

**THE NATIONAL COMPANY LAW TRIBUNAL
PRINCIPAL BENCH
NEW DELHI**

COMPANY PETITION NO. 43 (ND) /2016

Under Sections 237 of the Companies Act, 1956, presently
Section 213 of the Companies Act, 2013

In the matter of:

Central Bank of India

Petitioner

Versus

Surya Pharmaceutical Limited

Respondent

Judgment delivered on: **29.08.2018**

CORAM:

**CHIEF JUSTICE (Rtd.) M.M. KUMAR, Hon'ble President
S. K. MOHAPATRA, Hon'ble Member (T)**

For Petitioners:

Mr. Jaswinder Singh, Advocate

Ms. Swarnima Sinha, Law Officer

For Respondent:

Mr. Zorawar Singh, Advocate

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ORDER

S. K. Mohapatra, Member

1. This is a petition filed by the Petitioner Central Bank of India under Section 237(b) of the Companies Act, 1956, seeking issuance of direction on Central Government for appointment of an inspector for comprehensive enquiry of the affairs of the respondent company in order to protect the interest of creditors of respondent company.
2. The precise case of the petitioner is that the Petitioner Bank sanctioned Term Loan Facility to the tune of Rs. 60.00 Crores to the respondent company vide sanction letter dated 13.12.2010. The Respondent Company had executed following documents in order to secure the said Term Loan Facility:
 - *Term Loan Agreement dt. 13.12.2010 for a sum of Rs. 60 Crores.*
 - *Agreement for Hypothecation of Moveable Assets forming Part of Fixed Assets dt. 13.12.2010 for Rs. 60 crores.*
 - *Letter of Undertakings dt. 13.12.2010.*



3. Subsequently, the Petitioner Bank further sanctioned the following credit Facilities to the respondent company.

- *Cash Credit under consortium arrangement to the tune of Rs. 70.00 crores.*
- *Inland / Foreign LC(DA) Facility of Rs. 20.00 Crores.*

4. It is submitted that in order to secure, the due repayment of the aforesaid credit facilities, the respondent company executed the following security / loaning documents in favour of the Petitioner Bank on 16.11.2011.

- *Demand Promissory Note Dt. 16.11.2011 for a sum of Rs. 90 Crores.*
- *Letter of Continuity dt. 16.11.2011 for a sum of Rs. 90 crores.*
- *Letter of Hypothecation dt. 16.11.2011 for Rs. 90 crores.*
- *Deed of Hypothecation to Secure LC dt 16.11.2011 for Rs. 20 crores.*
- *Agreement for Hypothecation of Moveable Assets forming part of fixed Assets dt 16.11.2011 for Rs. 90 crores.*
- *Agreement for Hypothecation of Current Assets*



dt. 16.11.2011 for Rs. 90 crores.

- *Omnibus Counter Guarantee for Letter of Credit
dt. 16.11.2011 for Rs. 20 crores.*

5. It is stated that after taking into consideration of all the debit and credit transactions including adjustment of the part payments, the Respondent Company is liable to pay a sum of Rs. 129,02,05,412 /- (Rupees One hundred twenty nine crores two lacs five thousand four hundred and twelve rupees only) on account of principal, interest and other incidental costs, charges, expenses etc. as on 15.04.2014 to the Petitioner Bank.
6. However, since the respondent company failed to repay the dues, the loan account of respondent company was classified as NPA on 24.05.2012.
7. It is contended in the petition that after scrutiny of audited balance sheets of the company for the Financial Years ending 31.03.2011, 31.03.2012 and 31.03.2013 applicant found certain financial irregularities.
8. It has been alleged that during the year ended 31.03.2012 and 31.03.2013 serious irregularities have been noticed in regards to diversion of short term funds to long term use. The details of the NWC as stated in the



petition are as under: -

	2011	2012	2013
Current Assets (excluding debtors 6 months)	1502.98	1001.79	746.50
Current liabilities	1314.60	1637.12	1790.83
NWC	188.38	-6.35.33	-1044.33
Increase in investments		98.13	4.23
Increase in fixed assets		133.16	8.63
Increase in long term liabilities		-36.07	70.99

9. It has been pointed out by the petitioner that there has been increase in fixed assets and investment in the period when the company was facing working capital deficit. However, the long-term liabilities have decreased which implies that increase in long term assets have been funded from short term sources. Further, there has been diversion of funds from short term sources to long term uses, which is a clear case of wilful diversion of funds.
10. Further it is submitted that during the year ended 31.03.2012 and 31.03.2013 when the company has claimed sickness on various grounds, the company had given unsecured loan investments/ inter corporate



loans to its group companies as follows:

	2010-11	2011-12	2012-13
Investment in group concern	20.60	33.83	15.90
Loans to group companies	-	84.90	107.06
Total	20.60	118.73	122.96

11. It has been alleged that the respondent company has given interest free loans and advances to its group companies, whereas it was paying interest to the banks for the money borrowed thereby stressing the profits. Instead of taking steps to recover the advance to revive the cash flows and stability; the company had made diversion of funds.

