



Crl.O.P.Nos.6249, 6254, 8540, 8581, 9344 of 2023
& Crl.M.P.Nos.3907, 3915, 5443, 5444, 5460, 5462, 6106, 6107 & 11825 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on :28.08.2023

Pronounced on : 08.09.2023

CORAM

THE HONOURABLE DR.JUSTICE G.JAYACHANDRAN

Crl.O.P.Nos.6249, 6254, 8540, 8581 & 9344 of 2023
and Crl.M.P.Nos.3907, 3915, 5443, 5444, 5460, 5462,
6106, 6107 & 11825 of 2023

Crl.O.P.No.6249 of 2023

S.Ravi

... Petitioner/Accused No.18

/versus/

1.State by

The Superintendent of Police,
CBI/BSFB/Bangalore.

.. 1st Respondent/Complainant

2.Shri Praveen Sinha

Additional Secretary,
Central Vigilance Commission,
Satarkta Bhavan, GPO Complex,
Block-A, New Delhi 110 023.

...2nd respondent/Defacto
Complainant

Prayer: Criminal Original Petition has been filed under Section 482 of Cr.P.C., to call for the records in C.C.No.554 of 2023 on the file of the learned Additional Chief Metropolitan Court, Egmore, Chennai and quash the same.



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Crl.O.P.Nos.6249, 6254, 8540, 8581, 9344 of 20__
& Crl.M.P.Nos.3907, 3915, 5443, 5444, 5460, 5462, 6106, 6107 & 11825 of 2023

For Petitioner :Mr.N.R.Elango, Senior Counsel for
Mr.A.S.Aswin Prasanna

For Respondents :Mr.K.Srinivasan, Senior Counsel
Special Public Prosecutor for CBI

Crl.O.P.No.6254 of 2023

Ninad Bhalchandra Karpe

... Petitioner/Accused No.19

/versus/

1.State by
The Superintendent of Police,
CBI/BSFB/Bangalore.

.. 1st Respondent/Complainant

2.Shri Praveen Sinha
Additional Secretary,
Central Vigilance Commission,
Satarkta Bhavan, GPO Complex,
Block-A, New Delhi 110023.

...2nd respondent/Defacto
Complainant

Prayer: Criminal Original Petition has been filed under Section 482 of Cr.P.C., to call for the records in C.C.No.554 of 2023 on the file of the learned Additional Chief Metropolitan Court, Egmore, Chennai and quash the same.

For Petitioner :Mr.Amit Anand Tiwari
Assisted by
Ms.Devyani Gupta,
for Mr.A.S.Aswin Prasanna

For Respondents :Mr.K.Srinivasan, Senior Counsel
Special Public Prosecutor for CBI



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Crl.O.P.No.8540 of 2023

Srinivasan Kothandaraman Vaidyanathan Srinivasan

... Petitioner/Accused No.27

/versus/

1.State Represented by
Inspector of Police,
Central Bureau of Investigation,
Banking Securities Fraud Branch,
No.36, Bellary Road, Ganganagar,
Bangalore 560 032.

.. Respondent/Complainant

2.Praveen Sinha
Additional Secretary,
Central Vigilance Commission,
Satarkta Bhavan, GPO Complex,
Block-A, INA, New Delhi 110023.

...Respondent/Defacto
Complainant

Prayer: Criminal Original Petition has been filed under Section 482 of Cr.P.C., to call for the records in C.C.No.554 of 2023 on the file of the learned Additional Chief Metropolitan Court, Egmore, Chennai and quash the same as in so far as the petitioner is concerned.

For Petitioner :Mr.Abdul Saleem,
Senior Counsel for
M/s.AAV Partners

For Respondents :Mr.K.Srinivasan, Senior Counsel
Special Public Prosecutor for CBI



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Crl.O.P.No.8581 of 2023

Raj Kumar Bansal

... Petitioner/Accused No.26

/versus/

1.State Represented by
Inspector of Police,
Central Bureau of Investigation,
Banking Securities Fraud Branch,
No.36, Bellary Road, Ganganagar,
Bangalore 560 032.

.. Respondent/Complainant

2.Praveen Sinha
Additional Secretary,
Central Vigilance Commission,
Satarkta Bhavan, GPO Complex,
Block-A, INA, New Delhi 110023.

...Respondent/Defacto
Complainant

Prayer: Criminal Original Petition has been filed under Section 482 of Cr.P.C., to call for the records in C.C.No.554 of 2023 on the file of the learned Additional Chief Metropolitan Court, Egmore, Chennai and quash the same as in so far as the petitioner is concerned.

For Petitioner :Mr.Abdul Saleem,
Senior Counsel for
M/s.AAV Partners

For Respondents :Mr.K.Srinivasan, Senior Counsel
Special Public Prosecutor for CBI



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Crl.O.P.No.9344 of 2023

1.M.S.Raghavan	..Petitioner-1/Accused-15
2.Bal Krishan Batra	..Petitioner-2/Accused-16
3.Melwyn Oswald Rego	..Petitioner-3/Accused-17
4.Biju George K.	..Petitioner-4/Accused-20
5.Manoj Alex	..Petitioner-5/Accused-21
6.V.Venkatakrishnan	..Petitioner-6/Accused-22
7.Subroto Gupta	..Petitioner-7/Accused-23
8.Viney kumar	..Petitioner-8/Accused-24
9.B.Ravindranath	..Petitioner-9/Accused-25
10.Santhana Kumar.T	..Petitioner-10/Accused-29

/versus/

1. The State represented by
Inspector of Police,
Central Bureau of Investigation,
Banking Securities Fraud Branch,
No.36, Bellary Road, Ganganagar,
Bangalore 560 032.
(Ref.RC.9(E)/2018-CBI/BS&FC/BLR) .. Respondent-1/Complainant

2.Shri Praveen Sinha
Additional Secretary,
Central Vigilance Commission,
Satarkta Bhavan, G.P.O. Complex,
Block A, INA, New Delhi 110023. .. Respondent No.2/Defacto
Complainant

Prayer: Criminal Original Petition has been filed under Section 482 of Cr.P.C., to call for the records and quash and set aside the C.C.No.554 of 2023 as against the petitioners, pending on the file of the learned Additional Chief Metropolitan Court, Egmore, Chennai.

