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IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON: 22.04.2022

PRONOUNCED ON : 16.06.2022

CORAM

THE HON'BLE MR.JUSTICE G.CHANDRASEKHARAN

CRL.O.P.Nos.7968 & 8626 of 2021
and
Crl.M.P.No.5260 of 2021

Dumpala Madhusudhana Reddy

...Petitioner in
Crl.O.P.No.7968/2021

Ambedkar Rajkumar Ganta

...Petitioner in
Crl.O.P.No.8626/2021

Vs.

1. The Central Bureau of Investigation,
Banking Securities Fraud Branch,
Represented by Inspector of Police,
Mr. Anuj Kumar,
Having office at
Plot No.5-B, CGO Complex,
Lodhi Road, New Delhi-110 003.

2. The State Bank of India,
Represented by S. Ravichandran,
Deputy General Manager,
Stressed Assets Management Branch,
No.32, Red Cross Building,
Indian Red Cross Society,
Egmore, Chennai - 600 008.

...Respondents
in both Crl.O.Ps

COMMON PRAYER: Criminal Original Petitions are filed under Section 482 of the Code of Criminal Procedure, to call for the records and quash the FIR No.RCBD1/2021/E/0002 dated 24.03.2021 on the file of the Central Bureau of Investigation, BSFB, registered offences under Sections 120-B r/w Sections 420, 467, 468 and 471 IPC and 13(2) r/w 13(1) (d) of Prevention of Corruption Act, 1988.



For Petitioners : Mr. M.S. Krishnan,
in both Crl.O.Ps: Senior Counsel
for Mr. Anirudh Krishnan

For Respondents Mr. K. Srinivasan, for R1
in both Crl.O.Ps: Special Public Prosecutor for CBI Cases
Mr. M.L. Ganesh, for R2

C O M M O N O R D E R

Both these petitions have been filed to call for the records and quash the FIR No.RCBDI/2021/C/0002 dated 24.03.2021 on the file of the Central Bureau Of Investigation, BSFB registered for the offences under Sections 120-B r/w Sections 420, 467, 468 and 471 IPC and Section 13(2) r/w 13(1)(d) of Prevention of Corruption Act, 1988. This FIR had been registered on the basis of the complaint dated 23.03.2021 given by Mr.S.Ravichandran, Deputy General Manager, State Bank of India, SAMB Branch, Chennai. On the allegations that the first accused company (Borrowing company), its Directors and other unknown persons and public servants conspired and committed the acts of cheating, forgery including valuable securities, used forged documents as genuine, criminal misconduct, diverted and siphoned of the Bank's funds and cheated the lending banks to the tune of Rs.237.84 crores. M/s.Ind Barath Power Gencom Limited is the first accused and its Directors viz., 1).Sri.Kanumuru Raghu Rama Krishna Raja-Director, 2).Smt.Kanumuru Rama Devi-Director, 3). Smt.Kanumuru Indira Priyadarshini-Additional Director, 4). Sri.Ambedkar Rajkumar Ganta-Director, 5).Sri.Dumpala Madhusudhana Reddy-Whole-time Director, 6).Sri.Narayana Prasad Bhagavathula-Director, 7).Sri.Ramachandra Iyer Balakrishnan-Whole-time Director and other unknown persons & public servants are the other accused in this case.

2.Challenging the registration of the First Information Report against the petitioners, these criminal original petitions are filed for quashing the FIR.

3.It is submitted by the learned Senior Counsel for the petitioners that the first accused company namely M/s.Ind Barath Power Gencom Limited is one of the largest electricity producers in Tamil Nadu. It primarily, has dealing with Tamil Nadu Generation and Distribution Company Limited (TANGEDCO). TANGEDCO failed to make payments to the first accused company and it is the source of all problems for the Ind Barath Group. A sum of Rs.157,85,71,585/- is receivable from TANGEDCO, as on 30.06.2017. Owing to the failure of TANGEDCO in paying amount, first accused company found it difficult to meet the claim of its creditors. Creditors of the first accused company



approached this Court and obtained prohibitory orders, prohibiting TANGEDCO from releasing the sum mentioned in the applications to the first accused company. Proceedings were initiated before NCLT, Chennai and the same was dismissed. Appeal filed against the dismissal order was admitted and compromise was arrived at National Company Law Tribunal (NCLT) and it was recorded in the order of NCLT dated 29.05.2018. As on the date of settlement, TANGEDCO owed a total sum of Rs.229 crores to the first accused company and its group companies. However, first accused company had gone into the insolvency and due to default in repayment of loans, it was declared as Non-Performing Assets and had gone into insolvency. First accused company approached the creditors and proposed an One Time Settlement of Rs.200 crores to the consortium of lenders on 01.08.2019. This proposal was rejected by consortium of lenders.