12. It is further stated that during the year ended 2010-11 and 2011-12, the operating statement of the company is as follows:-

Particulars	2011	2012
Sales	1600.72	1622.95
Other income	2.67	4.63
Total Revenue	1603.25	1627.58
Raw Material Consumed (A)	1504.25	1597.58



Expenses	107.80	114.25
Depreciation	26.55	34.62
Increase / (Decrease) in WIP (C)	-222.68	21.25
Cost of production (A+B+C)	1389.38	1732.65
Add:- Increase (Decrease) in Finished goods	-50.58	36.11
Cost of goods sold	1338.38	1732.65
Increase in cost of goods Sold		429.97
PBT in 2012		-393.22

13. It is pointed out by the petitioner that for similar levels of sales/production and scale of operation in FY 2012 as compared to FY 2011, the company had shown raw materials cost at high amount of raw materials, whereas all other expenses are almost maintained at same level and the same has contributed to huge loss in FY 2012. Accordingly it has significantly impacted the cost of production and cost of goods sold.

14. The petitioner specified that the company has availed limits on stocks and receivable and a recovery in the stocks / receivables levels should result in corresponding reduction in working capital limits. However, in the instant case, the stock receivables were realized but there has not been any reduction in the



working capital limits. The brief of the same is as under:

	2010-11	2011-12	2012-13
Cash and bank balances	15.48	9.88	7.23
Receivables (Less and 6 Months)	285.96	66.70	2.60
Receivables (Less and 6 Months)	4.89	169.51	222.41
% Debtors (more than 6 Months)	1.69%	71.77%	98.5%
Stocks (inventors)	1040.63	812.25	628.41
Short Term Borrowings	1106.47	1435.85	1622.41

15. It has been further contended that as evident from above data, the ageing of receivables have deteriorated in FY 2012 and 2013 and shows huge slippage of receivables to higher ageing. Further the stock levels have reduced considerably from FY 2011 to FY 2012 and FY 2012 to 2013. It indicates poor management of receivables and stocks by the company and required efforts have not been employed by the company for any improvement. Further, the receivables/stocks have



reduced over time, without any reduction in the working capital limits implying that recoveries from the stocks / receivables have been taken out of the system and have been diverted.

16. It has been pointed out that the company has serious irregularities / defaults as appears from the adverse comments made in the audited balance sheets of the company, as detailed below:-

- *The company is in default u/s 252 and Sec. 383 of the companies Act, 1956, regarding non-complying with the minimum directors and appointments of the company secretary.*
- *The company is not regular in paying statutory dues like PF, ESI, Income Tax, Custom duty etc.*
- *The Company has not internal audit system; its audit committee is not functioning.*
- *The company has not filed audited balance sheet for 2013 whereas, the same was signed and accepted by the AGM on 20.07.2013.*



17. It is also disclosed in the petition that from the sale and purchase transaction records for the year 2011-12, it has been observed that company has entered into sale and purchase transactions of the same products with the same party. Products were purchased and sold to vendors back and vice – versa in huge amounts at different prices for purchase and sale. The same has impacted on the operational profitability and shows a deliberate attempt to inflate the revenue / purchase which may have been used to mislead the lenders for availing limits. The above fact shows without any iota of doubt that the affairs of the company are being conducted with a view to defraud the creditors which include the present applicant. The entire course of conduct points towards evading financial obligations, disregarding contracts and closing commercial operations. Moreover, there is no attempt to preserve any security to repay the dues.