For Petitioners :Mr.B.Kumar, Senior Counsel for
M/s Edward James

For Respondents :Mr.K.Srinivasan, Senior Counsel
Special Public Prosecutor for CBI



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COMMON ORDER

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The crime and investigation of financial fraud to a tune of INR 600 crores involving officials of IDBI Bank and the Directors of Siva Industries and Holding Ltd and its subsidiary companies, is the subject matter of C.C.No.554/2023 pending on the file of Additional Chief Metropolitan Magistrate Court, Egmore, Chennai.

2. A complaint from Shri.Praveen Sinha, Additiaonal Secretary, Central Vigilance Commission triggered the registration of FIR on 13/04/2018 against 39 F.I.R named accused which includes Companies, Public Servants, private individuals, and also unknown public servants and others.

3. The complaint of the CVC Commissioner in short was about the conspiracy between the Senior Management IDBI Officers with the Promoters/Directors of Siva Group of Companies to cheat IDBI bank under the garb of restructuring the loan of M/s Win Wind Oy (a company incorporated in Finland) by granting loan of 83 million USD to M/s Axcel Sunshine Limited (ASL) a company based on the British Virgin Islands,



which is an associate company of Siva Group of Companies.

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4. The scheme of conspiracy runs as below:-

Initially, ICG, Chennai IDBI in the month of October 2010 sanctioned loan to M/s Win Wind Oy (in short 'M/s WWO') to the extent of 52 million EUR (INR equivalent 322.40 crores), taking security of M/s.Siva Industries and Holding Ltd (SIHL) as corporate guarantee. After sanction of loan, the facilities were operated through the Dubai Industrial Finance Centre (DIFC) Branch, Dubai. Later, M/s WWO defaulted in repayment. It was granted voluntary bankruptcy by a Court in Finland in the month of October, 2013. Bankruptcy Estate Administrator (BEA) was appointed by the Finland Court for liquidation of the assets of M/s.WWO. In spite of knowing the bad financial position of Siva Groups of Company and about the voluntary bankruptcy of M/s.WWO, the Senior Officials of IDBI Bank granted loan to M/s Axcel Sunshine Limited, for non-productive purpose to a tune of 83 Million USD to use the same for repaying the loan of M/s WWO and other associate companies of Siva Groups. In contrary to RBI regulations and guidelines, for the loan to M/s Axcel Sunshine Limited (a Foreign Company). Unlisted shares of Tata Tele Services (Indian Company) was taken as primary security. As collateral security, *pari-passu* charge of third party



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immovable property worth Rs.38 crores along with the corporate guarantee of Siva Industries & Holdings Ltd (SIHL) was obtained. The order sanctioning loan to M/s ASL *vide* letter dated 05/03/2014 was modified within 20 days i.e., on 25/03/2014 by the Executive Committee Members of IDBI by classifying the facility as Medium Term Loan with modified rate of interest and the Corporate Guarantee of Siva Industries and Holding Ltd (SIHL) worth about Rs.5400 crores converted into 'Letter of Comfort'.

5. Out of 83 Million USD loan sanctioned to M/s Axcel Sunshine Ltd, 67 Million USD was disbursed on 26/03/2014. The said amount was transferred to M/s Broad Court Investments. From the account of M/s Broad Court Investments, the loan proceeds were transferred to the Siva Group of companies such as, M/s Indian Telecom Limited, M/s Lotus Ventures Investments, M/s.Siva Palm Corporation limited. This money in turn used for clearing dues of M/s WWO (65 Million USD); M/s Sterling Agro- Products and Processing Ltd (Rs.4.3 crores); M/s Planet Pickles (P) Ltd (Rs.2.37 crores); M/s Win Wind Power Energy (P) Ltd (Rs.1.97 crores); M/s.Dalmia Securities (Rs.5 lakhs) and M/s Siva Industries (Rs.2.95 crores).



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6. Pursuance to the conspiracy, to conceal their dishonesty of sanctioning the huge loan for a non-productive purpose and to make an impression that the borrowing Company is financially well to pay the interest for the loan without default for M/s ASL further disbursements of loan in three instalments aggregating to 4.70 USD released to enable M/s ASL to pay the interest due

7. After paying interest for few instalments from the loan amount itself, M/s.ASL failed to repay the loan. As on 31/12/2015 the due payable by M/s.ASL was 73,250,454.18 USD.

8. In this regard, the complaint of the Director, CVC taken up for investigation by CBI and the final report concluded that, M/s WWO is a company incorporated at Finland. M/s.Siva investments and Holdings Ltd (in short M/s.SIHL) is a Seychelles based company and it is the holding company of M/s WWO. SIHL is one of the entities of Siva Groups of Companies, headed by its Chairman Mr.Sivasankaran. For the loan sanctioned to M/s WWO, the entire assets of M/s.WWO and Corporate Guarantee of Siva Ventures Ltd (SVL) and Siva Industries and Holdings Ltd



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(SHL) were taken as primary security. For subservient charge, M/s Win Wind

Power Energy Pvt Ltd, a subsidiary Company of M/s.WWO in India was offered by the borrowing company. Within 3 years, M/s WWO become bankrupt and granted voluntary bankruptcy by a Court in Finland in the month of October 2013. Recovery proceedings were initiated against M/s WWO and its corporate guarantor M/s Siva Group of Companies. While so, pending recovery proceedings, the Promoter/Directors of Siva Group of Companies in connivance with senior officers/officials of IDBI Bank Ltd, managed to get sanction of a fresh loan amounting to 83 million USD from IDBI bank in favour of another company M/s Axcel Sunshine Limited (ASL) which is said to be an associate company of Siva Group in flagrant violation of regulatory guidelines of IDBI Bank/RBI/FEMA and to withdraw the recovery proceedings initiated against M/s.Win Wind Oy.

9. The role of 15 officials of IDBI Bank Ltd including 12 FIR named accused were found involved at different stages in processing, recommending, sanctioning and disbursement of the loan to M/s ACL. They all fall within the meaning of 'Public servant', hence sanction to prosecute them under Section 19 of Prevention of Corruption Act was sought by CBI from the competent authorities (i.e.) Government (In respect of Directors)



and the Bank, in respect of Senior Officials as the case may be. However, the competent authorities declined to accord sanction for prosecution under the Prevention of Corruption Act. Claiming that the denial of sanction to prosecute under PC Act is not an embargo to prosecute them for offences punishable under IPC, final report against the following 29 persons for offences under Sections 120(b) r/w 420 and 409 IPC and substantive offences under Sections 420 and 409 IPC is filed.