3(i). One of the lenders, Axis Bank Limited had approached the NCLT, Hyderabad vide CP(IB) No.187/7/HDB/2019 under Section 7 of Insolvency and Bankruptcy Code, 2016. NCLT Hyderabad, admitted the petition and initiated CIRP against the first accused company vide its order dated 13.11.2019. Committee of Creditors formed under the provisions of the Code for controlling the management of first accused company, commissioned a forensic audit by M/s.BDO India LLP, in its meeting on 21.01.2020. M/s.BDO submitted a Forensic Audit Report dated 24.07.2020. The copy of the Forensic Audit Report was not furnished to the petitioners or to the ex-management of the first accused company. Proceedings were initiated as per RBI Circular dated 01.07.2015 against the first accused company. The number of officers including the petitioners were identified as willful defaulters. Petitioners failed to receive a show cause notice, instead he was issued a notice dated 06.01.2021, about the personal hearing. These proceedings were initiated on the basis of the Forensic Audit Report. Since a copy was not furnished to the petitioner/Ambekar Rajkumar, he filed a writ petition in W.P.No.4646 of 2021 in the High Court of Telangana at Hyderabad. It was ordered in this petition that "Petitioners to approach the respondents bank on any working day, within a period of time, preferably within two weeks from the date of receipt of copy of this order, for inspection of forensic audit report. If the petitioners approach the respondents, it shall permit the petitioners to inspect the relevant documents and to take extracts. Within four weeks thereafter, the petitioners shall furnish their explanation." Petitioners issued multiple communications requesting the copy of the report. However, without furnishing the copy of the Forensic Audit Report, FIR was registered by the first respondent on the complaint given by the second respondent. The entire complaint was based on the Forensic Audit Report. The informations given in the FIR in para



4 and para 6(b) are contradictory with regard to time, date and place of occurrence of fraud. FIR was filed on the basis of RBI Directions. In the absence of RBI directions, first respondent will lack jurisdiction to investigate the crime. RBI direction was given to deduct the fraud at the earliest and prevent financial loss. There is no whisper from the second respondent regarding red flagging or any of the early warnings amounting to fraud when the petitioner was responsible for the affairs of first accused company. Coercive steps under the said circular were taken only in February 2020 i.e., after the lapse of more than two years from the date of declaration of the account of the first accused company as NPA. Petitioner was only an independent Director.

3(ii). Section 8.9.4 and 8.9.5 of the RBI directions give a list of steps to be taken by the banker before declaring an account to be fraudulent one. There are early deduction of fraud, early warning signals and red flagging, declaring the account as red flag account, reporting a red flag status or fraud status of account to CRILC, report of the fraudulent status of the bank to the RBI, meeting of joint lender forum, declaration of account as fraud or initiation of forensic audit, lodging of complaint with first respondent. None of the steps was taken by the second respondent before declaring the account as fraud and initiation of criminal proceedings. So far as petitioner is concerned, he is only an independent Director. Penal measures to apply only in rarest of rare cases against independent Directors based on conclusive proof of their complicity. Without a decision taken in joint lender forum, to declare the account as fraud or to red flag the same and initiate a forensic audit, second respondent passed off the forensic audit, conducted as part of the CIRP process as the forensic audit conducted pursuant to RBI Directions. Neither the first accused company nor the petitioner was apprised of the said situation and was never given any notice with regard to the proposed action. No opportunity was provided to the petitioner or the first accused company to explain the allegations levelled by the second respondent, it amounts to gross violation of the principles of natural justice. Second respondent should have given opportunity to the petitioners to explain the alleged fraud in the account, before taking the drastic step of initiating the criminal investigation. As per the complaint, the forensic audit was ordered on 21.02.2020 by the Joint Lender Forum.

3(iii). It is pertinent to note that CIRP was initiated on 13.11.2019 and the Joint Lender Forum ceased to be in existence and thereafter, a Committee of Creditors was formed. Forensic Audit was ordered by the Committee of Creditors on 21.01.2020 and not by the Joint Lender Forum.



4.It is further submitted that it is mandatory to get the consent of the State Government for the respondent to conduct investigation in Tamil Nadu, for the reason that entire cause of action is shown to have taken place in Chennai, Tamil Nadu. It appears that no consent was taken from the Government of Tamil Nadu. No preliminary enquiry was conducted by the first respondent before registering the FIR. The FIR does not disclose the name of any public servant. However, on mere suspicion, FIR was registered even for the offence under the Prevention of Corruption Act, 1988.

5.Petitioner in CrI.O.P.No.8626 of 2021 was a former Additional Chief Secretary of Government of Tamilnadu. He is only an independent Director and has no connection with the first accused company. After the initiation of CIRP by the NCLT, Hyderabad, there is no independent Forensic Audit conducted by the Joint Lender Forum as per the guidelines issued by the Reserve Bank Of India. None of the guideline was followed before declaring the account of the first accused company as fraud and the mandatory procedures not followed. The registration of the complaint is illegal without specific allegations and specific role attributed against the Directors and materials produced in support of the allegations, the Directors cannot be vicariously held liable for the default committed by the company. The FIR registered in this case against the accused more particularly against the petitioners is an abuse of process of law. Therefore, Learned counsel appearing for the petitioners prayed for quashing the proceedings.

6.Per contra, learned counsel appearing for the respondents 1 and 2 opposed these petitions on the ground that these petitions are filed only to scuttle the process of investigation and to gain from the delay in completing the investigation.

