submitted that the statement on oath by SFIO is recognized by the statute itself under Section 217(4) of the Companies Act,



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2013, and the law also prescribes punishment if a person gives false statement on Oath, therefore the statements given by the Accused people on Oath is valid and good in law.

30. It is further submitted that the exercise of powers under Section 482 of the Cr.P.C. to quash the proceedings is an exception and not a rule. Reliance in this regard is placed on **Kaptan Singh v. State of Uttar Pradesh and others**²⁰, and particularly on the following observation: -

"14. In view of the above and for the reasons stated above, the impugned judgment and order passed by the High Court quashing the criminal proceedings in exercise of powers under Section 482 Cr.P.C. is unsustainable and the same deserves to be quashed and set aside and is accordingly quashed and set aside. Now, the trial to be conducted and proceeded further in accordance with law and on its own merits. It is made clear that the observations made by this Court in the present proceedings are to be treated to be confined to the proceedings under Section 482 Cr.P.C. only and the trial Court to decide the case in accordance with law and on its own merits and on the basis of the evidence to be laid and without being influenced by any of the observations made by us hereinabove".

31. It is submitted that the Hon'ble Supreme Court in **N. Soundaram v. P.K. Pounraj and Another**²¹ has reiterated the principles governing the inherent jurisdiction under Section 482 of Cr.P.C. by reminding the Courts that this power has to be exercised sparingly and cautiously to prevent abuse of process of the Court and to secure the ends of justice while cautioning that inherent powers should not be exercised to stifle a legitimate prosecution and

²⁰ 2021 SCC OnLine SC 580

²¹ (2014) 10 SCC 616



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High Courts should refrain from giving a *prima facie* opinion at the initial stage unless there are compelling reasons to do so, as the case set up has to be considered as it is, without adding or subtracting anything to it.

32. It is further submitted that the Hon'ble Supreme Court in a catena of judgments have held that the FIR, is to be quashed only when it does not disclose commission of a cognizable offence. The High Court cannot embark upon enquiry into the merits of the allegations and quash the proceedings without allowing investigating agency to complete its task.

33. Learned counsel appearing on behalf of the respondent, further placed reliance on the following precedents:

- a) **SFIO v. Rajesh Kumar Yaduvanshi & Anr.**, order dated 05.03.2025 in SLP (Crl.) No. 3252/2021 [Para(s) 1 to 4];
- b) **Pradeep Nirankarnath v. Directorate of Enforcement & Anr.**, judgment dated 17.03.2025 in SLP (Crl.) No. 6185/2023 [Para(s) 32, 33, 35];
- c) **Ashish Bhalla v. State**²² [Para(s) 51, 54, 60, 61, 62, 63, 64, 84, 87];
- d) **Raja Narayan Bansilal v. Maneck Phiroz Mistry & Anr.**²³ [Para(s) 18, 19, 21, 23]
- e) **State of Haryana v. Bhajan Lal**²⁴ [Para 103];
- f) **Som Mittal v. Govt. of Karnataka**²⁵ [Para 8];
- g) **CBI v. Ravi Shankar Srivastava**²⁶ [Para 7, 9];

²² 2023 SCC OnLine Del 5818

²³ (1960) 30 COMP CAS 644

²⁴ 1992 Supp (1) SCC 335

²⁵ (2008) 3 SCC 574

²⁶ (2006) 7 SCC 188



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- h) **Kamal Shivaji Pokarnekar v. State of Maharashtra**²⁷ [Para(s) 4, 5];
- i) **K. Ashoka v. N.L. Chandrashekar**²⁸ [Para 14];
- j) **State of Bombay v. S.L. Apte**²⁹ [Para(s) 1, 3, 4, 6, 7, 9, 10, 11, 12, 13, 14, 15, 16, 17];

REJOINDER SUBMISSIONS ON BEHALF OF THE PETITIONER

34. Learned Senior Counsel appearing on behalf of the petitioners submits that the response filed on behalf of the respondent is wholly misconceived, as the allegations levelled against the petitioners are contrary to the record. It is contended that the respondent has intentionally suppressed material facts and it has also failed to disclose the fact that the petitioners had already been exonerated by three independent investigation agencies, namely, the EOW, the ED and the CBI.