- 1.M/s Axcel Sunshine Ltd. (A-1)
- 2.M/s Broadcourt Investments Ltd.(A-2)
- 3.M/s India Telecom Holding Ltd.(A-3)
- 4.M/s Lotus Ventures Investments Ltd.(A-4)
- 5.M/s Siva Palm Corp.Ltd.(A-5)
- 6.M/s Siva Industries & Holdings Ltd.(A-6)
- 7.M/sWin Wind Oy(A-7)
- 8.M/s Sterling Agro Product Processing Pvt.Ltd.(A-8)
- 9.M/s Planet Pickles Pvt.Ltd.(A-9)
- 10.M/s Win Wind Power Energy Pvt.Ltd.(A-10)
- 11.Shri Sanjeev Bafna (A-11)
- 12.Shri C.Sivasankaran(A-12)
- 13.Ms.Nithyavathi Venkatesan(A-13)
- 14.Shri Srinivasan Vaidyanathan(A-14)
- 15.Shri M.S.Raghavan(A-15)
- 16.Shri Bal Krishan Batra(A-16)
- 17.Shri Melwyn Oswald Rego (A-17)



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- 18.Shri Sethyrathnam Ravi(A-18)
- 19.Shri Ninad Bhalchandra Karpe(A-19)
- 20.Shri Biju George (A-20)
- 21.Shri Manoj Alex (A-21)
- 22.Shri V.Venkatakrishnan(A-22)
- 23.Shri Subroto Gupta (A-23)
- 24.Shri Viney Kumar (A-24)
- 25.Shri B.Ravindranath (A-25)
- 26.Shri Rajkumar Bansal (A-26)
- 27.Shri Srinivasan Kothandaraman Vaidyanathan Srinivasan(A-27)
- 28.Shri Thangavel Dillibabu(A-28)
- 29.Shri Santhanakumar (A-29)

10. In the final report a specific allegation made against the officials of IDBI that, the accounts of M/s Siva Group of Companies viz M/s Siva Industries and Holdings, M/s Win Wind Oy, M/s.Sterling Agro Product Processing Pvt Ltd are either NPA or running outstanding dues. The risk department of the Bank in its report dated 25/02/2014 has expressed that the track record of these group of companies is unsatisfactory. Despite that, after the account of M/s WWO declared as NPA and action for recovery initiated invoking the corporate guarantee and though being aware of the fact that no Siva Group of Company is doing well, the accused officials of IDBI in the process of evergreening of loans,



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- i) Sanctioned fresh loan to M/s.Axcel Sunshine Ltd;
- ii) Withdrew the suit for recovery against M/s.WWO.
- iii) Released the corporate guarantee worth above 5400 crores and;
- iv) Unlisted shares of Tata Tele Services Ltd were taken as primary security.

11. While the RBI guidelines contained in para 2.4.7.1 of the master circular on Exposure Norms dated 01/07/2013, mandates the credit facilities have to be sanctioned only for productive purposes, in the case of M/s Axcel Sunshines Ltd loan sanctioned was not for any productive purpose but to clear the overdue amounts in the previous loan accounts of Siva Group of Companies with IDBI Bank.

12. As per the initial sanction order additional security of any of the Siva Group of Companies has to be taken. This was modified to circumvent the regulatory restrictions of RBI and the property of M/s Sterling Agro Products Processing Pvt Ltd worth Rs.38 crores offered as third party collateral security.

13. In lieu of corporate guarantee, letter of comfort from SIHL was



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against the final report against them, are before this Court seeking quash of the complaint. These five petitions are by the officials of IDBI, who were in different position in IDBI during the relevant point of time.

- (1) Crl.O.P.No.9344/2023 - By A-15 to A-17, A-20 to A-25 & A-29
- (2) Crl.O.P.No.6249/2023 - By A-18
- (3) Crl.O.P.No.6254/2023 - By A-19
- (4) Crl.O.P.No.8581/2023 - By A-26
- (5) Crl.O.P.No.8540/2023 - By A-27

16. The petitioners herein are the public servants falling under three categories. They are either Chairman and whole time Directors nominated appointed by the Central Government or independent Directors elected by share holders or the officials in the rank of Manager and above. As per the Articles of Association of IDBI Bank, the Board of Directors shall consists of Chairman on whole time basis appointed by the Central Government and designated as Chairman and Managing Director. Besides Chairman the Board shall consists of 11 more Directors. Out of which, two whole time Directors nominated by Central Government be designated as Deputy Managing Director. Among the 12 Directors, atleast 4 Directors (1/3rd) shall be appointed as Independent Directors as per Section 149(a) of Indian Companies Act.

17. The Chairman and the Whole time Directors appointed by the



Central Government can be terminated also by the Central Government after causing written notice of not less than 3 months (Article 118). The Reserve Bank of India have power to remove the Chairman and the Whole Time Directors in accordance with the Articles provided (Article 120). As far as the independent Directors elected under Article 116(e) and not been appointed by the Central Government. The shareholders, by an ordinary resolution remove them after causing special notice. In respect of Officials holding the post of Manager and above, the bank is the competent authority to remove them from their service.

18. The learned Senior Counsel appearing for the petitioners mainly harp on the point that the criminal prosecution against the petitioners for IPC offences cannot be proceeded since for the very same set of facts when sanction to prosecute under P.C Act sought by the CBI rejected by the Government. It is contended that despite the Competent Authority on perusing the records had denied sanction to prosecute, the CBI had ventured to proceed against the petitioners under IPC provisions for the very same set of facts forming part of the same transaction. Having discharged their official duty, if at all any prosecution has to be carried on under IPC provisions, sanction under Section 197(1) of Cr.P.C., is mandatory. Atleast



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in respect of the petitioners, who are appointed as Directors by the Central Government and can be removed only by the Central Government, the sanction under Section 197 of the Code is necessary.