7.Learned counsel for the second respondent submitted that when the case of the petitioners are that the RBI (Frauds Classification and Reporting by Commercial Banks and Select Financial Institutions) Directions, 2016 dated 01.07.2016 is inapplicable and the first respondent ought not to have acted upon on the basis of the complaint lodged by the second respondent, petitioners should have assailed the same by way of writ petition and not by way of challenging the FIR. Accused cannot challenge the FIR but can file discharge petition before the trial Court after the receipt of summons, if substantial injury is caused. Petitioners and other accused jointly and severally committed an economic offence at the cost of public money. Petitioners heavily relied on the decision of High Court of Telangana dated 24.02.2021 passed in W.P.No.639 of 2021. Hon'ble Apex Court in SLP No.3931 of 2021, in order dated



15.04.2021 had stayed the operation of order passed in W.P.No.19102 of 2019 dated 10.12.2020 passed by High Court of Telangana. When the issue is pending before the Hon'ble Apex Court, petitioners cannot rely on the aforesaid judgment in support of their case. Petitioners questioned the legality of the forensic audit conducted by the Lender Banks. He cannot thwart the lender banks from conducting forensic audit when exfacie embezzlement of public money under the guise of performing business operations. The High Court of Telangana, directed the petitioners to approach respondent bank on any working day, within a reasonable period of time, preferably within two weeks from the date of receipt of copy of this order, for inspection of Forensic Audit Report. However, petitioner has not done that. Axis Bank, SBI and UCO Bank constituting 81% in the consortium had decided in the meeting held on 30.07.2020 to classify the account as fraud in view of the transactions that are fraudulent in nature. The consortium concurred with the findings of the auditor and recommended to classify the account as fraud. Company represented by its Directors had falsified and fabricated the books of accounts, entries, vouchers and financial statements. It opened current account with another bank outside the consortium without the knowledge, information and permission of the lender banks. Company failed to route the sale proceeds to Trust and Retention Account but routed Rs.472.79 crores received from TANGEDCO through Canara Bank. Only a sum of Rs.62.43 crores was transferred to TRA and Rs.233.86 crores was utilised as operational expenses, repayment of loan of Rs.108.05 crores and Rs.68.45 crores was transferred to related parties. It is nothing but preferential transactions to cheat the lender banks. Petitioners cannot escape from the case by citing technical grounds thereby, leaving the lender banks in lurch.

8.It is the submission of the learned Special Public Prosecutor appearing for the first respondent that the complaint details about the illegal acts of commission and omission by the accused and in the process causing wrongful loss of Rs.237.84 crores to consortium member banks. Therefore, on the basis of the complaint given by Mr.S.Ravichandran, Deputy General Manager, this case was registered. Prima facie cognizable offences of criminal conspiracy, cheating, forgery of valuable security, forged for the purpose of cheating, using forged documents as genuine and criminal misconduct by unknown public servant had been disclosed from the complaint allegations. Thus, FIR was registered for the offences under Sections 120-B, r/w 420, 467, 468, 471 IPC and Section 13(2) r/w 13(1)(d) of Prevention of Corruption Act, 1988. In the light of the allegations made and materials available, there is no need to conduct any preliminary enquiry in this case. It is observed in Lalitha Kumari vs. State of UP reported in 2013 (4) RC.Cr1.979



that if, information discloses, commission of cognizable offence, no preliminary enquiry is permissible in such a situation. The police officer has no option except to enter the contents thereof, in the prescribed form, that is to say to register a case on the basis of such information.

9. In Y.S. Jagan Mohan Reddy Vs. CBI reported in (2013) 7 SCC 439, the Hon'ble Supreme Court held that economic offences having deep rooted conspiracies and involving huge loss of public funds need to be valued seriously and considered as grave offences affecting the economy of the country as a whole and thereby posing serious threat to the financial health of the country. The persons involved in economic offences who continue to reap the benefit of the crimes committed by them do not deserve any sympathy in law. Economic offences are preceded by cool, calculated and deliberate design for the purpose of personal gains.

10. In M/s. Neeharika Infrastructure Vs. State of Maharashtra, CrI.A.No.330 of 2021, the Hon'ble Supreme Court held in para 23 of the judgment observed that

i) Police has the statutory right and duty under the relevant provisions of the Code of Criminal Procedure contained in Chapter XIV of the code to investigate into a cognizable offence.

ii) Courts would not thwart any investigation into the cognizable offences.

v) While examining an FIR/complaint, quashing of which is sought, the Court cannot embark upon an enquiry as to a reliability or genuineness or otherwise of the allegations made in the FIR/complaint.

vi) Criminal proceedings ought not to be scuttled at the initial stage.

vii) Quashing of a complaint/FIR should be an exception rather than an ordinary rule.

xii) The First IR is not an encyclopedia which must disclose all facts and details relating to the offence reported.