35. It was further reiterated that the petitioners were obliged to attend the board meetings of BFOPL and were merely nominee non-executive directors, appointed by SCPE II & III, and they were not a part of the Key Management Personnel of BFOPL. Further, it is stated that the petitioners had no executive powers or any involvement in the day-to-day affairs of BFOPL, rather, the management and control of BFOPL was solely vested in the promoter and the managing director, Mr. Virkaran Awasty.

²⁷ (2019) 14 SCC 35

²⁸ (2009) 5 SCC 199

²⁹ 1960 SCC OnLine SC 56



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36. Learned Senior Counsel further submitted that neither the audit report for the financial year 2011-2012 prepared by Deloitte, nor the report prepared by GM Kapadia, who was appointed by 'Hassad' as part of its own independent due diligence for verification of the inventories, have named the petitioners, as being involved in the physical verification of the inventories.

37. It was further submitted that the complaint lodged by the respondent, does not allege offences *qua* the petitioners under Section(s) 209, 211 and 628 of the Companies Act, 1956, however, the learned Special Judge (Companies Act), Dwarka Courts, New Delhi, had summoned the petitioners for the said offences, which demonstrates non-application of mind. It is further contended that neither the SFIO complaint level any charge against the petitioners, nor it has ever been the case of the respondent that the petitioners manipulated the financial statements of BFOPL to obtain credit facilities from various banks.

38. It was further pointed out that 'Hassad' itself filed an affidavit dated 18.11.2018, before the learned ACMM, Saket Courts, New Delhi, confirming that the petitioners were not party to any wrongdoings. It was contended that the respondent, despite being in possession of the said affidavit, while lodging its complaint before the learned ACMM, Saket Courts, New Delhi, failed to disclose the fact that the petitioners were exonerated from the previous EOW case. Thereby, the respondent misled the learned Court and obtained the impugned order through suppression of material facts.



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39. It was further submitted by the learned Senior Counsel, that the representations on inventory of the statutory auditors, *i.e.*, Deloitte, had not been made by the petitioners, rather the said representation, in accordance with the Institute of Chartered Accountants of India guidelines, were contained in the detailed Management Representations letter dated 24.09.2012, which was relied upon by Deloitte as part of its audit report. It was further submitted that the said Letter of Representation, containing the financial and inventory position of BFOPL, given to Deloitte, was signed by Mr. Virkaran Awasty and Mr. Vinod Sirohi, as they were the Key Managerial Personnel of BFOPL.

40. It is the case of the petitioners that the Information Memorandum and Databook was a document prepared by KPMG, based on the information and representations given by Key Managerial Personnel of BFOPL and not by the petitioners. Further, the disclaimer clause of the Information Memorandum states that the Information Memorandum should not be the basis for any investment decision by any party. It was further contended that even assuming that the petitioners were involved in the preparation of the said Information Memorandum and Databook, it is relevant to state that 'Hassad's offer to invest in BFOPL was only a non-binding offer, which clearly stated that 'Hassad' would make a binding/definitive offer, only after being satisfied (in its sole discretion) with the results of its own comprehensive, extensive and independent due diligence.



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41. Learned Senior Counsel for the petitioners submitted that the allegation of violation of Section 449 of the Companies Act, 2013 is wholly misconceived. It was further submitted that the petitioners had not made any false statements in their statements recorded by the respondent. It was further argued that Section 499 only comes into operation if the trial Court in appreciation of all the evidence on record before it, comes to a conclusion that the statements of the petitioners recorded by the respondent, under Section 217(4)(b) of the Companies Act, 2014, were willfully false. It is further contended if the process issued *vide* the impugned order is quashed, then, *ipso facto*, the invocation of Section 449 must also fail.