19. It is contended that, it was the Chief Vigilance Commissioner, who directed the CBI to investigate the matter. After completion of investigation, when sanction to prosecute the petitioners was sought, the same was declined by the Government and the Bank. The said decision has been accepted by the Chief Vigilance Commissioner. Without jurisdiction or authority and contrary to the decision of the Chief Vigilance Commission, the CBI proceeds against these petitioners under the provisions of IPC.

20. Mr.B.Kumar, the learned Senior Counsel appearing for the petitioners, referring Section 8-A and 8-B of the Central Vigilance Commission Act, 2003, submitted that, if the investigation conducted by the CBI on the direction of Chief Vigilance Commissioner, the final report has to be submitted to the Commission before proceeding further. The Commission to decide the further course of action on the report received. The Vigilance Commission may either charge sheet or file a closure report before the Special Court against the public servant or initiate departmental proceeding



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or any other appropriate action against the concerned public servant. CBI cannot take an independent decision to prosecute without the approval of CVC which has directed CBI to investigate.

21. The learned counsels appearing for the petitioners relying upon the judgment of the Hon'ble Supreme Court in *A.Srinivasulu v. State represented by the Inspector of Police reported in Manu/SC/0723/2023*, submitted that sanction of loan to M/s Axcel Sunshine Ltd, on reconstruction of earlier loan granted to M.s Win Wind Oy is based on the commercial wisdom to secure better primary security and it was done in discharge of public duty. Therefore, they are protected under Section 197(1) of the Code. Being the officers of the company, coming within the description contained in Section 21(12) of Indian Penal Code and also public servant within the meaning of expression under Section 2(c)(iii) of the Prevention of Corruption Act, 1988, the requirement of previous sanction both under Section 197(1) of the Code and 19(1) of the PC Act is required. Since, the Competent Authority had declined to grant sanction to prosecute under the Prevention of Corruption Act, they cannot be prosecuted under the provisions of IPC for the very same set of facts. If the CBI had thought fit to prosecute them under the provisions of IPC prior sanction under Section 197 of Cr.P.C ought to



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have obtained. CBI cannot brush aside the legal impediment of obtaining prior sanction under Section 197(1) of the Cr.P.C., and presume there is no legal impediment to prosecute these petitioners for IPC offences without sanction.

22. The learned counsel relied upon the judgment of High Court of Jammu and Kashmir and Ladakh at Srinagar rendered in ***Sanjay Kumar Srivastava and others v. Central Bureau of Investigation reported in [Manu/JK/0658/2022]*** which has referred the judgments of the Hon'ble Supreme in (i) Ashoo Surendranath Tiwari v. The Deputy Superintendent of Police, EOW, CBI and Ors., reported in [(2020)9 SCC 636]

23. The Learned Senior Counsel submitted that the observation of the Jammu and Kashmir High Court in paragraph No.19, squarely applies to the case in hand. For easy reference, the said paragraph is extracted below:-

"The protection granted to a public servant against the prosecution under Section 6 of the J&K PC Act, which is in pari materia with Section 19 of the PC Act of 1988, has been provided under the statute in order to safeguard the public servants from frivolous complaints and un-necessary harassment, while they are discharging their official duties. It is to give them freedom to perform their duties without fear or favour. The power to grant or refuse sanction for



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prosecution in the hands of the sanctioning authority is to safeguard the honest public servants from vexatious prosecutions. Grant of sanction for prosecution of a public servant is not an idle formality but the same is a mandatory requirement of law. This protection given to a public servant cannot be circumvented by defeating the provisions relating to grant of sanction as contained in the Prevention of Corruption Act by dropping the offences under the said Act and launching prosecution in respect of the offences under other statutes in a case where same set of facts gives rise to offences under different statutes."

24. It is contended by the petitioners that, the question of accountability, acts of omissions or commission on the part of the Petitioners been examined and analyzed numerous times by various authorities/independent persons, such as the Forensic Audit ("Forensic Audit") undertaken by Chaturvedi & Co., Chartered Accountants ("Auditor"), independent Statutory auditors appointed by the Board of the Bank, investigation by the Reserve Bank of India ("RBI"), internal investigation by the Bank, Staff Accountability Committee(s) of the Bank and Special Staff Accountability Committee of the Bank. They all uniformly observed that there is dishonest or malafide in the decision to advance loan to M/s.ASL. No pecuniary advantage obtained by the officials. The loan to M/s.ASL was primarily considered as the bank's NPA resolution strategy. No



vigilance angle was also discernible by way of the above investigative exercises. Accordingly, in such background, attribution of criminality and *mens rea* is beyond question.

25. It is contended by the petitioners that they have acted bonafidly without any criminal intent. The loan process of M/s ASL was cash neutral with no incremental risk caused to the bank. The monies sanctioned as loan repaid to the bank for the outstanding NPA accounts. Accordingly, the said bonafide action on the part of the bank and the petitioners are part of the NPA resolution/reconstructing strategy. Therefore, the case against the petitioners is *ex-facie* legally unsound and without any merit and with malafide and oblique considerations without jurisdiction. The Letter of Comfort obtained from M/s ASL under English Law in legal effect akin to a guarantee. The closure of NPA accounts of M/s Siva Industries and Holding Group of Companies by granting fresh loan to M/s ASL had provided improved security and better credit profile. Therefore, the decision of granting loan to M/s ASL cannot be made a subject matter of criminal action. More so, when the Competent Authorities both the Government as well as the Bank who are the field experts declined to grant sanction to prosecute.