18. The premises numbering 911, 9th Floor Surya Kiran Building, K. G. Marg, New Delhi and 1596 Bhgirath Place, Chandni Chowk, New Delhi were



inspected by the petitioner bank on 27.01.2015. It has been alleged that earlier these premises were used / owned by Surya Pharmaceuticals and since 2012 these premises are locked and no one was found working there. Besides the following premises of Surya Pharmaceuticals were also inspected on 23.06.2015 by Petitioner Bank: -

- 383, Industrial Area, Phase - 1, Punchkula, Haryana.
- Property no. 87, HPSIDC, Industrial Area, Baddi, Himachal Pradesh.
- Property no. 85, HPSIDC, Industrial Area, Baddi, Himachal Pradesh.
- SCO - 164-165, Sector - 9, Madhya Marg, Chandigarh.

19. It is the case of the petitioner that all the aforesaid premises were found closed. All these properties are industrial / commercial properties and are the premises from which the company carried out commercial production. Since these industrial units are functionally not operational and are lying closed, it is evident that the company is no longer interested in



commercial production and has diverted and siphoned off the funds obtained as loan from the petitioner bank and a number of other banks as well as other creditors and there is no accountability on the part of the company to show in what manner they were utilized and also what steps have been taken by the company to repay the lenders.

20. Applicant has contended that the facts stated above show beyond a pale of doubt that the affairs of the company are being deliberately conducted with a view to defraud its creditors.

21. The respondent company has filed its reply on 07.06.2016 opposing the admission of the present petition and submitted that the Respondent Company was incorporated in the year 1992 and till the financial year 2010-11, the respondent company had been a profit making company with a turnover of INR 1600 crores and a profit of INR 100 crores. However, subsequently due to various factors such as economic slowdown; devaluation of Indian currency; huge inventory of stocks; delay in recovery from sundry



debtors; rapid diversification into various business; closure of plant at Baddi due to environment issues; time and cost overrun in commissioning of plant at Jammu and Kashmir etc. during the next financial year ending March 2012, respondent company reported a loss of INR 272 crores despite a turnover of INR 1621 crores.

22. Thereafter the financial health of the company came under lot of stress, so much so that the Respondent Company started defaulting in servicing of its debts. It is alleged that Lenders of the respondent Company like the Petitioner, by refusing to sanction further loan / provide working capital facility and subsequently declaring accounts of the Respondents Company as 'Non-Performing Assets', further compounded the already stressed financial health of the Respondent Company. Denial of sanction of fresh loan or enhancement of working capital limit by the consortium of banks led by State Bank of India, of which the Petitioner was also a party, dried up the working capital required for the growing business of



the Respondent Company. It is contended that the shortage of funds arising from the action and inaction of the consortium banks and other lenders caused significant adverse effect on the Respondent Company, which forced the Respondent Company to scale down its business operations, which ultimately led to closure of the operations of the Respondent Company by the end of year 2012.

23. It is stated in the reply that the Respondent Company approached the lead banker, State Bank of India ("SBI"), in December, 2011 for restructuring of its debts under Corporate Debt Restructuring ("CDR") mechanism and sanction of fresh working capital loan to re-start the business operation of the Respondent Company. SBI referred the case of the Respondent Company to CDR Empowered Group "(CDR-EG)" on 10.03.2012 and it was taken up in the CDR-EG meeting held on 16.03.2012. Proposal of the Respondent Company was then taken up again in the CDR-EG meeting held on 29.03.2012, when proposal of the Respondent Company was admitted under CDR.



SBI was appointed the Monitoring Agency ("MI"). SBI being the MI had appointed M/s Saxena & Saxena chartered Accountants to carry out stock audit of the Company, M/s Mott Macdonald Private Limited to carry out the Techno Economic Viability ("TEV") study and M/s Peritus Advisory Private Limited for the Valuation of fixed assets.

24. It has also been stated that the Petitioner bank had participated in aforesaid restructuring of debts before the CDR Cell. During the process of restructuring of debts by CDR, a detailed and comprehensive investigation of the Respondent Company was carried out by an internationally reputed consultant "Mott MacDonald". The said consultant investigated every aspect of the Respondent Company and its business operations viz. background of the Company, its organization and management structure, market assessment, technical evaluation, financial assessment and review of its business plant etc. and had visited various facility of the Respondent Company and thereafter, had submitted a detailed TEV report.



Mott Macdonald in its TEV report had reported that all the units of the Respondent company are technically viable and capable of achieving production as indicated in the business plan. A copy of TEV report of Matt MacDonald has been placed on record.

