IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CRIMINAL APPELLATE JURISDICTION

WRIT PETITION NO. 4140 of 2016

1. Hall and Anderson Limited)
   A Company incorporated under the)
   Companies Act, 1956, having its regd.)
   Office at 31, Chowringhee Lane,)
   Kolkata- 700 016.)
2. Kamlesh G. Mehta,)
   Age : 46 years, of Mumbai,)
   Indian Inhabitant, having his office at)
   216, Tardeo Air-Conditioned Market,)
   Tardeo, Mumbai – 400 034.) ….Petitioners

Versus

1. The Central Bureau of Investigation,)
   (Economic Offences Wing),)
   11th/12th Floor, Plot No.C 35A,)
   G Block, Bandra Kurla Complex,)
   Near MTNL, Bandra (East),)
   Mumbai – 400 051.)
2. The State of Maharashtra)
   Through Government Pleader)
   High Court, Bombay.)
3. Union of India,)
   Through Secretary (Home),)
   Ministry of Home Affairs,)
   North Block, Delhi – 110 001.) …..Respondents

With
CRIMINAL APPLICATION NO.343 OF 2018
IN
WRIT PETITION NO. 4140 of 2016

Hall and Anderson Limited and anr. ….Applicant/ Petitioners

Versus

The Central Bureau of Investigation and ors. …..Respondents

With
CRIMINAL APPLICATION NO.308 OF 2019
IN
WRIT PETITION NO. 4140 of 2016

Central Bureau of Investigation ….Applicant/ Respondent No.1

In the matter of:
Hall and Anderson Limited and anr. ….Petitioners
Versus
The Central Bureau of Investigation and ors. …..Respondents

Mr. Vikram Chaudhary, senior counsel along with Mr. Cyrus Ardeshir, Mr. Kunwar Shashank, Mr. Jas Sanghavi, Ms. Divyasha Mathur and Mr. Prakash Shah i/b. M/s. PDS Legal, advocates for the petitioners in writ petition No.4140 of 2016 and for applicants in criminal application No.343 of 2018.
Ms. Ameeta Kuttikrishnan, advocate for respondent No.1 in writ petition and for applicant in criminal application No.308 of 2019.
Mrs. Aruna S. Pai, APP for the State.

CORAM : RANJIT MORE &
SMT. BHARATI H. DANGRE, JJ.

DATE : 28th JUNE, 2019.

Oral Judgment : (Per : Ranjit More, J.)

1. The petition is filed for quashing and setting aside the FIR registered with the CBI bearing RC No.CBI/EOW No.068(E) of 2015//EOW/ACB No.5/E of 2015 under Sections 120B and 420 of the Indian Penal Code, 1860 (for short "the IPC") and under Sections 13(2) and 13(1)(d) of the Prevention of Corruption Act, 1988 (for short "the PC Act").

Criminal Application No.343 of 2018 is filed by the petitioner seeking directions to respondent No.1 to release the original documents and articles seized vide Search List dated 17th June 2015 on terms and conditions as may be deemed fit by this Court.

Criminal Application No.308 of 2019 is filed by respondent No.1-CBI seeking permission for filing charge-sheet in the subject FIR against the accused person in the Court of competent jurisdiction.

2. The brief facts giving rise to the present petition are as follows:

The first petitioner is a company incorporated under the provisions of the Companies Act, 1956, having its registered office at Kolkata and is in the business of manufacturing of various textile products and raw materials, real estate development and other related businesses. The second petitioner is a shareholder and a former Director of the first petitioner.

In or around 1980, the first petitioner acquired a textile mill known as Madhusudan Mills situated at Globe Mills Compound, Delisle Road, Lower Parel, Mumbai. On 01/04/1995, the Textile Undertakings (Nationalisation) Act, 1995 ('the Nationalisation Act') came into force. The said Nationalisation Act provided for the vesting of the shares of

Madhusudan Mills and the land in favour of the National Textile Corporation (South Maharashtra) Ltd. ('NTCSML'). The said NTCSML was a Government undertaking and was a subsidiary of National Textile Corporation ('NTC'). The first petitioner was to receive an amount of Rs.2,70,85,000/- as compensation for the said acquisition.