ANALYSIS AND FINDINGS

42. Heard learned Senior Counsel for the petitioners as well as learned CGSC for SFIO and perused the records.

43. In the impugned order dated 22.09.2022 taking cognizance and summoning the petitioners, after noting in detail the facts presented in the complaint filed by the respondent/SFIO on the basis of the investigation report including the allegations against the present petitioners, learned ASJ-03 & Special Judge (Companies Act), Dwarka Courts, New Delhi, passed the following order: -

“4. As per Section 212(15) of the Companies Act, 2013, the investigation report filed before this Special Court for the purpose of framing of charges shall be deemed to be a report filed by a police officer u/s 173 CrPC. As a *fortiori* this Court can scrutinize the chargesheet for the limited purpose for taking cognizance in essence as to whether the conclusion reached by the investigating



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agency warrants summoning of the prospective accused or not. Reference in this regard can be made to the following observation made in ***Abhinandan Jha vs. Dinesh Mishra AIR 1968 CriLJ 97*** :-

“.....Sub-section (1), of this section, will cover a report sent, under s. 173. The use of the words 'may take cognizance of any offence', in sub-s. (1) of s. 190 in our opinion imports the exercise of a 'judicial discretion', and the Magistrate, who receives the report, under Section 173, will have to consider the said report and judicially take a decision, whether or not to take cognizance of the offence. From this it follows that it is not as if that the Magistrate is bound to accept , , the opinion of the police that there is a case for placing the accused, on trial. It is open to the Magistrate to take the view that the facts disclosed in the report do not make out an offence for taking cognizance or he may take the view that there is no sufficient evidence to justify an accused being put on trial. On either of these grounds, the Magistrate will be perfectly justified in declining to take cognizance of an offence, irrespective of the opinion of the police.....”

5. Thus, considering the allegations mentioned in the Investigating Report of SFIO and supporting documents, cognizance of alleged offences Companies Act, 1956 and Companies Act, 2013 is taken.

6. Further, it is found that sufficient material has been placed on record against the accused persons to face prosecution in respect of following offences:

| <i>No. of Accused</i> | <i>Name of Accused</i> | <i>Sections for which accused is summoned</i> |
|------------------------------|-------------------------------|---|
| A-1 | Virkaran Awasty | U/s. 68, 211 r/w 209, 628, 542 of the Companies Act, 1956. |
| A-2 | Ritika Awasty | U/s. 211 r/w 209 & 628, 542 of the Companies Act, 1956 |
| A-3 | Vinod Sirohi | U/s. 68, 211 r/w 209, 628, 542 of the Companies Act, 1956 and u/s. 449 of the Companies Act, 2013 |



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| | | |
|------|--|--|
| A-4 | Rahul Raisurana | U/s. 68, 211 r/w 209, 628 and 542 of the Companies Act, 1956 and u/s. 449 of the Companies Act, 2013 |
| A-5 | Namit Arora | U/s. 68, 211 r/w 209, 628, 542 of the Companies Act, 1956 and u/s. 449 of the Companies Act, 2013. |
| A-6 | Bishdev Kashyap | U/s. 211 r/w 209, 628 and u/s. 542 of the Companies Act, 1956. |
| A-7 | Jaideep Bhargava, Chartered Accountant | U/s. 227, 233 and 542 of the Companies Act, 1956. |
| A-8 | Deloitte Haskins & Sells LLP | U/s. 227 and 233 of the Companies Act, 1956 |
| A-9 | Standard Chartered Private Equity (Mauritius) (II) Limited | U/s. 68, 211 r/w 209, 628 and 542 of the Companies Act, 1956; |
| A-10 | Standard Chartered Private Equity (Mauritius) (III) | U/s. 68, 211 r/w 209, 628 and 542 of the Companies Act, 1956 |
| A-11 | R.K. Mitra, Chartered Accountant | U/s. 227, 233 and 628 of the Companies Act, 1956 |
| A-12 | Prakash Mishra | U/s. 540 of the Companies Act, 1956 |
| A-13 | Yoginder Kumar | U/s. 542 of the Companies Act, 1956 |
| A-14 | Raj Sareen | U/s. 542 of the Companies Act, 1956 |
| A-15 | Sandeep Vats | U/s. 540 of the Companies Act, 1956. |
| A-16 | Nitin Aggarwal | U/s.542 of the Companies Act, 1956. |
| A-17 | Jagdish Garg | U/s.542 of the Companies Act, 1956. |
| A-18 | Sai Chandrasekhar | U/s. 542 of the |



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| | | |
|--|--|----------------------|
| | | Companies Act, 1956. |
|--|--|----------------------|

7. Hence, aforesaid accused persons be summoned accordingly.”

44. The issue before this Court is whether in the exercise of power under Section 482 of the CrPC, can this Court interfere with the order taking cognizance by the learned Special Court? Answering a similar issue, the Hon’ble Supreme Court in **Nupur Talwar v. Central Bureau of Investigation, Delhi and Anr.**,³⁰ had observed and held as under:

“**15.** Now the question is: what should be the extent of judicial interference by this Court in connection with an order of taking cognizance by a Magistrate while exercising his jurisdiction under Section 190 of the Code?

