

# **Whether the SFIO Report is admissible evidence?**

**-An Overview**



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Corporate Legal & Financial Advisory



### **Is SFIO Report admissible evidence?**

The question is, if the SFIO has made an investigation and submitted its report to the Court and if that report has been obtained by the concerned party with due instruction/order of that court, whether that order can be used as evidence in any other legal proceedings, and will that be admissible evidence?

### **Preview:**

This is to understand that the appointment of the SFIO, their power, the manner of investigation and submission of report etc. are dealt under *Chapter XIV, Inspection, Inquiry and Investigation* of the Companies Act, 2013. The relevant sections under this chapter are Section 211, 212, and 223 apart from Section 208 and 210. Under these sections the Act prescribes about the manner and procedure wherein the ROC or the Central Government may and (in certain circumstances) shall adopt for investigating into the affairs of the Company by appointing an Inspector and also by way of handing over the matter to the SFIO. The Central Government under certain circumstances, e.g., based on the report of the ROC as per the inspection u/s 208, or if the matter is in the public interest, or if the company has passed a special resolution for such inspection, or if any department of the Central and the state Government has their view in this regard, **may** issue a direction for such investigation into the affairs of the Company, however if the orders are issued by the Court for any investigation into the affairs of the Company, the Central Government **shall** be bound to issue order for such investigation. This is also to note that if the Central Government has issued a direction for such investigation by appointing an inspector under section 210 read with section 208, then the said report shall be submitted to the Central Government by the said Inspector upon such completion of the Investigation and the concerned person may obtain a copy from the Central Government, (Section 223 of the Act), however such is not the case if the investigation is made through SFIO under section 212 upon a direction of the Central Government.

At this outset, this is important to understand the relevant provisions of the Companies Act, 2013, to understand better the question in the subject matter.

### **Relevant Provisions of the Companies Act, 2013:**

Section 211 deals with the establishments and formation of the SFIO, its composition, structure and the appointment of Director who shall head the office. Section 212, sub section (1) of this section empowers the central Government for handing over of the investigation if the Central Government thinks it proper to the SFIO for such further investigation. The manner in which the SFIO shall conduct its investigation and submit its report are dealt in the sub section (12) of this section.

Though the important aspect of this section is that the Central Government when thinks it proper for such handing over of the matter to the SFIO, they issue a direction as such, and the Director of the SFIO then proceed to appoint an Inspector for further investigation. The Inspector so appointed is termed as IO and he leads the investigation with a team as built upon the direction of the SFIO Director. Once the investigation has been ordered by the Central Government into the affairs of the Company, no other investigations by any other Central and state agencies can be initiated in such case for the offence under this act, and if already initiated cannot be proceeded further, though the relevant document and records as obtained during the investigation (by other agencies) shall be handed over to the SFIO, (sub section 2). The sub section 3, 12 and 13 deals with the provisions where the SFIO shall submit its report to the Central Govt. and the same can be obtained by the concerned person by making an application to the Court.

### **Investigation under section 210 and 213:**

The prominent facet of section 210 and 213 are such that the Central Government may direct for the investigation into the affairs of the Company under both these sections, i.e. under section 210 an inspector as appointed by the Central Govt. shall conduct the investigation and shall submit its report to the Central Govt. which shall route through

Regional Director, however under Sec 212 such investigation shall be conducted by the SFIO and report shall directly be submitted to the Central Govt. However, the report u/s 212 can only be obtained by the person concerned, if the Court orders in this respect.

#### **Admissibility of the report as legal evidence:**

In pursuance of the aforesaid, another important distinction as enumerated in Sec 223 is that the report of the Inspector appointed under this chapter shall be admissible in any legal proceedings as evidence in relation to any matter contained in the report, however nothing as mentioned in section 223 shall apply to the report referred in section 212.