11. In State of Haryana and Ors. Vs. Ch. Bhajan Lal and Ors. reported in 1992 Cri LJ 327, the Hon'ble Supreme Court has held that:

the police under Section 154(1) of the Code has a statutory duty to register a cognizable offence and thereafter vide Section 156(1) a statutory right to investigate any cognizable case. However, the said statutory right to investigate a cognizable offence is subject to the fulfillment of prerequisite condition contemplated in Section 157(1) as per which the officer in charge of a police station, before proceeding to investigate the facts and circumstances



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of the case, should have "reason to suspect" the commission of an offence which he is empowered under Section 156 Cr.P.C. to investigate, "but not with regard to the involvement of an accused in the crime". Therefore, the expression "reason to suspect the commission of an offence" would mean the sagacity of rationally inferring the commission of a cognizable offence based on the specific articulate facts mentioned in the First Information Report as well in the Annexures, if any, enclosed and any attending circumstances which may not amount to proof. In other words, the meaning of the expression "reason to suspect" has to be governed and dictated by the facts and circumstances of each case and "at that stage the question of adequate proof of facts alleged in the first information report does not arise".

12. In Superintendent of Police, C.B.I. & Ors. Vs. Tapan Kr. Singh reported in 2003 AIR SCQ 2133, the Hon'ble Supreme Court has held that:

"20. It is well settled that a First Information Report is not an encyclopedia, which must disclose all facts and details relating to the offence reported. An informant may lodge a report about the commission of an offence though he may not know the name of the victim or his assailant. He may not even know how the occurrence took place. A first informant need not necessarily be an eye-witness so as to be able to disclose in great details all aspects of the offence committed. What is of significance is that the information given must disclose the commission of a cognizable offence and the information so lodged must provide a basis for the police officer to suspect the commission of a cognizable offence. At this stage it is enough if the police officer on the basis of the information given suspects the commission of a cognizable offence, and not that he must be convinced or satisfied that a cognizable offence has been committed. If he has reasons to suspect on the basis of information received, that a cognizable offence may have been committed, he is bound to record the information and conduct an investigation. At this stage it is also not necessary for him to satisfy himself about the truthfulness of the information. It is only after a complete investigation that he may be able to report on the truthfulness or otherwise of the information. Similarly, even if the information does not furnish all the details, he must find out those details in the course of investigation and collect all the necessary evidence. The information given



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disclosing the commission of a cognizable offence only sets in motion the investigative machinery, with a view to collect all necessary evidence, and thereafter to take action in accordance with law. The true test is whether the information furnished provides a reason to suspect the commission of an offence, which the concerned police officer is empowered under Section 156 of the Code to investigate. If it does, he has no option but to record the information and proceed to investigate the case either himself or depute any other competent officer to conduct the investigation. The question as to whether the report is true, whether it discloses full details regarding the manner of occurrence, whether the accused is named, and whether there is sufficient evidence to support the allegations are all matters which are alien to the consideration of the question whether the report discloses the commission of a cognizable offence. Even if the information does not give full details regarding these matters, the investigating officer is not absolved of his duty to investigate the case and discover the true facts, if he can."

13. Thus, the learned counsel appearing for the respondents 1 and 2 submitted that the petitions filed for quashing the FIR in RCBD1/2021/E/0002 is devoid of merits and liable to be dismissed giving way for the completion of investigation and file final report and to proceed with the trial.

14. Considered the rival submission and perused the records.

15. From the submission of the learned counsel appearing for the parties especially the learned Senior Counsel appearing for the petitioners that the main grievance of the petitioners in registering the FIR in this case are that:

i) the Reserve Bank of India guidelines issued under the caption Frauds Classification and Reporting by Commercial Banks and Select Financial institutions, direction 2016 dated 01.07.2016 are not applicable to banking transaction of the first accused company. Assuming that it is applicable, the mandatory guidelines have not been followed before declaring the first accused company as fraud account. No independent Forensic Audit Report was conducted on the basis of the decision taken by the Joint Lender Forum, but the Forensic Audit Report given on the basis of forensic audit initiated by the Committee of Creditors was used for declaring the account as fraud.

ii) Before declaring their account as fraud, no notice was given to the petitioner or the first accused company to show



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cause and offer their explanation. Petitioner/Ambedkar Rajkumar Ganta is only an independent director and he cannot be prosecuted unless there is a compelling evidence against him. There was no willful default on the part of the first accused company to repay the amount.

iii) It was primarily dealing with TANGEDCO to pump the electricity generated into the grid controlled by TANGEDCO. As on 30.06.2017, TANGEDCO was liable to pay Rs.157,85,71,585 crores to the first accused and its group companies. It is the source for all the ills the petitioners company is facing. The petitioners' company despite, taking its best efforts to repay the loan was declared as Non-Performing Asset. Still the petitioners' company is working out the possibility of repaying the amount with possibility of One Time Settlement. Instead of proceeding under the civil law for recovery of amount, the launching of criminal prosecution cannot be sustained.

16.Before proceeding further, it is pertinent to note here the gist of the complaint allegations made against the accused in this case for the better appreciation of the rival contentions of the parties.