26. The learned counsels citing judgments rendered by Hon'ble



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Supreme Court on Section 19 of P.C Act and Section 197 of Cr.P.C., taking

cognizance of offence alleged to be committed by a public servant and sanction to prosecute, submitted that if the act complained of are so integrally connected with the duties attaching to the office as to be inseparable from them, then sanction to prosecute under Section 197(1) would be necessary; but if there was no necessary connection between them and the performance of those duties, the officials status furnishing only the occasion or opportunity for the acts, then no sanction would be required. In the case in hand, the decision to restructure NPA account of M/s WWO and to create primary security of higher credential is closely connected with the responsibility and discharge of official duty. Therefore, the contention of the prosecution that, the corporate security already available to the tune of Rs.5462 crores has not proceeded to satisfy the NPA accounts of M/s Siva Groups of Company is not in tune with commercial wisdom. There were consortium of banks claiming lien over the corporate guarantee and the same was subject matter of NCLT order which tested the settlement plan under Section 12-A of SARFAESI Act presented before it. Since NCLT rejected the settlement plan, appeal was filed before NCLAT and the matter further escalated to the Hon'ble Supreme Court. Finally, the Hon'ble Supreme Court accepted the settlement proposal submitted by the consortium of banks



(including IDBI) and M/s Siva Groups of Company by holding, “when 90% and more of the creditors in their wisdom, after due deliberation, find that it will be in the interest of all the stake holders to permit the settlement and withdraw CIRP, in our view, the adjudicating authority or appellate authority cannot sit in any appeal over the commercial wisdom of COC. The interference would be warranted only when the adjudicating authority or the appellate authority finds the decision of the COC to be wholly capricious, arbitrary, irrational and *de hors* the provisions of the statute or the Rules”.

27. Per contra, the Learned Senior Counsel appearing for the CBI submitted that no doubt, the Government as well as the bank refused to grant sanction to prosecute the petitioners under the provisions of the Prevention of Corruption Act. However, the evidence collected and the further investigation on anvil indicate that conspiracy among the higher officials in the banking sector including the petitioners and prime accused Sivashankaran harped in India and other places across the country which has enabled the prime accused Sivashankaran to float various shell companies in India and abroad to avail loan from IDBI and other banks with an dishonest intention to cheat.

28. As far as the instant case is concerned, initially, M/s WWO, one



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of the Siva Group of Companies availed loan from IDBI Bank to the tune of Rs.391 crores and later filed voluntary insolvency before the Court in Finland. This loan was well secured with corporate guarantee to the tune of Rs.5362 crores. However, the officials in IDBI bank instead of proceeding against the corporate guarantee, thought fit to advance fresh loan to a new company by name M/s.ASL which initially claim to be one of the group companies of Siva Industries and Holding Limited. Contrary to RBI guidelines for non-productive purpose, loan to the tune of Rs.83 million USD was sanctioned. The initial proposal was modified and effectively the corporate guarantee offered by Siva Industries and Holding Company released. The assurance to take shares of M/s Tata Tele Service which is unlisted Company was also could not be accepted as primary security in view of the restriction in RBI guidelines which says, for loan to a foreign company, property in India cannot be given as security. It is a jargon invented by the accused persons to justify the action of lending loan violating the norms and guidelines of RBI by accepting unlisted shares of M/s Tata Tele Service in the name of “Letter of Comfort”. M/s ASL failed to pay the loan amount, shortly after availing the loan to the tune of Rs.600 crores. Being an unlisted company, the shares received in the name of Letters of Comfort still not able to sell. In the result, for outstanding of Rs.384 crores



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payable by M/s Siva Industrial Group of Company, in the name of restructuring further sum of Rs.600 crores given as loan to a foreign company which is now claimed to be an independent company and has nothing to do with M/s.Siva Group of Company except trade relationship.

29. The e-mail correspondence between the petitioner and the prime accused Sivashankaran shows the manner in which the loan sanctioned initially on 05.03.2014 modified on 25.03.2014, keeping RBI in dark clearly establishes the malafide intention of these petitioners. Certainly their act in total violation of RBI proceedings does not fall within the responsibility of discharging the official duty. It is a clear case of abuse of their position abdicating their responsibility and granting further loan indirectly under the grab of restructuring.

30. Lengthy arguments on either side and reference to the documents were made. In short, it was a mini trial conducted in the High Court. This Court is conscious that the criminal prosecution cannot be permitted if the prosecution is in gross violation of law and launched with malicious intention. The case of the petitioners is that the competent authority have declined to sanction for prosecution after detailed study of the



material collected by the CBI. It is contended that the loan was sanctioned in compliance with RBI guidelines and FEMA Rules. Detailed proceedings/enquiry by the competent authority and compliance with all statutory protocols and procedures including multiple in-depth investigation and audit of RBI, Forensic audit and the staff accountability at multi level was conducted. At all level of enquiry, it has been consistently held that there was no criminality or undue pecuniary advantage gained by the officials of IDBI.

31. Conveniently, the prosecution has not placed the order denying sanction by the competent authority. The view of the investigating officer that there is no legal impediment to prosecute the petitioners under the provisions of IPC is contrary to law and procedure established under law. To buttress the above submissions, the following facts submitted for consideration:-

(a) RBI - the RBI vide letters dated February 11, 2015, January 15, 2016 and email dated May 28, 2019, raised certain clarifications over the WWO and ASL Account and irregularities to which the Bank duly responded in detail point wise explanation vide letters dated March 9, 2015, January 20, 2016 and August 7, 2019 respectively. The Bank has always acted with clean hands and in detail provided all necessary information to the RBI,



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who in receipt of the said responses have not proceeded against the Bank.

(b) Forensic Audit - the audit report held that there are irregularities in compliances and certain lapses in sanctions, there is no misappropriation nor any criminal intention or negligence. It was further specifically stated that the intention appears to be recovery of NPA dues and funds disbursed have come back to the Bank.

(c) Internal Investigation - the Bank has conducted internal investigation examining the lapses issues indicated in the forensic audit and allegations made in the complaint to the CVC and the Report dated April 25, 2017 concluded in concurrence with the Forensic Audit that, there is no evidence of misappropriation of funds or any criminal intention.

(d) Staff Accountability - the investigation, audit conducted at numerous intervals by the Staff Accountability Committee of the Bank, have not uncovered any illegal pecuniary gains to the Petitioners much less any malafide intention or any deliberate or criminal intent on the part of any of the Petitioners. It was clearly held that no Staff Accountability was discernable in the case.