The acquisition gave rise to various proceedings before different High Courts and the Hon'ble Supreme Court of India. The first petitioner had challenged the constitutional validity of the Nationalisation Act by way of Writ Petition No.1829 of 2004 before the High Court of Calcutta.

Sometime in July 1993, the NTCSML was declared as a Sick Industrial Company under the provisions of the Sick Industrial Companies (Special Provisions) Act, 1985. In 1995, pursuant to the Nationalisation Act, the ownership of the mill came to be vested with NTCSML and thereafter NTCSML initiated proceedings before the BIFR. By an order dated 25th July, 2002, the BIFR sanctioned a scheme of rehabilitation of NTCSML. The said scheme provided for sale of assets of the Madhusudan Mills which was already characterized as an unviable mill. There were 7 other unviable mills in all and the order indicated that the consideration to be realized from the sale of the assets of these 8 unviable mills, including the Madhusudan Mills, was approximately Rs.83,86,00,000/-.

The first petitioner thereafter preferred Appeal No.175 of 2005 before the Appellate Authority of Industrial and Financial Reconstruction (AAIFR), challenging the order of the BIFR but the said appeal was dismissed by the AAIFR vide its order dated 19th July, 2006. The first petitioner then challenged the said order by preferring SLP (C) No.18726 of 2006 before the Hon'ble Supreme Court of India. The said SLP (C) No.18726 of 2006 was finally disposed off by an order dated 27th February, 2009, in terms of consent terms arrived at between the parties.

After about six years of disposal of the said SLP, an FIR was registered on 08/06/2015 with the first respondent herein vide RC no. CBI/EOW No.068(E) of 2015/EOW/ACB No.5E of 2015. It was mentioned in the FIR that in the month of May 2014, preliminary inquiry was conducted by the first respondent on the allegation that some unknown officials of NTC and Ministry of Textile, in collusion with the second petitioner herein, transferred the land of Madhusudan Mills to the second petitioner thereby causing a wrongful loss of Rs.1750 Crores to the Government Exchequer. The FIR goes on to describe as to how the terms of settlement were unduly favouring the petitioners herein and even the price paid by the first petitioner to NTC for the 35% of the land was grossly inadequate causing wrongful loss to the tune of Rs.709.27 Crores approximately. The FIR has named six accused, including the second petitioner, the then Minister of Textile for Government of India and various high ranking officers working with the NTC.

3. Mr. Chaudhary, learned senior counsel for the petitioners contended that the settlement arrived at and the consequent Consent Terms were accepted by the Hon'ble Supreme Court and were specifically forming part of the order passed by the Hon'ble Supreme Court in disposing off the SLP (C) No.18726 of 2006. Thus, according to the petitioners, the transactions had attained finality and the Consent Terms were placed on record before the Hon'ble Supreme Court and therefore, there was no *mala fide* intention or fraud on the part of the petitioners in executing those Consent Terms in respect of the transactions concerning the land of the said Madhusudan Mills and thereafter there was no question of any offence having been committed. It was submitted on behalf of the petitioners that the allegations of causing wrongful loss to the Government, is without any basis. It was further submitted that by lodging the present FIR, the investigating agency was overreaching the order passed by the Hon'ble Supreme Court. It was also submitted that there were no allegations that the petitioners gave bribe to any of the accused.

4. Ms. Kuttikrishnan, learned counsel for respondent No.1-CBI

heavily relied upon the stand of respondent No.1 elaborated in affidavit-in-reply dated 19th December, 2016 and affirmed by Mr. A. V. Pawar, Inspector of Police, CBI, EOW. Ms.Kuttikrishnan submitted that in the year 2002 itself, the price of the land belonging to Madhusudan Mills was valued at Rs.157.91 Crores. Thus, when the value was decided in the year 2009, the market value of the said land was not taken into consideration and the figure of Rs.83.86 Crores was intentionally wrongly considered which, in turn, meant that 35% of Rs.83.86 crores i.e. Rs.29.35 Crores was considerably lower figure and could not have been accepted by NTC. Ms. Kuttikrishnan further submits that the FIR, prima-facie, makes out a case for offences punishable under Sections 120-B and 420 of IPC and under Sections 13(2) and 13(1)(d) of PC Act. She lastly submitted to this Court not to interfere in this petition in exercise of jurisdiction conferred under Article 226 of the Constitution of India and Section 482 of the Code of Criminal Procedure, 1973 and sought permission to respondent No.1- CBI to file charge-sheet in the subject case.