17.As already indicated, the complaint for registration of FIR was given by Mr.S.Ravichandran, Deputy General Manager, State Bank of India, SAMB Branch, Chennai. In para 4 of the complaint, time, date and place of occurrence of fraud are detailed.

i)The accused alleged to have diverted the frauds, manipulated books of accounts with an objective to defraud the Bank and to gain unlawfully at the cost of Bank's funds.

ii) The fraud came to light when a Forensic Audit conducted by M/s.BDO India LLP submitted the Report on 24.07.2020.

iii) The Forensic Audit was ordered by the consortium in the Joint Lenders' Meeting held on 21.02.2020 and it covered the period from 28.05.2012 to 28.05.2017.

iv) The account of the Company was classified as fraud by the Fraud Identification Committee, State Bank Of India, Stressed Assets Resolution Group, Mumbai in its meeting held on 14.09.2020.

18.1.The particulars of fraud perpetrated by the borrower company and its promoters /directors, is furnished in the Forensic Audit Report dated 24.07.2020 at Annexure -I of the complaint. Particulars of fraud and history of account are detailed in brief.

i) The plant was shut down in May 2017. M/s.Axis Bank, the lead lender filed fresh application and the unit is admitted in NCLT, Hyderabad on 13.11.2019. As a part of CIR process,



resolution professional has assigned Forensic Audit to M/s.BDO India LLP. Based on the Forensic Audit Report, it is understood that the company has involved in related parties transaction, impairment of primary stock, non-adherence to TRA and absence of supporting documents for the incurred expenses. Axis Bank, the lead lender in the consortium has already declared the account as fraud.

The details of credit facilities sanctioned to the first accused company by the Consortium Banks are as follows:-

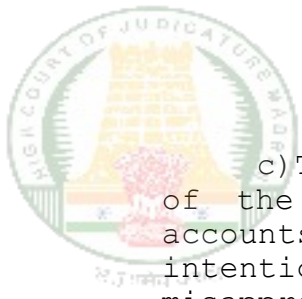
Bank Name	Limit (Cr.)	O/S (Cr.)	% of Share as on 31.08.2020	Total Dues as on 31.08.2020
State Bank of India	150.00	55.90	17.50%	107.57
Axis Bank	171.00	123.64	35.20%	123.65
ILFS Financial Services Ltd	169.27	72.40	19.00%	*
UCO Bank	130.00	53.12	15.50%	*
Syndicate Bank	40.00	27.08	7.70%	46.05
BOI Amount in USD Million	10.00	10.84	2.40%	13.94
PNB	35.00	5.77	1.60%	*
IOB	40.00	3.50	1.10%	6.62

18.2.The Forensic Audit Report dated 24.07.2020 revealed that accused have colluded together and committed illegal activities including forgery by manipulation and submission of fake financial statement, fabrication of fictitious transactions, diversion of funds and misappropriation of funds for the purposes other than for the purpose for which the funds are released by the Bank.

i) Diversion of Funds (Inventory of Coal)

a) Coal inventory of Rs.94.56 crores was written-off in March 2018 returned of ..2018, without obtaining the prior consent from the lenders. Indicates fraudulent removal of pledged stocks and potential diversion of loan funds.

b) Coal of Rs.196.15 crores and Rs194.19 crores were purchased in financial year 2016 and 2017 respectively. Corresponding documents viz., goods receipt note, stock register, testing report, physical verification report, procedure for inward and outward movement of coal, coal consumption report for financial year 2017 were not provided by the company. It can be assumed to be potential diversion of funds.



c) The company was not able to clarify as to the observations of the statutory auditor with regard to physical inventory accounts as at 31st March 2016. It indicates the company's intention of potential diversion of funds which amounts to misappropriation of funds and caused unlawful loss to the Bank. Borrower has misused the funds to the detriment of bank's interest. Potential diversion of funds resulted in causing huge loss to the public money.

ii) Misappropriation of funds:-

a) Rs.841.80 crores was transferred and Rs.776.81 crores was received in the nature of Inter Corporate Deposits (ICD) during review period. Clarification on the nature of transactions and supporting documents were requested for sample transactions, but these were not provided to the Forensic Auditor. These funds were transferred either directly or through group entities. It can be assumed to be potential diversion of funds.

b) Interest on the Intercompany Deposits (ICD): As per inter corporate deposit agreements, it was agreed that interest rate at 15% per annum would be charged on the ICD's. Company entered into an agreement in September 2019 with Ind Barath Power Infra Limited and the reason for signing the agreement prior to CIRP commencement date 13.11.2019, despite the funds being transferred from the year 2013 were not provided by the management. Additionally, interest was not charged on the ICD. It indicates company's intention of potential diversion of funds.

c) Analysis shows that corporate loan received from group entities (amounting to Rs.776.75 crores), it was noted that these funds were utilised for the purpose of repayment of short terms loans (Rs.294.08 crores), operational expenses (Rs.140.85 crores). Forensic Auditor is not able to identify the purpose of utilisation of the balance amount of Rs.341.88 crores due to lack of information or clarification provided by the company. It is potential diversion of funds involving falsification of accounts.

d) Interest amount receivable from group companies is Rs.123.48 crores and payable to the group companies is Rs.85.32 crores. Company has not provided supporting documents / proofs for the efforts made to recovering the amount lent, the interest being charged. It indicates company's intention to potential diversion of funds.

e) On 31.03.2020, former management expressed its concern to impair the outstanding inter corporate deposits amounting to Rs.145.30 crores due from M/s.Ind Barath Power Infra Limited, due to its inability to repay the loans and current financial



position of M/s.Ind Barath Power Gencom Limited. However, there was no board resolution for the impairment of such receivables. The receivable write-off indicates potential diversion of loan funds and customer receipts.