With respect to the report of the SFIO under section 212, sub section 15 of this section clearly specifies that the Investigation Report filed under this section *shall be deemed to be a report filed by a police officer under section 173 of the Code of Criminal Procedure, 1972*, which is often referred as the Charge Sheet. The Hon'ble Supreme Court in K. Veeraswami v. UOI in its judgment dated 25.07.1991 had observed that:

*".....This report is an intimation to the magistrate that upon investigation into a cognizable offence the investigating officer has been able to procure sufficient evidence for the Court to inquire into the offence and the necessary information is being sent to the Court. In fact, **the report under Section 173(2) purports to be an opinion of the investigating officer** that as far as he is concerned he has been able to procure sufficient material for the trial of the accused by the Court....."*

Also the Hon'ble apex court in M.C. Mehta v. UOI had observed in its judgement dated 10.10.2007 that:

*".....Lastly, the term **investigation under Section 173(2) of the Criminal Procedure Code includes opinion of the officer in charge of the police station** as to whether there is sufficient evidence or reasonable ground of*



*suspicion to justify the forwarding of the case to the court concerned or not. **This opinion is not legal evidence.** At the stage of Section 173(2) the question of interpretation of legal evidence does not arise. In any event, that function is that of the courts....*

Hence, by analyzing the aforesaid the contentions are clear that the report as submitted by the SFIO to the Central Govt. under section 215 (3) are not legal evidence, as this is being a deemed police report under section 173 of the CrPC and such report are nothing more than an opinion of the investigating officer as observed by the Hon'ble apex court in the aforesaid judgements.

#### **The provisions in the Companies Act, 1956 as contrary to the 2013 Act.**

The previous Act, i.e., the Act of 1956, contains the provisions as contrary to the aforesaid provisions in 2013 Act.

Section 246 of the repealed Act outlines a provision saying that the report of the inspector as appointed under section 235 and 237 of this Act and authenticated as such to conduct the investigation, **the report as submitted shall be admissible in any legal proceeding as evidence of the opinion of the inspector or inspectors** in relation to any matter contained in the report.

The said view was further endorsed by the Hon'ble Supreme Court while dealing with the matter of *B. Suryanarayana Raju Vs. SEBI (Civil Appeal No. 17383 of 2017)*. The Apex Court had taken into the consideration of the submissions made by the Senior Counsel appearing for SEBI, making a reference of section 246 of the Companies Act, 1956 and the admissibility of SFIO report being a report of the Inspector. The Hon'ble court had concluded that:

“37. Section 246 of the Companies Act, 1956 reads as under:

*Section 246. Inspectors' report to be evidence*



*A copy of any report of any inspector or inspectors appointed under section 235 or 237 authenticated in such manner, if any, as may be prescribed, shall be admissible in any legal proceeding as evidence of the opinion of the inspector or inspectors in relation to any matter contained in the report.”*

38. **From this Section, it is clear that the report can be used as evidence in any other proceeding.....**

**.....Under Section 246. of the Companies Act, 1956, this Court is empowered to look at the same as evidence of the opinion of the inspector concerned in relation to any matter contained in the report.....**

With the aforesaid contentions and also by virtue of the provisions of the law this was established that in the previous law the inspector’s report was admissible as evidence in other proceedings, however in the current law the said report seems not to be admissible in the court proceedings.

**The observation of the SAT contrary to the facts about admissibility of SFIO Report as evidence:**

The Minority View of the SAT while dealing with the matter Ms. B. Jhansi Rani (Appeal 462/2015), and Late Shri Chintalapati Srinivas Raju (Appeal No. 451/2015), Chintalapati Holdings Pvt. Ltd. (Appeal No. 452/2015) and Late Shri Anjiraju Chintalapati (Appeal No. 453/2015) had observed as below on the question of admissibility of the SFIO Report:

*“ 66. In the present matter, the SFIO analyzed the over-statement of accounts of Satyam, which is also investigated by SEBI. These agencies inferred that the Board of Satyam had been deceived by the manipulators involved. In addition to the SFIO Report, CBI Chargesheet and CBI Court finding, we also perused SEBI’s Investigation Report which we summoned during the course of proceedings before this Tribunal. It is noted that SEBI itself acknowledges in its Investigation Report that it worked closely with SFIO.*



67. After completing the investigation, the SFIO gave a detailed report on the various aspects of how the fraud occurred in Satyam.....

