Knowledge of carrying on of the business with intent to defraud creditors of the company or any other persons or for any fraudulent purpose is sine qua non to bring these persons within the ambit of section 339 of the Companies Act, 2013

The **Mumbai Bench of the National Company Law Tribunal (NCLT)** in the case **of Union of India vs Infrastructure Leasing and Financial Services Ltd [IA 1/2022 IA 2/2022 COMP.APPL/ 313(MB)2025] dated March 24, 2026**, has clarified that the aspect whether third persons, including the auditors, participated in, facilitated or assisted fraudulent transactions by a company knowing that the company's business is being carried on for any fraudulent purpose are yet to be looked into and can only be considered when the evidence(s) on record in relation to their role in perpetration of such fraud are examined.

No general rule for their exclusion from scope of section 339 of the Companies Act, 2013 can be laid, as it would depend on the facts of each case. Accordingly, the contention of third persons, including auditors, against their liability is premature at this juncture, added the NCLT.

The NCLT observed that Section 339 of the Companies Act makes liable any person, who is or has been a director, manager, or officer of the company or any persons who were knowingly parties to the carrying on of the business if any business of the company has been carried on with intent to defraud creditors of the company or any other persons or for any fraudulent purpose.

The Tribunal observed that the definition of officer under Explanation (b) to section 339 has the effect of excluding the word 'key managerial person' from the ambit of section 339 of the Act, however, they may fall under the words "any person".

Further, the Tribunal held that the words "any person" cannot be read ejusdem generis to the words 'officer, manager or director' so as to hold that any person would only include a person who is an insider to the company, instead this word is a catch all provision to bring within its ambit any third person i.e. outsider who participated or aided or assisted in the fraud perpetrated by the insiders i.e. 'officer, manager or director'.

The knowledge of carrying on of the business with intent to defraud creditors of the company or any other persons or for any fraudulent purpose is sine qua non to bring these persons within the ambit of section 339 of the Companies Act, 2013, added the Tribunal.

Moving ahead, the Tribunal made it abundantly clear that the word 'any persons' would also include the persons outside the organisation of the company, in whose affairs the fraud has been committed, who participate in, facilitate or assist fraudulent transactions by a company when they know that the company's business is being carried on for any fraudulent purpose. It also follows that the third persons cannot be automatically brought within the ambit of section 339 of Companies Act, 2013 merely because they were parties to any activity alleged to be fraudulent unless they have participated in facilitating or furthering the said fraudulent activity.

In relation to the liability of Auditors and their partner(s) under Section 339, the Tribunal noted that an Auditor in view of his professional obligations is equated to a watchdog but not a blood hound, however, a watchdog cannot claim immunity if it is found that watchdog deliberately or consciously failed to be vigilant to allow perpetration of fraud by the insiders of the company and such deliberate or conscious act on part of watchdog furthered or facilitated commission of fraud.

The auditors cannot claim any immunity if they are found guilty of active participation or collusion or abatement in the commission of fraud in the affairs of auditee company. Accordingly, the action u/s 339 against the auditors will not lie automatically, however, their culpability in commission of fraud remains subject matter of examination and depends on the evidences on record, concluded the Tribunal.