32. Per contra, the learned Special Public Prosecutor appearing for CBI had in nutshell extracted the role of the accused/petitioners in the crime and emphatically argued that, this cannot be termed as action done during the



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course of discharge of official duty. The role of the accused for accusing them for guilty of IPC offences is as below:-

Shri M. S. Raghavan (A-15) was the Chairman and Managing Director of the IDBI Bank Ltd. The email correspondences reveals that he expressed desire to meet Shri C. Sivasanakaran (A-12), Chairman of Siva Group. Accordingly, Shri.C.Sivasanakaran (A-12) met him in his office at IDBI Head Quarters on 14.02.2014 He was a member of the Credit Committee-I held on 26.02.2014 with regard to proposal for sanction of secured Overdraft Facility / Medium Term Loan of US\$ 83 to M/s. Axcel Sunshine Ltd. (A-1) put up to Executive Committee held on 28.02.2014. He was also a member of the Executive Committee and present in the board meetings of the Bank held on 28.02.2014, 25.03.2014, which approved for sanction of credit facilities and modifications in the sanctioned terms and conditions to M/s. Axcel Sunshine Ltd (A-1) for closing the NPA outstanding in the accounts of M/s. WinWind Oy (A-7), M/s. Sterling Agro Products Pvt Ltd (A-8) and M/s. Planet Pickles Pvt. Ltd (A-9) and over dues in the account of other companies of Siva Group, in violation of various guidelines of IDBI Bank, RBI and FEMA. He was also a member of Executive Committee (EC) of IDBI Bank, Mumbai held on 25.11.2014 and 19.06.2015 which has approved for release of 2nd and, 3d disbursement for interest payments pending creation of collateral security even after 15 months from the date of disbursement of loan. Thus Shri M S Raghavan (A-15) in conspiracy with other



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accused without ensuring proper due diligence facilitated the borrower to fraudulently avail a fresh loan for closing the NPA Accounts of Siva Group companies to ensure not to enforce Corporate Guarantee of M/s. Siva Industries and Holdings Ltd(A-6) and Collateral Security of M/s.Sterling Agro Processing Pvt Ltd(A- 8) which were under the custodial guarantee of the Bank and thereby caused wrongful loss to the IDBI and corresponding wrongful gain to the accused borrowers.

Shri Bal Krishan Batra (A-16) was an Executive Director from 2005 and Dy. Managing Director from 2012 and worked up to 30.07.2016 as Dy.Managing Director till his retirement. He approved the Note sheet dated 22.04.2014 for advances to be made to M/s. Axcel Sunshine Ltd (A-1) for settling the NPA dues of M/s. WinWind Oy (A-7) and other over dues in the accounts of the Siva Group companies. That Shri Bal Krishna Batra was also a signatory in the Note sheet dated 22.02.2014 for advances to be made to M/s. Axcel Sunshine Ltd (A-1). Subsequently a Note dated 31.03.2014 was put up to CMD, Shri Raghavan (A - 15) by Shri Biju George (A-20), DGM (ICG) stating in detail about the post sanction disbursement of loan proceeds which was acknowledged by Shri Subroto Gupta (A - 23) Shri Viney Kumar (A-24) and Shri Melwyn Oswald Rego (A-17) He was also present in the Executive committee board meetings of IDBI Bank Ltd held on 28.02.2014, 25.03.2014, 25.11.2014 and 19.06.2015 as a member, which sanctioned and approved disbursement of credit facilities of US\$ 83 million to Axcel Sunshine Ltd (A 1) for adjustment of NPA



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outstanding in M/s. WinWind Oy (A - 7) M.s Sterling Agro Product Processing Pvt Ltd (A-8) and M/s. Planet Pickles Pvt. Ltd (A - 9) and other over dues of Siva Group of Companies, in violation of various IDBI Bank, FEMA and RBI guidelines and sanctioned modifications in the sanctioned terms and conditons. He was a member of Executive Committee meetings held on 25.11.2014, 19.06.2015 and 28.12.2015 which approved for release of 2nd 3rd and 4th disbursement of the Medium Term Loan towards interest payments pending creation of collateral security, even after more than 21 months from the date of disbursement of loan. Thus Shri B K Batra (A-16) in conspiracy with other accused without ensuring proper due diligence facilitated the borrower to fraudulently avail a fresh loan for closing the NPA Accounts of Siva Group companies to ensure not to enforce Corporate Guarantee of M/s. Siva Industries and Holdings Ltd (A-6) and Collateral Security of M/s. Sterling Agro Processing Pvt Ltd(A-8) which were under the custodial guarantee of the Bank and thereby caused wrongful loss to the IDBI Bank and corresponding wrongful gain to the accused borrowers.

Shri Melwyn Oswald Rego (A-17) was an Executive Director in IDBI Bank Ltd, Head Office, Mumbai from 01.07.2009 to 29.08.2013 and Dy Managing Director from 30.08.2013 to 13.08.2015. He retired on 13.08.2018 as MD & CEO of Syndicate Bank. He besides to the email correspondence made with management of Siva Group, met with Shri Srinivasan Vaidyanathan (A-14), CEO, Siva Group on 20.02.2014 at IDBI Head Office, Mumbai where the conspiracy plotted to settle the NPA and other over dues



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in the accounts of Siva Group Companies so that not to enforce the corporate guarantee of M/s. Siva Industries and Holdings Ltd (A-6) which was already revoked for the exposure of M/s. WinWind Oy (A-7).

43.1 He in furtherance of criminal conspiracy with other accused, has recommended the Note dated 22.02.2014 put up by Shri Biju George (A-20) for NPA resolution of M/s. WinWind Oy (A-7) involving extension of a secured overdraft/medium term loan to M/s. Axcel Sunshine Ltd (A-1) with proceeds to be utilized for settling the NPA dues of M/s. WinWind Oy (A-7) and other over dues in the accounts of the Siva Group companies and forwarded the proposal to CMD for approval. He was present in the board meetings of IDBI Bank Ltd held on 28.02.2014, 25.03.2014, 25.11.2014 and 19.06.2015 as a member of the Executive Committee which sanctioned, modifications and disbursed credit facilities of US\$ 83 million to Axcel Sunshine Ltd for adjustment of NPA and other over dues of Siva Group of Companies, in violation of various RBI guidelines. He was also a member of Executive committee Meeting held on 25.11.2014 and 19.06.2015 which approved for release of 2nd & 3rd disbursement of the Medium Term Loan, pending creation of collateral security. Thus Shri O Rego(A-17) in conspiracy with other accused without ensuring proper due diligence facilitated the borrower to fraudulently avail a fresh loan for closing the NPA Accounts of Siva Group companies to ensure not to enforce Corporate Guarantee of M/s. Siva Industries and Holdings Ltd (A-6) and Collateral Security of M/s. Sterling Agro Processing Pvt Ltd (A-8) which were under the custodial guarantee of the Bank and



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thereby caused wrongful loss to the 108 Bank and corresponding wrongful gain to the accused borrowers.