.....SFIO also made a specific assertion that its findings “may therefore be brought to the notice of SEBI” (Para 4.7.21 of SFIO Report at page 16)

**68. When confronted with the SFIO Report, the WTM in the Impugned Order refused to take in account the SFIO Report by observing that SEBI’s investigation is independent and separate from that of other investigating agencies.**

**69. This finding is unfortunate and rather absurd.** As a matter of law, the Companies Act, 2013 (and prior Companies Act, 1956) stipulates that the SFIO Report is admissible as evidence in any legal proceeding. S.246 of the Companies Act, 1956 states :

“246. Inspectors' report to be evidence. A copy of any report of any inspector or inspectors appointed under section 235 or 237 authenticated in such manner, if any, as may be prescribed, shall be admissible in any legal proceeding as evidence of the opinion of the inspector or inspectors in relation to any matter contained in the report.” (A similar provision is there in S.223(4) of the Companies Act, 2013).

70. When a statute expressly mandates that the SFIO Report (which is Report of the Inspector) is admissible in any legal proceeding as evidence, the WTM ought to have carefully considered the findings of the SFIO Report as well.

71. Even though SEBI is a separate agency tasked with enforcement of SEBI Act, 1992, it has to take into account the findings of the other Government of India investigating agencies so as to ensure that there are no incongruities and that it is on the same page with other investigating agencies regarding material facts and does not overlook the same. This is more so when the SEBI worked closely with SFIO, CBI, ED, IT Dept and RBI for the purpose of conducting investigation into the affairs of Satyam and righting the horrendous wrong done to shareholders of Satyam. In such a grave matter as this, it is of paramount importance that there be no loopholes in the findings of SEBI or any other investigating agency, which is precisely the reason that MDIT was formed in the first place, instead of leaving every investigating agency to conduct its own enquiry in isolation. (SFIO Supplementary Report dated 23.10.2009 at para 1.1 and 1.2).

**72. It may not be understood to mean that the reports of other investigating agencies are binding on SEBI, but SEBI has to take into account the findings of the said agencies, particularly when they have investigated the same subject matter and specifically**





***recommended that its findings be brought to the attention of SEBI atleast for the sake of clarity and better understanding and to avoid contradictions.***

***73. Even though WTM refused to take cognizance of the SFIO Report, SEBI in its oral submissions placed extensive reliance on facts from the SFIO Report and the CBI Charge Sheet. It, therefore, appears that as and when it was convenient for SEBI, they relied upon the SFIO Report to support their arguments and when confronted with factual findings in the SFIO report which undermined the allegations made by SEBI, they took the position that SEBI investigation is independent of the other investigating agencies. This approach of SEBI cannot be countenanced and points to a double standard which must be prevented from becoming a regular practice. In light of the above, reliance can be placed on the SFIO Report.***

This is pertinent to note that such orders of the SAT (as Majority Judgements were against the Appellant and in favour of SEBI) was challenged by the Appellant to the Apex Court, under Civil Appeal Nos. 16805/2017 (w.r.t SAT order in 451/2015), 19494/2017 (w.r.t SAT order in 452/2015) and 37202/2017 (w.r.t SAT order in 453/2015). The Hon'ble S.C had upheld the Minority view in these orders and passed it against the Majority View of SAT.

Hence, such minority view/order of the SAT wherein it was observed amongst other aspects, that the SFIO Report is admissible, and reliance can be placed on the same was upheld by Hon'ble Supreme Court, however, the Apex Court had not made any observation on such admissibility of the SFIO Report, while upholding such Minority View.

After observing the aforesaid, it can be concluded that provisions in the Companies Act, 2013 had its clarity on the subject matter that SFIO Report is not admissible as evidence, however a fair number of arguments can also be placed on the contrary view taken by the Minority judgement of the SAT and later upheld by the Apex Court.

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