25. It is further submitted that some of the lenders had subsequently demanded appointment of an auditor to carry out the Special Investigation audit ("SAI") of the company to investigate whether promoters of the Respondent Company have diverted any funds and benefited from. Accordingly, M/s S.S. Kothari Mehta & co. was appointed to carry out SIA report was submitted to the lenders. Based on the said report of mott Mac Donald and SIA report, CDR-EG had approved the CDR package vide approval letter dated 29.01.2013 and Master Restructuring Agreement was executed between the Respondent Company and the consortium banks including the Petitioner. It is further submitted that copy of the said SIA report would be available with the Petitioner and all the allegation of the Petitioner bank has already



been dealt with and only after that the CDR Scheme was sanctioned.

26. The said CDR package was subsequently withdrawn by the lenders allegedly due to failure of the Respondent Company to adhere to the terms and conditions of the said CDR package. It is submitted that the Respondent Company failed to comply with the terms and conditions of the CDR package due to reasons which were beyond the power and control of the Respondent Company. Some of the said reasons, which were also within the knowledge of the lenders including the Petitioner are as below:

- a. Initiation of winding up proceedings by some of the creditors of the Respondent Company;
- b. Attachment of assets of the Respondent Company by the Income Tax Department. The said attachment was subsequently vacated, however, by then the lenders had already revoked the CDR package;



c. Huge number of receivables of the Respondent Company was stuck in litigation and are pending adjudication before various courts.

27. The promoters of the Respondent Company planned to restart the Company in September, 2012, but the lead bank i.e. SBI withheld all the working capital available thus, denying holding on operations as mandated by CDR terms to the Company and refused to pay advance amount of 10% to be paid to suppliers of key raw material which is Penicillin G (who had agreed to supply the raw material on these terms with great persuasion). The Petitioner is also aware of the fact that the Respondent Company was forced to close its business operation since 2012 due to non-availability of working capital and that situation has continued till date. Thus, in view of the aforesaid, allegation of diversion of funds and other alleged irregularity by the petitioner is baseless and only an afterthought to keep the Respondent Company entangled in unnecessary litigation. It is further



submitted that as the detailed financial analysis has already been carried out by an internationally reputed consultant namely Mott MacDonald and M/s S.S. Kothari Mehta & Co. who conducted SIA of the Respondent Company as aforesaid at the behest of the consortium banks which included the Petitioner as well, and the reports of which is already available with the petitioner, appointment of an Inspector by this Tribunal to investigate the affairs of the Respondent Company again would not bring out any new fact. It is argued that the instant application is a fishing expedition on the part of the Petitioner, which cannot be permitted under Section 237(b) of the Act and deserves to be dismissed.

28. It is submitted that grounds alleged by the Petitioner in the instant application for appointment of an Inspector are baseless and the alleged financial irregularity, if any, has been in knowledge of the Petitioner since a long time in as much as the alleged irregularity as per the Petitioner's case in the instant application was claimed to be committed during the



year 2012-13. Thus, the instant application has been filed after an inordinate delay of 3 years and thus deserves to be dismissed being barred by limitation.

29. It is further stated that the Respondent Company had filed a reference under section 15(1) of the Sick Industrial Companies (Special Provisions) Act, 1985 ("SICA") and BIFR had registered the reference of the Respondent Company as Case No. 85 of 2013 vide order dated 28.11.2013.

30. An objection has been raised that Section 22 of SICA bars / prohibits continuation of any proceeding with respect to a sick company for winding up or for execution or distress or the like against any properties of a sick company or for the appointment of a receiver or like except with the consent of BIFR. The Petitioner bank has already filed its objection before BIFR raising identical objections, which is pending adjudication. Raising the same allegation again before this Board by the Petitioner amounts to forum shopping, which cannot be permitted and thus the application deserves to be dismissed.



31. It is further pointed out by the respondent that the Petitioner has also filed an original application bearing OA No. 169 of 2014 before DRT-II, New Delhi for recovery of INR 129,02,05,412.00/-, which is pending adjudication. It is claimed that such forum shopping amounts to taking coercive action against a sick company which is prohibited in terms of Section 22 of SICA and thus the instant application deserves to be dismissed.

32. We have heard learned counsel for the parties and have perused the case records.

33. The power conferred on the Tribunal to direct an investigation in to the affairs of the company is provided in Section 237 (b) of the Companies Act, 1956 which is '*Pari materia*' with sub section (b) of Section 213 of the Companies Act, 2013.