44. *Shri Sethurathnam Ravi (A-18) was an Independent Director, IDBI Bank Ltd, Mumbai for 6-years from 02.07.2012 to 13.05.2018. He in furtherance of criminal conspiracy with other accused, attended the board meetings of IDBI bank Ltd held on 28.02.2014, 25.03.2014 (via video conferencing), 25.11.2014, 19.06.2015 and 28.12.2015, as a member of the Executive Committee which sanctioned and approved disbursement of the credit facilities of US\$ 83 Mn. to M/s. Axcel Sunshine Ltd (A-1) for adjustment of NPA and other over dues of Siva Group of Companies. He has also approved release of 2nd, 3rd and 4th disbursement of the Medium Term Loan towards interest payments in violation of various RBI/FEMA guidelines in order avoid the account becoming NPA with full knowledge that the creation of collateral security is still pending. Thus facilitated the borrower to fraudulently avail a fresh loan for closing the NPA account of M/s. WinWind Oy (A-7) to ensure not to enforce its Corporate Guarantee of M/s Siva Industries and Holdings Ltd (A-6) and thereby in conspiracy with other accused without ensuring proper due diligence facilitated the borrower to fraudulently avail a fresh loan for closing the NPA Accounts of Siva Group companies to ensure not to enforce Corporate Guarantee of M/s. Siva Industries and Holdings Ltd (A-6) and Collateral Security of M/s. Sterling Agro Processing Pvt Ltd (A-8) which were under the custodial guarantee of the Bank and thereby caused wrongful loss to the IDBI Bank and corresponding wrongful gain to the accused borrowers.*



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45. *Shri Ninad Bhalchandra Karpe (A-19) was an Independent Director. IDBI Bank Ltd for 6-years from 02.07.2012 to 11.05.2018. He in furtherance of criminal conspiracy with other accused, attended the board meetings of IDBI bank held on 28.02.2014 and 25.11.2014, as a member of the Executive Committee which sanctioned and approved disbursement of the credit facilities of US\$ 83 Mn to M/s. Axcelsunshine Ltd (A-1) for adjustment of NPA and other over dues of Siva Group of Companies including M/s. WinWind Oy (A-7). He has also approved release of 4th disbursement of the Medium Term Loan, towards interest payments in order to avoid the account becoming NPA with full knowledge that the creation of collateral security is still pending. Thus facilitated the borrower to fraudulently avail a fresh loan for closing the NPA Account of Ms. WinWind Oy (A-7) to ensure not to enforce its Corporate Guarantee of M/s. Siva Industries and Holdings Ltd (A-6) and thereby by in conspiracy with other accused without ensuring proper due diligence facilitated the borrower to fraudulently avail a fresh loan for closing the NPA Accounts of Siva Group companies to ensure not to enforce Corporate Guarantee of M/s. Siva Industries and Holdings Ltd (A-6) and Collateral Security of M/s Sterling Agro Processing Pvt Ltd (A-8) which were under the custodial guarantee of the Bank and thereby caused wrongful loss to the IDBI Bank and corresponding wrongful gain to the accused borrowers.*

46. *Shri- Biju George (A-20) was Dy. General Manager & Branch Head, Infrastructure Corporate Group,*



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Chennai from July 2013 to May 2014 and working as General manager, Project Appraisal, Syndication and Structuring Department, IDBI Bank; Mumbai from May 2014 to June 2017. He in conspiracy with other accused, besides making email correspondence with the management of Siva Group, has submitted a proposall note dated 22.02.2014 for NPA resolution of M/s. WinWind Oy(A-1) Involving extension of a secured Overdraft / Medium Term Loan to M/s Axcel Sunshine Ltd (A-1), with proceeds to be utilized for settling the NPA dues of M/s. WinWind Oy(A-1) and some of the other dues in the companies of the Siva group. The said proposal was put up to Shri.Subroto Gupta (A-23), CGM; Shri Viney Kumar(A-24), ED; Shri Melwyn Oswald Rego (A-17), DMD; Shri. Raghavan (A-15). then CMD. Based on the approved resolution structure by the CMD, Shri M.S.Raghavan (A-15), the proposal was sent to Shri. Biju George (A-20) DGM for further action. He was also a signatory to the proposals dated 22.02.2014, 26.02.2014, 28.02.2014, 25.03.2014 put up to Credit Committee-1 and Executive Committee for sanction of US\$ 83 Mn. to M/s. Axcel Sunshine Ltd (A-1) during February 2014, in violation of various RBI/FEMA guidelines. Thus, facilitated the borrower to fraudulently avail a fresh loan for closing the NPA Account of M/s. Oy (A-7) to ensure not to enforce its Corporate Guarantee of M/s. Siva Industries and Holdings Ltd (A-6). Thus, Shri Biju George (A-20) in conspiracy with other accused without ensuring proper due diligence facilitated the borrower to fraudulently avail a fresh loan for closing the NPA Accounts of Siva Group companies to ensure not to enforce Corporate Guarantee of M/s. Siva Industries and Holdings Ltd. (A-6) and Collateral



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Security of M/s. Sterling Agro Processing Pvt Ltd (A-8) which were under the custodial guarantee of the Bank and thereby caused wrongful loss to the IDBI Bank and corresponding wrongful gain to the accused