16. Section 190 of the Code lays down the conditions which are requisite for the initiation of a criminal proceeding. At this stage the Magistrate is required to exercise sound judicial discretion and apply his mind to the facts and materials before him. In doing so, the Magistrate is not bound by the opinion of the investigating officer and he is competent to exercise his discretion irrespective of the views expressed by the police in its report and may prima facie find out whether an offence has been made out or not.

17. The taking of cognizance means the point in time when a court or a Magistrate takes judicial notice of an offence with a view to initiating proceedings in respect of such offence which appears to have been committed. At the stage of taking of cognizance of offence, the court has only to see whether prima facie there are reasons for issuing the process and whether the ingredients of the offence are there on record.

³⁰ (2012) 2 SCC 188



18. The principles relating to taking of cognizance in a criminal matter has been very lucidly explained by this Court in *Chief Enforcement Officer v. Videocon International Ltd.* [(2008) 2 SCC 492 : (2008) 1 SCC (Cri) 471] , the relevant observations wherefrom are set out: (SCC p. 499, paras 19 & 20)

“19. The expression ‘cognizance’ has not been defined in the Code. But the word (cognizance) is of indefinite import. It has no esoteric or mystic significance in criminal law. It merely means ‘become aware of’ and when used with reference to a court or a Judge, it connotes ‘to take notice of judicially’. It indicates the point when a court or a Magistrate takes judicial notice of an offence with a view to initiating proceedings in respect of such offence said to have been committed by someone.”

20. ‘Taking cognizance’ does not involve any formal action of any kind. It occurs as soon as a Magistrate applies his mind to the suspected commission of an offence. Cognizance is taken prior to commencement of criminal proceedings. Taking of cognizance is thus a sine qua non or condition precedent for holding a valid trial. Cognizance is taken of an offence and not of an offender. Whether or not a Magistrate has taken cognizance of an offence depends on the facts and circumstances of each case and no rule of universal application can be laid down as to when a Magistrate can be said to have taken cognizance.”

19. The correctness of the order whereby cognizance of the offence has been taken by the Magistrate, unless it is perverse or based on no material, should be sparingly interfered with. In the instant case, anyone reading the order of the Magistrate taking cognizance, will come to the conclusion that there has been due application of mind by the Magistrate and it is a well-reasoned order. The order of the High Court passed on a criminal revision under Sections 397 and 401 of the Code (not under Section 482) at the instance of Dr. Mrs Nupur Talwar would also show that there has been a proper application of mind and a detailed speaking order has been passed.”



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(emphasis supplied)

45. Similarly, in **Bhushan Kumar and Anr. v. State (NCT of Delhi) and Anr.**,³¹ the Hon'ble Supreme Court had observed and held as under: -

“11. In *Chief Enforcement Officer v. Videocon International Ltd.* [(2008) 2 SCC 492 : (2008) 1 SCC (Cri) 471] (SCC p. 499, para 19) the expression “cognizance” was explained by this Court as “it merely means ‘become aware of’ and when used with reference to a court or a Judge, it connotes ‘to take notice of judicially’. It indicates the point when a court or a Magistrate takes judicial notice of an offence with a view to initiating proceedings in respect of such offence said to have been committed by someone.” It is entirely a different thing from initiation of proceedings; rather it is the condition precedent to the initiation of proceedings by the Magistrate or the Judge. Cognizance is taken of cases and not of persons. Under Section 190 of the Code, it is the application of judicial mind to the averments in the complaint that constitutes cognizance. At this stage, the Magistrate has to be satisfied whether there is sufficient ground for proceeding and not whether there is sufficient ground for conviction. Whether the evidence is adequate for supporting the conviction can be determined only at the trial and not at the stage of enquiry. If there is sufficient ground for proceeding then the Magistrate is empowered for issuance of process under Section 204 of the Code.