5. The Division Bench of Hon'ble Supreme Court on 22nd July, 2008 passed the following order in Transfer Petition (Civil) No. 71 of 2017 which was filed by the first petitioner against the Union of India and ors., which reads thus :

O R D E R

> "List after four weeks along with SLP (C) No.18726 and T.P.(C)No.71/2007. In the meantime, the 2nd and 3rd respondents, if approached by the petitioner for amicable settlement in the matter, may consider the request and decision taken thereof shall be placed before the Court."

In pursuance of the above order, the first petitioner and NTC settled their dispute amicably and prepared settlement terms, a copy of which is annexed at "Exhibit -R' to the petition.

6. The SLP (C) No.18726 of 2006 was placed before the Hon'ble Apex Court on 27th February, 2009 and after hearing the parties, the Apex Court passed the following order :

> *" The learned counsel for both the parties have requested us to dispose of the abovesaid special leave petition as also the transfer petition in terms of settlement arrived at between the parties which has been signed and certified by both the parties. A copy of the proposed terms of settlement has been filed in Transfer Petition (C) No.71/2007 with I.A.No.2/2008 at pages 28 to 31 of the paperbook. The learned counsel have also filed a copy of additional settlement duly signed by both the parties and their respective counsel, which is also taken on record of these cases.*
>
> *The Special Leave Petition as also the*

> *Transfer Petition are disposed of in terms of the proposed terms of settlement and additional settlement. The terms of settlements shall form part of order of this Court. Parties to bear their own costs."*

The order clearly mentions that '***the terms of settlement shall form part of order of this Court*.'** The important clause in the said Consent Terms was that the NTC was to convey and transfer 35% of the land with the structures thereon to the first petitioner, preferably, for textile relating activities and, the first petitioner was to pay a sum of Rs.29,35,10,000/- to NTC as a consideration being 35% of the aforementioned sum of Rs.83,84,00,000/-. The NTC was to retain the remaining 65% of the land. The first petitioner also was to pay Rs.1,54,46,439/- for the purpose of meeting statutory liabilities pertaining to the said textile undertaking to make the land free of any encumbrances on account of such statutory liabilities. In this view of the matter, the SLP (C) No.18726 of 2006 was disposed off.

7. The NTC arrived at settlement with the first petitioner being erstwhile owner, extracting best terms in the given circumstances. It is to be underlined that the NTC has undertaken an exercise for compromise or settlement with erstwhile owner after obtaining approval from BIFR, Board of Directors and Ministry of Textile. What we find is that it was

never intended to be a sale transaction in commercial sense, so the question of market value does not arise and the contention of respondent No.1 is baseless as it was not a sale transaction. We also find that the terms of settlement were approved by the BIFR, Board of Directors and Supreme Court and the settlement has thus become decree of the Supreme Court. The respondent No.1 - CBI cannot investigate the impugned Supreme Court Order and is, in fact, mandated to act in aid of Supreme Court under Article 144 of the Constitution of India. Any overt act of CBI, in contravention of the Supreme Court order, runs afoul of the Doctrine of Separation of Powers and is in fact contumacious.

8. In the light of the above, the subject FIR registered by respondent No.1 cannot be sustained and the same deserves to be quashed and set-aside. The writ petition is, accordingly, allowed in terms of prayer clause (a) and is disposed of as such.

9. Since we have quashed and set-aside the subject FIR filed by respondent No.1, criminal application No.343 of 2018 is allowed in terms of prayer clause (a) thereof and is disposed off as such.

10. Criminal Application No.308 of 2019 is dismissed in the light of the order allowing the above said writ petition in terms of clause (a).

[SMT. BHARATI H. DANGRE, J.] **[RANJIT MORE, J.]**