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f) Company entered into a shareholders' agreement with the group captive consumers and issued shares to raise capital fund amounting to Rs.82.50 crores. However, it was observed that there was no fund infused by the group company's towards share capital contribution.

Aggregate sale of electricity sold to the group captive consumers amounted to Rs.576 crores and on analysis of bank statement shows that it was 571.00 crores sale consideration was received. Trade receivable from group captive consumers was Rs.87.58 crores. Outstanding balance payable to M/s.Ind Barath Power Gencom Limited by the group captive consumers could not be verified due to non-availability of informations.

Amount receivable of Rs.87.58 crores from the group captive consumers has been written off stating that company is liable to pay compensation to group captive consumers due to non-supply of power. No documented evidence available to establish the company's effort to initiate the process of terminating the agreements under the termination clause and to avoid / minimise the compensation. It indicates the write-off of Rs.87.58 crores is suspicious in nature. It seems that the accused jointly and dishonestly misappropriate the funds for their own use.

III) Absence of supporting documents for operating expenses incurred.

It was noted that operational expenses of Rs.140.85 crores out of Rs.1687.96 crores were paid by the related parties. Forensic Auditor asked for the supporting documents but supporting documents were not produced. Company is not in a position to provide supporting documents / invoices for the expenses of Rs.432.22 crores. It indicates potential diversion of funds and huge loss to the public money.

IV) Non-adherence to Trust and Retention Account:

Rs.472.79 crores was received from TANGEDCO in Canara Bank account (Non-TRA and non-lender). Only Rs.62.43 crores was subsequently transferred to TRA, Rs.233.86 crores was utilised as operational expenses, repayment of loan of Rs.108.05 crores and Rs.68.45 crores were transferred to related parties. Routing of funds through any bank other than the consortium banks, indicates the potential diversion of funds.

19. Thus, it is seen from the complaint allegations that every conceivable details are given in the complaint with regard



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to diversion and siphoning off bank funds to the tune of Rs.237.84 crores for cheating the lending banks by committing forgery, using the forged documents and for the said criminal misconduct FIR was registered for the offences under Sections 120-B, r/w 420, 467, 468, 471 IPC and Section 13(2) r/w 13(1)(d) of Prevention of Corruption Act, 1988. No doubt that all these offences are cognizable offences except the offence under Section 467 IPC as per first schedule of criminal procedure code. We have seen the judgments relied by the learned counsel for the second respondent, in 2013 (4) RCR (Criminal) 979 and 1992 CrLJ 327 cited Supra, that if the information in the complaint discloses commission of cognizable offence, the officer is duty bound to register the case on the basis of information disclosing a cognizable offence. In the light of the settled legal proposition, it has to be found as to whether the FIR in this case is liable to be quashed on the basis of the grounds raised by the learned counsel for the petitioners. Thus this Court finds that judgment in Ramdev Food Products (P) Ltd., Vs. State of Gujarat reported in (2015) 6 SCC 439 relied by the learned counsel for the petitioner for the proposition as to the necessity of holding a preliminary enquiry in the facts and circumstances of this case is not applicable to this case.

20.Learned counsel for the petitioners relied on the judgment of the High Court of State of Telangana in W.P.No.19102 of 2019 in State Bank of India & ORS. Vs. Rajesh Agarwal & ORS. dated 10.12.2020, for the proposition that the principles of audi alteram partem have to be applied before declaring a party as a fraudulent borrower or a holder of fraudulent account. It is observed in para 60 of this order, which reads as follows:-

"60. Fair play in governance is the gravitational force which binds the entire State. Therefore, before a person or entity is obliterated, or is subjected to civil and penal consequences, the person or entity must be given an opportunity of hearing. Without giving an opportunity of hearing, without giving an opportunity to explain the intricacies of the accounts, or of the business dealings, to denounce a person is to act unfairly, unjustly, unreasonably, and arbitrarily. Even in an administrative action, justice should not only be done, but also must appear to be done to the satisfaction of all the parties. Therefore, the principles of audi alteram partem, howsoever short, have to be applied before declaring a party as 'a fraudulent borrower', or as 'a holder of fraudulent account'. Such an interpretation is also inconsonance with the principles extracted above from the relevant case law. Thus, this Court is of the opinion that the principles of audi alteram partem will have to be incorporated into Clauses 8.9.4 and



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8.9.5 of the Master Circular even if the said Clauses are silent. Such an interpretation cannot be said to be far fetched. For, as mentioned above, in a series of cases decided by the Apex Court, the Hon'ble Supreme Court has read the requirements audi alteram partem even in those provisions of law which did not expressly prescribed the observance of audi alteram partem in their scope and ambit."