12. A “summons” is a process issued by a court calling upon a person to appear before a Magistrate. It is used for the purpose of notifying an individual of his legal obligation to appear before the Magistrate as a response to violation of law. In other words, the summons will announce to the person to whom it is directed that a legal proceeding has been started against that person and the date and time on which the person must appear in court. A person who is summoned is legally bound to appear before the court on the

³¹ (2012) 5 SCC 424



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given date and time. Wilful disobedience is liable to be punished under Section 174 IPC. It is a ground for contempt of court.

13. Section 204 of the Code does not mandate the Magistrate to explicitly state the reasons for issuance of summons. It clearly states that if in the opinion of a Magistrate taking cognizance of an offence, there is sufficient ground for proceeding, then the summons may be issued. This section mandates the Magistrate to form an opinion as to whether there exists a sufficient ground for summons to be issued but it is nowhere mentioned in the section that the explicit narration of the same is mandatory, meaning thereby that it is not a prerequisite for deciding the validity of the summons issued.

14. Time and again it has been stated by this Court that the summoning order under Section 204 of the Code requires no explicit reasons to be stated because it is imperative that the Magistrate must have taken notice of the accusations and applied his mind to the allegations made in the police report and the materials filed therewith.”

(emphasis supplied)

46. This position of law has further been reiterated in **Kallu Nat @ Mayank Kumar Nagar v. State of U.P. and Anr.**,³² wherein, it was observed and held as under: -

“19. The term “cognizance” has nowhere been defined under the Code, but the word itself is of indefinite import. The word itself is derived from the Latin word ‘*cognoscere*’, and the French Word “*conoissance*” which means “*to know*”, “*to become acquainted with*”, or “*to recognize*”. The Black’s Law Dictionary defines the term “cognizance” as “*Judicial notice, knowledge or acknowledgement*” or “*the judicial hearing of a cause*”.

20. In criminal law, the term “cognizance” has no esoteric or mystic significance, and the same is reflected by the omission of

³² 2025 INSC 930: 2025 SCC OnLine SC 1606



any formulaic definition of the term under the Code. However, over time, the term “cognizance” has come to acquire a special and distinct connotation, through a catena of decisions and authoritative exegesis rendered by this Court. **The expression “cognizance” means to ‘become aware of’ or ‘to take notice of judicially’.** The special connotation that has been ascribed to the term denotes or indicates the stage at which a judicial authority such as a Court of Sessions or a Magistrate is said to have taken judicial notice of the commission of an offence, with a view to initiate proceedings against the person or persons alleged to have committed such offence. [See: *Chief Enforcement Officer v. Videocon International Ltd.*, (2008) 2 SCC 492].

21. Cognizance is, at its heart, always an act of the court. It entails not merely the receipt of information or the mechanical act of acknowledgement of a particular offence by a judicial authority, but a conscious application of mind by it, to the information disclosed or received, as the case may be, and the subjective element of its satisfaction that **i)** an offence has indeed occurred and **ii)** the circumstances necessitate setting into motion criminal proceedings in respect of the said offence, or at the very least take steps for ascertaining if there is any basis for initiating such proceedings. Cognizance is attended by the assumption of jurisdiction for proceeding further.

24. The process of “taking cognizance” is one of variable and indeterminate import; it neither carries a uniform or fixed procedural contour nor has it been used in the same sense throughout the scheme of the Code. This is because “taking of cognizance” signifies the setting into motion, the criminal justice machinery, which may be done, under the Code, in different ways, which is why it derives its understanding from the various procedures by which proceedings are initiated under the Code, and as such its import differs, depending upon the context of the procedure in which it has been used. Hence, there exists no rigid taxonomy or formulaic framework for “taking cognizance”, and the act of “taking cognizance” has to be understood from the procedure itself, more particularly, at which stage, it could be said that there has been an application of judicial mind for the purpose of initiating



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proceedings under the Code or in simple words, cognizance has been taken. [See: *Darshan Singh Ram Kishan v. State of Maharashtra, (1971) 2 SCC 654*”

(emphasis supplied)

47. It is also equally well settled law that cognizance is always taken of the offence and not the offender(s). The learned Magistrate/Court while taking cognizance has to apply his mind to the complaint/police report alongwith material placed before it, and if satisfied, he can proceed further by taking cognizance and summoning the accused persons. The concerned learned Magistrate/Court, at this stage, is not required to examine in detail whether the offence has been committed by the alleged accused person or not, as the same would be considered by the concerned Court at the stage of consideration on the point of charge. At that stage, if based on material on record, the Court is satisfied that no offence is made out *qua* certain accused persons, it can proceed to discharge them. While at the same time, if it is satisfied with the material on record, the concerned Court can proceed to frame charge(s) against the alleged person(s) and hold trial. In other words, the concerned Court while taking cognizance is taking judicial notice of the complaint/police report filed before it to initiate proceedings.