34. Section 213 of the Companies Act, 2013 reads as follows: -

"213. The Tribunal may, —

(a) on an application made by —

(i) not less than one hundred members or



members holding not less than one-tenth of the total voting power, in the case of a company having a share capital; or

(ii) not less than one-fifth of the persons on the company's register of members, in the case of a company having no share capital, and supported by such evidence as may be necessary for the purpose of showing that the applicants have good reasons for seeking an order for conducting an investigation into the affairs of the company; or

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

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



purpose;

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

(iii) the members of the company have not been given all the information with respect to its affairs which they might reasonably expect, including information relating to the calculation of the commission payable to a managing or other director, or the manager, of the company,

order, after giving a reasonable opportunity of being heard to the parties concerned, that the affairs of the company ought to be investigated by an inspector or inspectors appointed by the Central Government and where such an order is



passed, the Central Government shall appoint one or more competent persons as inspectors to investigate into the affairs of the company in respect of such matters and to report thereupon to it in such manner as the Central Government may direct:

Provided that if after investigation it is proved that—

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

(ii) any person concerned in the formation of the company or the management of its affairs have in connection therewith been guilty of fraud,

then every officer of the company who is in default and the person or persons concerned in the formation of



the company or the management of its affairs shall be punishable for fraud in the manner as provided in section 447."

35. A perusal of Section 213 of the Companies Act, 2013 reveals that the Tribunal is empowered under Section 213 to investigate into the affairs of a company:

(a) on an application made by the certain number of members of the company; and

(b) on an application made by any other persons or otherwise.

36. Tribunal can therefore entertain an application under Section 213 to investigate into the affairs of a company preferred by 'any other person' such as a creditor. Accordingly, the present petition filed by the creditor, Central Bank of India, seeking issuance of direction on Central Government for appointment of an inspector for comprehensive enquiry of affairs of the respondent company, is maintainable.

37. Section 213 (b) of the Companies Act, 2013 further provides that the Tribunal is required to be



satisfied that the circumstances so suggest that offenses has been committed as mentioned at sub-clause (i), (ii) and/or (iii) of clause (b). The Tribunal is also required to pass order, after giving a reasonable opportunity of being heard to the parties concerned, that the affairs of the company ought to be investigated by an inspector or inspectors appointed by the Central Government.

38. In compliance of the said provisions, respondent company was afforded opportunity to file reply and to place its case during final hearing. Respondent Company has alleged that by refusing to sanction further loan and enhancement of working capital limit by the consortium of banks led by State Bank of India, of which the Petitioner was also a party, dried up the working capital required for the growing business of the Respondent Company. It is contended that the shortage of funds arising from the action and inaction of the consortium banks and other lenders caused significant adverse effect on the Respondent Company, which forced the Respondent Company to



scale down its business operations, which ultimately led to closure of the operations of the Respondent Company by the end of year 2012.

39. In this regard the petitioner bank has stated in the petition that the respondent company is liable to pay outstanding amount running into more than Rs. 1000/- Crores to various creditors. It is pertinent to note that in financial transactions, adjustments and compromise should be left to the parties to settle the matter in their best interest or exigencies of the business. When such huge loan amount was outstanding, it is open to the lenders not to give further loan facilities in the factual background of the matter. Accordingly, not sanctioning further loan cannot be a ground to reject the petition pertaining to investigation of the affairs of the company.
40. It is also the case of the respondent that grounds alleged by the Petitioner in the instant application for appointment of an Inspector are baseless and the alleged financial irregularity, if any, has been in knowledge of the Petitioner since a long time in as



much as the alleged irregularity as per the Petitioner's case in the instant application was committed during the year 2012-13. Thus, objection was raised that the instant application has been filed after an inordinate delay of 3 years and therefore deserves to be dismissed being barred by limitation.

41. In this regard it can be seen that the Petitioner has mentioned in their petition that upon scrutiny of balance sheets for the Financial Years 2011, 2012 and 2013, they found various irregularities. The diary date of filing of the present petition is 20.07.2015 which is well within three years from the date of balance sheet of financial year ending 31.03.2013. Therefore, the objection of delay and laches in filing the present petition has no leg to stand.

42. It is further stated in the reply that the Respondent Company had filed a reference under section 15(1) of the Sick Industrial Companies (Special Provisions) Act, 1985 ("SICA") and BIFR had registered the reference of the Respondent Company as Case No. 85 of 2013 vide order dated 28.11.2013.



