

In the Court of the Judge, 2nd Special Court, Calcutta
Criminal Case No.05/2024
CNR No. WBCS01-000271-2024
Present :- Ananta Kumar Singha Mahapatra (J.O Code-WB00902).

Order No.16
31.07.2025

Today is fixed for passing order in respect of the discharge application dated 18.02.2025, herein after referred to as the said application, in short, filed by the accused persons.

The learned company prosecutor is absent.

The representative of A-1 company is present.

A-2 to A-7 are absent by filing an application praying for representation by their learned advocate under Section 317 of the Cr.P.C.. Heard. The said application is allowed.

I have carefully heard learned advocates for both the parties and have perused the said application, the written objection and the case record. Considered.

By filing the said application, the accused persons have contended that the allegations levelled upon them in the complaint do not make out any offence punishable under Section 186 (13) of the Companies Act, 2013. It is their specific case that agriculture comes under paragraph 2 of Schedule VI to the Companies Act, 2013. The learned advocate for the accused persons argued that tea cultivation, which is the primary activity of the company, is an agricultural activity. That in paragraph no.3 of the Memorandum of Association of the company it has been mentioned that the primary endeavor of the company is, "To grow, cultivate, manufacture, treat, cure, blend, process, buy, sell, distribute and deal in tea or coffee...". That the said company is engaged with business of planting tea in India since 1869 and is the largest tea producing company in the world. That as the accused persons are engaged with business in agriculture (cultivation and manufacturing of tea) facilities which is exempted under Section 186 as per Schedule VI, Section 186 of the Companies Act, 2013 is not applicable against them.

The learned advocate for the accused persons have referred to the decision of the Hon'ble Apex Court reported in 1980 AIR 169, Commissioner of Sales Tax, Lucknow versus D. S. Bist and AIR 1999 SC 3125 Belsund Sugar Co. Ltd. Versus State of Bihar and submitted that tea cultivation including processing and packaging of the same is an

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agricultural activity.

The complainant has contested the said application by filing a written objection. It has been argued by the learned company prosecutor that in the Memorandum of Association of the A-1 company various business objects other than production of tea has been mentioned. That A-1 company cannot claim exemption from applicability of Section 186 of the companies Act, 2013 as according to the Memorandum of Association of the A-1 company, the said company deals in many other businesses. He further argued that tea plantation cannot be considered as agricultural activity after enactment of the West Bengal Land Reforms (Amendment) Act, 2000. The learned company prosecutor further argued that the accused company cannot claim to be covered under the expression "infrastructure facilities" specified in Schedule VI. He, thus prayed for rejection of the said application.

In the present case, A-1 is the company and A-2 to A-4, A-6, A-7 are the directors of the A-1 company and A-5 is the Company Secretary of the A-1 company. It is the allegation against A-1 company that it has granted loans (inter-corporate deposits) amounting to Rs.1,74,468 lakhs to different body corporates outstanding as on 31.03.2019. That the same is in excess of limits on lending prescribed under section 186 of the Companies Act, 2013 by Rs.61,156.16 lakhs for which approval has not been obtained from the members of the company.

As per Section 186(2) of the Companies Act, 2013 no company can give any loan to any person or body corporate exceeding sixty percent of its paid-up share capital, free reserves and securities premium account or one hundred percent of its free reserves and securities premium account, whichever is more. If the loan exceeds the prescribed limit prior approval by means of a special resolution passed at a general meeting shall be necessary.

Section 186 (11) of the Companies Act, 2013 provides that the provisions of Section 186 (2) shall not apply to a company engaged in the business of providing infrastructural facilities. For the purposes of this

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section, the expression “infrastructure facilities” means the facilities specified in Schedule VI.

Schedule VI, sub clause 2 provides that the term “infrastructural projects” or “infrastructural facilities” includes the following projects or activities, agriculture including the following namely (a) infrastructure related to storage facilities, (b) construction relating to projects involving agro processing and supply of inputs to agriculture, (c) construction for preservation and storage of processed agro products, perishable goods such as fruits, vegetables and flowers including testing facilities for quality.

Indian Accounting Standard (Ind AS) 41 provides that tea is an agricultural produce. The objective of Ind AS 41 is to prescribe the accounting treatment and disclosures related to agricultural activity. Nowhere in the said accounting standard it has been mentioned that the companies dealing in cultivation or manufacturing or sale of tea will be exempted under Section 186 (11) of the Companies Act, 2013.

I have carefully gone through the decisions referred to by the learned advocate for the accused persons. In my humble opinion, the law laid down in those decisions are settled principle of law but the same are not applicable in the factual matrix of the present case relating to the applicability of the provisions of Section 186 of the Companies Act, 2013 in so far as the cultivation, manufacture, production and sale of tea is concerned.

Moreover, on perusing the Memorandum of Association of the A-1 company, I find that the company is engaged in diverse businesses including manufacturing etc., for generation and storage of all kinds of energy, manufacturing etc., all petrochemicals, agricultural chemicals etc., Thus, at this stage, without trial it cannot be said that the business of A-1 company is cultivation, manufacture, production and sale of tea only or that the business of A-1 company will be exempted under Section 186 (11) of the Companies Act, 2013.

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Considering all aspects, I find no merit in the discharge application dated 18.02.2025 and the said application is rejected **on contest**.

To **28.11.2025** for charge hearing.

Dictated and corrected by me

**Judge, 2nd Special Court,
Calcutta
J.O. Code-WB00902**

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