21.The reading of the judgment shows that petitioner Ragesh Agarwal filed a petition aggrieved by non inclusion of principles of natural justice before classifying the account of M/s.B.S. Limited, as 'fraud' and 'willful defaulter'. While deciding the issue, the Court observed that the principle of audi alteram partem has to be applied before declaring the party as fraudulent borrower. Direction was given to give an opportunity of hearing after furnishing the copies of the forensic audit report and the subsequent report submitted by Dr.K.V.Srinivas, to decide as to whether the account should be classified as fraud or not. However, in the case before hand, petitioner filed a writ petition before the High Court of Telangana in W.P.Nos.636 and 639 of 2021 with regard to initiation of further action without furnishing copy of the forensic audit report. The Court directed the petitioner to approach the respondent-Bank within a period of two weeks from the date of receipt of copy of this order, for inspection of Forensic Audit Report. It appears that petitioner has not appeared before the respondent-Bank, for inspection of Forensic Audit Report. In the case before hand, Committee of Creditors including the second respondent in a meeting held on 22.01.2020 commissioned a forensic audit by M/s.BDO India LLP. In pursuance thereon, M/s.BDO India LPP submitted the Forensic Audit Report dated 24.07.2020. On the basis of this report, the complaint was given. It is also seen from the complaint that Axis Bank, the lead lender in the consortium, already declared the first accused company account, as fraud. State Bank of India received mandate from Axis Bank vide letter dated 17.09.2020 and Indian Overseas Bank vide letter dated 12.10.2020 for filing the complaint. Other banks in the consortium namely UCO Bank, Syndicate Bank, Bank of India, Punjab National Bank and ILFS Financial Services limited, yet to give approval for filing FIR.

22.Perusal of Reserve Bank of India (Frauds classification and reporting of commercial banks and select financial institutions) directions 2016 shows that the purpose of directions is to provide a framework to banks to enable them to detect and report frauds early and taking timely consequent actions like reporting to the investigative agencies so that fraudsters are brought to book early, examining staff



accountability and do effective fraud risk management. Central fraud registry is made available based on fraud monitoring returns. Banks have been given access through user I.Ds., and password to get information. Banks are required to furnish fraud monitoring return to RBI electronically using FMR application in XBRL system. Banks to ensure that delay in reporting the fraud should be avoided, failing which they are liable to penal action prescribed under Section 47(A) of the Bank Regulation Act, 1949.

23. Quarterly annual review of frauds is provided. Guidelines for reporting frauds to police/CBI is dealt under Chapter - VI. If the fraud involves more than Rs.500 million, the complaint to be lodged with Joint Director (Policy) CBI, Head quarters, New Delhi. Chapter VII deals with loan frauds. The objective is to direct the focus of banks on the aspects relating to prevention, early detection, prompt reporting to the RBI and investigative agencies and timely initiation of the staff accountability proceeding. Early warning signals and red flagged accounts are the methods to check the fraud. Chapter 8.9 deals with lending under consortium and multiple banking arrangements. This is to facilitate the banks to take coordinated actions against the borrower to siphon off funds by diverting from the bank on which the fraud is being perpetrated. The bank which detects a fraud is required to immediately share the details with all other banks. Individual banks must conduct their own due and diligence before taking any credit exposure and also independently monitor the end use of funds. Early warning signals should be shared with other consortium lenders. 8.9.4 provides that if the individual bank decides to classify the account as fraud, it shall report the fraud to RBI within 21 days of deduction and also report the case to CBI/Police.

24. In the case before hand, Axis Bank declared the account of the first accused company, as fraud. Then the bank should asked the consortium leader to convene a meeting of the JLF to discuss the issue. The meeting must be convened within 15 days from the receipt of the request. In case of broad agreement, the account should be classified as fraud, else based on the majority with 60% share in the total lending, the account should be red flagged and subjected to a forensic audit. 8.9.5 provides that forensic audit must be completed within a maximum period of three months from the date of JLF meeting authorising the audit, then a decision has to be taken to classify the account as fraud. In a JLF meeting on the basis of forensic audit report, RFA status shall be changed to fraud and reported to RBI and within 30 days of report to RBI complaint should be lodged with the CBI.

25. It is submitted by the learned counsel for the



petitioners that the guidelines given in 8.9 are not followed before giving complaint in this case to the first respondent police. As stated earlier, Axis bank had declared the account of the first accused company as fraud. It had written to the second respondent for giving the complaint. Indian Bank had also written a letter for giving complaint. Then the account was classified as "fraud" and then complaint was given. There may be some procedural violation in complying the guidelines with regard to obtaining Forensic Audit Report but the fact remains that a Forensic Audit Report dated 24.07.2020 is available and it enumerates the various acts of illegal commission and omission of the accused detailed above, which are liable to be prosecuted for the commission of cognizable offences indicated above. Forensic audit report was made possible as per the decision made by creditors.