48. The principal ground, on behalf of the petitioners, to challenge the aforesaid order is that the petitioners have since been exonerated by three different Investigating Agencies, and in ignoring the said fact, the learned Special Court had erred in taking cognizance of a complaint filed by the respondent/SFIO. Submissions on behalf of the learned Senior Counsel appearing on behalf of the petitioners to the effect that since the other



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agencies had given the petitioners a clean chit, and therefore, the complaint ought not to have been filed and cognizance could not have been taken by the learned Special Judge cannot be accepted for the simple reason that the opinion of an Investigating Officer of a certain agency would not be binding on any other Officer of a different agency, or for that matter, on the Court.

49. In fact, learned Trial Court in EOW case, after filing of supplementary chargesheet, which as per learned Senior Counsel for the petitioners had exonerated the latter, *vide* order dated 10.11.2022 had observed as under: -

“SC NO. 104/21
STATE Vs SAI CHANDRA SHEKHAR
FIR No. 136/14
PS- EOW SOUTH

10.11.2022

Present :- Mr. Nishchal Singh Ld. Addl. PP for State.

Accused Sai Chandrashekhar with Sh. Yash Dutt, Ld. Counsel.

Accused Vir Karan and Ritika are P.O.

Sh. Neeraj Agarwal, Ld. Counsel for Official Liquidator for M/s Bush Food Pvt. Ltd.

Sh. Shahrukh, Ld. Counsel for Reliance Assets Reconstruction Co. India.

Ms. Gunjan Mangla and Sh. Chandan Singh Shekhawat Ld. Counsel for Rahul Rai Surana and Namit Arora.

The matter is at the stage of arguments on charge. Record reveals that cognizance was taken by the Ld. MM earlier. The cognizance was taken for offences punishable u/s 409/420/467/468/471/477A/120B IPC. Thereafter, further investigation was also carried out and a supplementary report was also filed by the police. Even after filing of the supplementary chargesheet no summons were issued to the persons who were kept in Col. No. 12 of the supplementary chargesheet.

No protest petition was also filed by the complainant. Infact, order dated 19.02.2021 as passed by the Hon'ble Delhi High Court in this matter shows that the complainant has already expressed that the



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complainant is satisfied with the investigation where some persons have been placed in Col. No. 12 and not in Col. No. 11.

This court is satisfied that at this stage, there is no material to proceed against the accused kept in Col. No. 12 in the supplementary chargesheet. Thus, the lawyers representing these persons are informed that they or their clients need not appear in this court till and if at all, specifically summoned by this court.

To come up **for arguments on charge on 14.12.2022.**”

A perusal of the aforesaid order reflects that the same was passed by the concerned learned Trial Court primarily on the basis of material placed before the Court at that stage, and the fact that no protest petition was preferred by the complainant against the said supplementary chargesheet. It is pertinent to note that Recommendation No. 1 of the Investigation Report records as under: -

“RECOMMENDATION NO.1

4.14.1 EOW, New Delhi has filed chargesheet u/s 409/420/468/471/477A/120 B of IPC before Ld. ACMM Saket Courts, New Delhi against Virkaran Awasty, Ritka Awasty, Vinod Sirohi of "BFOPL" and Sai Chandrasekhar, ex-employee of "Hassad". A copy of this report may also be shared with EOW as the final chargesheet is to be filed by them before Ld. ACMM, Saket Court, New Delhi. In view of this, charges under IPC have not been recommended in this report.”

Thus, the present complaint is confined for prosecution of offence(s) punishable under the Companies Act, and the material collected by the respondent was forwarded to EOW for further scrutiny. It is upon relying on the material placed by the complainant/SFIO for prosecution of offence(s)



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under the Companies Act, the learned Special Court had passed the impugned order on cognizance.