43. An objection has been raised that Section 22 of SICA bars / prohibits continuation of any proceeding with respect to a sick company for winding up or for execution or distress or the like against any properties of a sick company or for the appointment of a receiver or like except with the consent of BIFR. The Petitioner bank has already filed its objection before BIFR raising identical objections, which is pending adjudication. Raising the same allegation again before this Tribunal by the Petitioner amounts to forum shopping, which cannot be permitted and thus the application deserves to be dismissed.
44. It is further pointed out by the respondent that the Petitioner has also filed an original application bearing OA No. 169 of 2014 before DRT-II, New Delhi for recovery of INR 129,02,05,412.00/-, which is pending adjudication and this also amounts to forum shopping.
45. In this regard it is no longer res-integra that a secured creditor bank has the option to move both under the Recovery of Debts Due to Banks and Financial Institutions Act, 1993 as well as under



SARFAESI Act simultaneously to recover its dues. It is also pertinent to note that with the repeal of SICA, the proceeding initiated before BIFR, if any, has since abated and the prohibition under Section 22 of SICA as claimed is not applicable to the instant case. During arguments it was placed that no winding up proceedings against the respondent company has yet been admitted. In the facts it cannot be said that the petitioner is doing forum shopping or that the present application is not maintainable.

46. It is also the case of respondent that the accounts of the company was already audited/examined by the consortium banks. Needless to say that if the accounts of the Company have been properly maintained with fully transparency, there is nothing to be afraid of in further scrutinisation of its accounts and no prejudice will be caused to the respondent company. Even if the accounts of the company has been audited by consortium banks, that itself cannot be a ground to reject the present petition for investigation into the affairs of the company, once the requirement of clause



i, ii, and iii of Section 213(b) of the Act is fulfilled.

47. Coming to the merit of the case the Tribunal is required to form opinion in regard to existence of ingredients as mentioned in sub clause (i), (ii) and/or (iii) of clause (b) of Section 213 of the Companies Act, 2013. However, the Tribunal is not required to form opinion objectively, and is only required to satisfy itself on the basis of materials/evidence on record that there are good grounds to order investigation. The material/evidence taken on consideration should reflect the satisfaction of the Tribunal to order investigation.

48. In the present case applicant has shown that the respondent company had given interest free loans and advances in crores to its group companies, whereas it was paying interest to the banks for the moneys borrowed and outstanding. There is no material on record to suggest that respondent had taken steps to recover the advances in order to revive the cash flows and stability of the company. Balance sheets of the company itself depict that there had been diversion of



funds. On this count alone, prima facie adverse opinion can be formed that the affairs of the company are being conducted with a view to defraud the creditors.

49. Applicant bank has also shown that there has been diversion of funds from short term sources to long term uses. That apart considerable reduction in stocks suggest that the recoveries from the stocks / receivables have been diverted. The petitioner also has pointed out that false sale and purchase transactions of goods have been made to defraud the creditors.

50. It was further revealed that though there was realisation of the stock receivables but there has not been any corresponding reduction in the working capital limits, which suggests mismanagement in the affairs of the company.

51. In addition, applicant bank has placed on record the details of adverse comments made in the audited balance sheets of the company to show the following violations:

- *The company is in default u/s 252 and Sec. 383*



of the companies Act, 1956, regarding non-complying with the minimum directors and appointments of the company secretary.

- *The company is not regular in paying statutory dues like PF, ESI, Income Tax, Custom duty etc.*
- *The Company has not internal audit system; its audit committee is not functioning.*
- *The company has not filed audited balance sheet for 2013 whereas, the same was signed and accepted by the AGM on 20.07.2013.*

52. Not only the company has collected huge amount from the creditors but also has failed to repay the debts and the aforementioned facts prima facie show that the business of the company was being conducted to deceive its creditors. Admittedly the petitioner bank deals with public money and has come to the Tribunal bonafide. There should not be slightest indication of a likelihood of prejudice to the public interest. Mismanagement of the affairs of the company including syphoning of funds have caused prejudice to the creditors. There are allegations of manipulation of



accounts which raises inference of misappropriation and diversion of funds with intent to defraud its creditors as described in sub-clause (i) of sub-section (b) of Section 213 of the Companies Act, 2013. Material on record suggests that deeper probe in the affairs of respondent company is necessary.

53. In view of above the company petition is allowed by holding that it is a fit case to direct Central Government to take steps to investigate in to the affairs of respondent company M/s Surya Pharmaceutical Limited.

Registry is directed to take follow up steps accordingly.

Let the copy of the order be served to the parties.

Sd/-

29.08.2016

(M.M. KUMAR)
PRESIDENT

Sd/-

(S. K. MOHAPATRA)
MEMBER (T)