

## SFIO's Exclusive Jurisdiction in Corporate Fraud Investigations: Avoiding Double Jeopardy



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There has been a continuous debate on the wide powers granted to the Serious Fraud Investigation Office (“**SFIO**”) under the Companies Act, 2013 (“**2013 Act**”). Repeatedly, there have been instances where two similar complaints against a company, arising out of similar facts and circumstances, have led to confusion about which investigative agency will take precedence. In such cases, does the investigation conducted by the SFIO carries more weight over any separate agency’s investigation? Does SFIO has an exclusive jurisdiction in corporate fraud investigations?

In a recent case of *Ashish Bhalla v. State and Anr.*<sup>i</sup>, the Delhi High Court delivered a decisive ruling, emphasizing that, “*once an investigation has been initiated by the SFIO under Section 212 of the 2013 Act, a parallel investigation by a separate agency into the affairs of the Company, is not permissible.*”

The question before the Court was whether the impugned FIR before the Economic Offences Wing (“**EOW**”), and the proceedings emanating therefrom are maintainable in view of the pendency of earlier SFIO proceedings initiated pursuant to the first complaint before the Ministry of Corporate Affairs, New Delhi (“**MCA**”) under Section 212 of the 2013 Act?

The Court scrutinised the background behind the need for the establishment of SFIO based upon the suggestions of the ‘Committee of Corporate Affairs’ and highlighted the role of SFIO. The Court while emphasising upon the expertise of SFIO held that it is an expert body made for a definitive purpose with a clear and special objective in mind and therefore, no other parallel agency, can be considered to be competent to look into the same set of facts or allegations as an expert body like the SFIO.

With reference to the cases *Serious Fraud Investigation Office v. Rahul Modi & Anr.*<sup>ii</sup> and *Sunair Hotels Ltd. v. Union of India*<sup>iii</sup>, the Court reinforced that the term “assign” in Section 212(3) of the 2013 Act should be interpreted as a comprehensive delegation of authority to the SFIO, granting them the responsibility to thoroughly investigate all aspects related to the “affairs of the company.” This includes every facet connected to the company and involves examining all its past and present officials.

In addition to this, the Court affirmed that the enactment of the 2013 Act being a special piece of legislation is not in derogation of the Cr.P.C., a general piece of legislation, rather they are co-existing. This is evident from Sections 209, 212(7) and 436(2) of the 2013 Act as they clearly demonstrate that the provisions of Cr.P.C. are very much applicable to the SFIO proceedings despite operating in different spheres. However, it has also been established as per the rule of *Generalia Specialibus Non Derogant*, that a special law would always take precedence over general law.

On top of that, the Court by relying on *T.T. Antony v. State of Kerala*<sup>iv</sup> stated that two complaints arising out of the same facts and allegations, at the same time cannot be allowed to exist.

When SFIO takes on a case to examine a company's operations, any ongoing cases conducted by other investigative authorities related to or directly connected to offenses under the Companies Act, 2013, must be transferred to the SFIO. Furthermore, a simultaneous investigation by a separate agency into the company's affairs is not allowed, considering the bar under Section 212(2).

In the opinion of this Court, especially in view of what is contained above herein, it would be a travesty of justice and a gross abuse of the process of law, if the impugned FIR is allowed to co-exist and be proceeded with simultaneously along with the SFIO proceedings as the same would tantamount to vexing the petitioner twice because he will be subjected twice over again and that too by two different agencies at the same time for the same offence.

Therefore, in conclusion, a special law would always prevail over a general law. The Companies Act, 2013, being a special piece of legislation is not in derogation of the Code of Criminal Procedure, 1973, a general piece of legislation, rather they co-exist. However, when there is an overlap between two complaints of the same nature arising out of similar facts and circumstances against a company, the one being investigated by SFIO would prevail. Any parallel investigation by a separate agency into the affairs of the Company would not be allowed to proceed further. Such investigation would amount to gross abuse of law which cannot be the intention of the legislature. Hence, SFIO has an exclusive jurisdiction in corporate fraud investigations.

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<sup>i</sup> CRL.M.C. 298/2023, CRL.M.A. 12731/2023 & CRL.M.A. 21779- 21780/2023.

<sup>ii</sup> (2019) 5 SCC 266.

<sup>iii</sup> (2019) 5 SCC 266.

<sup>iv</sup> 2001 6 SCC 181.