50. Reliance has been placed by learned Senior Counsel for the petitioners on the judgments of the Hon'ble Supreme Court with regard to the exercise of power under Section 482 of the CrPC for quashing of proceedings at stage of summoning of the accused person(s). It is however, noted that the prayer in the present petition is restricted to setting aside of the impugned order taking cognizance dated 22.09.2022. The scope of the present petition is, therefore, limited to examine whether an interference is called for in the said order taking cognizance.

51. It has been argued by learned CGSC for respondent/SFIO that the offences for which the complaint has been filed by the respondent relates to the offences under the Companies Act. It is submitted that the petitioners have been exonerated by the EOW, but the same cannot be a bar to their prosecution for offences under the Companies Act.

52. It has been vehemently argued on behalf of the learned Senior counsel for the petitioners that the latter being the non-executive nominee directors were not responsible nor involved in day-to-day affairs of the subject company, Bush Foods Overseas Pvt. Ltd. It is submitted that this finding has been given by the EOW. On the other hand, learned CGSC for the respondent/SFIO relies upon certain statements made by other co-accused persons as well as witnesses and documents including emails to demonstrate



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that the petitioners were involved in management of day-to-day affairs of the subject company and had knowledge about the fraudulent verification of the inventories, thus, attracting the liability of the petitioners under Section 149(12) of the Companies Act, 2013. It has been argued that the petitioners sat in 8 board meetings where significant decisions were taken and they were receiving and sending e-mails regarding audit of the financials of the company and the same shows that the alleged acts had occurred in their knowledge and can be attributed through Board processes. It is further submitted that they were also actively involved in preparation of information of memorandum of the BFOPL, which was submitted to “Hassad International” for investing in the BFOPL. This Court while examining the correctness of the impugned order taking cognizance cannot examine and adjudicate the disputed question of fact. The relevant stage for that is yet to come and the said exercise can be taken by the parties before the learned Special Court at the stage of consideration on point of charge.

53. As already noted hereinabove, the perusal of the impugned order taking cognizance shows that the learned Special Court had examined the facts and allegations made in the complaint *qua* the offences alleged as well as accused persons arrayed in the said complaint. In view of the settled legal position, at this stage, the concerned Court is mainly concerned with material to satisfy itself whether there are sufficient grounds to proceed and summon the alleged accused person(s). The said order cannot be faulted with, and therefore, no interference from this Court, in the present jurisdiction, is called for. The said order clearly reflects that there has been due application of mind



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by the learned Special Court, and in these circumstances, it is apposite to refer to judgment of Hon'ble Supreme Court in **Kamal Shivaji Pokarnekar v. State of Maharashtra and Ors.**³³, wherein, it has been observed and held as under:

“4. The only point that arises for our consideration in this case is whether the High Court was right in setting aside the order by which process was issued. It is settled law that the Magistrate, at the stage of taking cognizance and summoning, is required to apply his judicial mind only with a view to taking cognizance of the offence, or in other words, to find out whether a prima facie case has been made out for summoning the accused persons. The learned Magistrate is not required to evaluate the merits of the material or evidence in support of the complaint, because the Magistrate must not undertake the exercise to find out whether the materials would lead to a conviction or not [*Sonu Gupta v. Deepak Gupta*, (2015) 3 SCC 424 : (2015) 2 SCC (Cri) 265].”

54. Thus, in view of the aforesaid circumstances, no grounds for interference are made out at this stage. In the considered opinion of this Court, the impugned order does not suffer from any infirmity, illegality, or perversity. In view thereof, the petition is dismissed and disposed of.

55. Needless to state that, nothing mentioned hereinabove, is an opinion on the merits of the case or on the pending trial against the present Petitioners and any observations made herein are only for the purpose of the present petition.

³³ (2019) 14 SCC 350



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- 56.** The petitioners are always at liberty to raise the pleas taken in the present petition, in accordance with law, before the learned Special Court at the stage of consideration on point of charge.
- 57.** Interim order dated 12.04.2023 stands vacated.
- 58.** Pending application(s), if any, also stands disposed of accordingly.
- 59.** Copy of the judgment be sent to the concerned learned Trial Court for necessary information and compliance.
- 60.** Judgment be uploaded on the website of this Court, *forthwith*.

AMIT SHARMA
(JUDGE)

NOVEMBER 27, 2025/bsr/ns/db