26. In the light of the facts and circumstances of the case, this Court is of the view that the failure to follow the guidelines would no way impact the registration of the FIR in this case. The judgment in W.P.No.19102 of 2019 had no occasion to consider the issue of registration of the FIR. Therefore, this Court is of the view that this judgment is not applicable to the facts and circumstances of this case. Moreover, the Hon'ble Supreme Court had stayed the order of the High Court, insofar as it is observed that a personal hearing be given. Therefore, this judgment is not useful to the case of the petitioners.

27. Judgment in Vineet Narain Vs. Union of India reported in (1998) 1 SCC 226 is relied for the proposition that provisions of CBI manual are mandatory in nature. CBI has registered the FIR in this case as per RBI Guidelines. There is no violation of CBI manual in registering the FIR.

28. Learned counsel for the petitioner relied on the judgment in SBI Vs. Jah developer., reported in 2019 (6) SCC 787, and Ishwar Chand Goel and others vs. Sri Ambica Food Pvt. Limited & Others reported in AIR 2021 Delhi 1 for the proposition, as to the consequence of not providing adequate opportunity, in terms of RVI circulars. The question that arose for consideration in the case of SBI Vs. Jah developer., is that, whether when a person is declared to be a wilful defaulter under the circulars of RBI, such person is entitled to be represented by a lawyer of his choice before such declaration is made. After considering the conspectus of case law, the Hon'ble Supreme Court in para 24, observed as follows:

"24. Given the above conspectus of case law, we are of the view that there is no right to be represented by a lawyer in the in-house proceedings contained in Para 3 of the Revised Circular dated 1-7-



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2015, as it is clear that the events of wilful default as mentioned in Para 2.1.3 would only relate to the individual facts of each case. What has typically to be discovered is whether a unit has defaulted in making its payment obligations even when it has the capacity to honour the said obligations; or that it has borrowed funds which are diverted for other purposes, or siphoned off funds so that the funds have not been utilised for the specific purpose for which the finance was made available. Whether a default is intentional, deliberate, and calculated is again a question of fact which the lender may put to the borrower in a show-cause notice to elicit the borrower's submissions on the same. However, we are of the view that Article 19(1)(g) is attracted in the facts of the present case as the moment a person is declared to be a wilful defaulter, the impact on its fundamental right to carry on business is direct and immediate. This is for the reason that no additional facilities can be granted by any bank/financial institutions, and entrepreneurs/promoters would be barred from institutional finance for five years. Banks/financial institutions can even change the management of the wilful defaulter, and a promoter/director of a wilful defaulter cannot be made promoter or director of any other borrower company. Equally, under Section 29-A of the Insolvency and Bankruptcy Code, 2016, a wilful defaulter cannot even apply to be a resolution applicant. Given these drastic consequences, it is clear that the Revised Circular, being in public interest, must be construed reasonably. This being so, and given the fact that Para 3 of the Master Circular dated 1-7-2013 permitted the borrower to make a representation within 15 days of the preliminary decision of the First Committee, we are of the view that first and foremost, the Committee comprising of the Executive Director and two other senior officials, being the First Committee, after following Para 3(b) of the Revised Circular dated 1-7-2015, must give its order to the borrower as soon as it is made. The borrower can then represent against such order within a period of 15 days to the Review Committee. Such written representation can be a full representation on facts and law (if any). The Review Committee must then pass a reasoned order on such representation which must then be served on the borrower. Given the fact that the earlier Master Circular dated 1-7-2013 itself considered such steps to be reasonable, we incorporate all these steps into the Revised Circular dated 1-7-2015. The impugned





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evidence nor should the court judge the probability, reliability or genuineness of the allegations made therein. More so, the charge-sheet filed or charges framed at the initial stage can be altered/amended or a charge can be added at the subsequent stage, after the evidence is adduced in view of the provisions of Section 216 Cr.P.C."

32. Thus, this Court finds that there are no merits in the claim of the petitioners for quashing the proceedings in FIR No.RCBD1/2021/E/0002 dated 24.03.2021 on the file of the Central Bureau of Investigation, BSFB. In this view of the matter, both the petitions are dismissed. Consequently, connected miscellaneous petition is closed. The first respondent is directed to complete the investigation and file final report as early as possible.

Sd/-
Deputy Registrar (CS)

//True Copy//

Sub Assistant Registrar

AT

To

1. The Central Bureau of Investigation,
Banking Securities Fraud Branch,
Represented by Inspector of Police,
Mr. Anuj Kumar,
Having office at
Plot No.5-B, CGO Complex,
Lodhi Road, New Delhi-110 003.

2. The Deputy General Manager,
State Bank of India,
Stressed Assets Management Branch,
No.32, Red Cross Building,
Indian Red Cross Society,
Egmore, Chennai - 600 008.

+1cc to M/s.Anirudh Krishnan, Advocate, S.R.No.37008

CRL.O.P.Nos.7968 & 8626 of 2021
and
Crl.M.P.No.5260 of 2021

RGN(CO)
RGA(29/06/2022) (30/06/2022)