47. Shri Manoj Alex (A-21) was Asst General Manager, in IDBI Bank Ltd. Infrastructure Corporate Group(ICG), Chennai from May 2010 to June 2014 He in furtherance of criminal conspiracy, has initiated the proposal for sanction of US\$ 83 Mn. to M/s Axcel Sunshine Ltd. (A-1) for closing the NPA accounts and adjusting against over dues in the account of Siva Group of Companies including M/s. WinWind Oy (A-7) during Feb 2014 through Memorandum to Credit Committee-1 dated 26.02.2014, Memorandum to Executive Committee dated 28 02.2014 and Memorandum to Executive Committee dated 25.03.2014, in violation of various RBI guidelines. He assigned Level 1 credit rating for the proposed USS 83 Mn facility to M/s. Axcel Sunshine Ltd (A-1) was done by him and Level 2 credit rating was done by the DGM, ICG, Chennai. The finalization of rating was done by Rating Department at Head Office. Thus, facilitated the borrower to fraudulently avail a fresh loan for closing the NPA Account of M/s. WinWind Oy (A-7) to ensure not to enforce its Corporate Guarantee of M/s. Siva Industries and Holdings Ltd (A-6). Thus Shri Manoj Alex (A-21) in conspiracy with other accused without ensuring proper due diligence facilitated the borrower to fraudulently avail a fresh loan for closing the NPA Accounts of Siva Group companies to ensure not to enforce Corporate Guarantee of Ms. Siva Industries and Holdings Ltd (A-6) and Collateral



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Security of M/s. Sterling Agro Processing Pvt Ltd (A-8) which were under the custodial guarantee of the Bank and thereby caused wrongful loss to the IDBI Bank and corresponding wrongful gain to the accused borrowers.

48. *Shri V. Venkatakrishnan (A-22) was General Manager and Regional Head, Infrastructure Corporate Group, IDBI Bank Ltd, Hyderabad from 16.08.2011 to 15.05.2014. He in furtherance of the criminal conspiracy, has recommended and forwarded proposal for sanction of US\$ 83 Mn to M/s. Axcel Sunshine Ltd(A-1) for adjusting the outstanding in NPA accounts of Siva Group of Companies including M/s. WinWind Oy(A-7) during Feb 2014. He recommended the proposal vide Memorandum to Credit Committee-I dated 26.02.2014, Memorandum to Executive Committee dated 28.02.2014 and Memorandum to Executive Committee dated 25.03.2014, in violation of various RBI guidelines. Thus Shri V. Venkatakrishnan (A-22) in conspiracy with other accused without ensuring proper due diligence facilitated the borrower to fraudulently avail a fresh loan for closing the NPA Accounts of Siva Group companies to ensure not to enforce Corporate Guarantee of M/s Siva Industries and Holdings Ltd(A-6) and Collateral Security of M/s. Sterling Agro Processing Pvt Ltd(A-8) which were under the custodial guarantee of the Bank and thereby caused wrongful loss to the IDBI Bank and corresponding wrongful gain to the accused borrowers.*

49. *Shri Subroto Gupta (A-23) was Chief General Manager, Infrastructure Corporate Group, IDBI Bank, Mumbai from August 2011 to August 2016 He was one of*



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the IDBI officials with whom the management of Siva Group was in regular touch through emails in hatching the conspiracy. He was a signatory to the Note dated 22.02.2014 for NPA resolution of M/s. WinWind Oy (A-7) involving extension of a secured overdraft / Medium Term Loan to M/s Axcel Sunshine Ltd (A-1), with proceeds to be utilized for settling the NPA accounts and over dues of Siva group companies including M/s. WinWind Oy (A-7). Thus facilitated the borrower to fraudulently avail a fresh loan for closing the NPA Account of M/s. WinWind Oy (A-7) to ensure not to enforce its Corporate Guarantee of M/s. Siva Industries and Holdings Ltd (A-6), which was under custodial guarantee of the Bank

49.1. Conspiracy with other accused, A-23 has recommended the Memorandum to Credit Committee-I dated 26.02.2014 for sanction of Secured Overdraft Facility/Medium Term Loan of US\$ 83 Mn, in the Memorandum to Executive Committee dated 28.02.2014 for sanction of Secured Overdraft Facility/Medium Term Loan, in the Memorandum to Executive Committee dated 25.03.2014 for sanction of Secured Overdraft Facility/Medium Term Loan of US\$ 83 Mn and approval of Modifications in terms and conditions of sanction, in the Memorandum to Executive Committee dated 25.03.2014, in violation of various RBI guidelines which were put up to Credit Committee-I and Executive Committee for sanction of USS 83 Mn to M/s.Axcel Sunshine Ltd(A-6) during February/March 2014 Thus, facilitated the borrower to fraudulently avail a fresh loan for closing the NPA Account of M/s. WinWind Oy (A-7) to ensure not to enforce its



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Corporate Guarantee of M/s. Siva Industries and Holdings Ltd (A-6). Thus Subroto Gupta (A-23) in conspiracy with other accused without ensuring proper due diligence facilitated the borrower to fraudulently avail a fresh loan for closing the NPA Accounts of Siva Group companies to ensure not to enforce Corporate Guarantee of M/s Siva Industries and Holdings Ltd (A-6) and Collateral Security of M/s. Sterling Agro Processing Pvt Ltd (A-8) which were under the custodial guarantee of the Bank and thereby caused wrongful loss to the IDBI Bank and corresponding wrongful gain to the accused borrowers.

50. Shri Viney Kumar (A-24) was working as Executive Director. Infrastructure Corporate Group, IDBI Bank Ltd, Mumbai from September 2013 to March 2014 and retired in June 2016 in the same capacity. He was one of the IDBI officials with whom the management of Siva Group was in regular touch through emails in hatching the conspiracy. He, in furtherance of the criminal conspiracy, he has signed and forwarded the proposal dated 22.02.2014 for NPA resolution of M/s WinWind Oy (A-7). involving extension of a secured Overdraft/Medium Term Loan to Mis Axcel Sunshine Ltd (A-1) with proceeds to be utilized for settling the NPA accounts and other over dues accounts of Siva Group companies

51. That he was also a member of the Credit Committee-I held on 26 02 2014 with regards to proposal for sanction of secured Overdraft Facility /Medium Term Loan of US\$ 83 Mn to M/s. Axcel Sunshine Ltd (A-1) put up to Executive Committee held on 28.02.2014. He was an



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invitee in the board meetings of IDBI Bank Ltd held on 28.02.2014 and 25.03.2014, which has approved the sanction of Secured Overdraft/Medium Term Loan of US\$ 83 Mn made to M/s. Axcel Sunshine Ltd (A-1) and further sanction for approval of modifications in terms and conditions of sanctioned loan, in violation of RBI guidelines. He was also a member of Executive Directors Rating Committee (EDRC) which reviewed the risk rating assigned to M/s. Axcel Sunshine: Ltd (A-1) by Rating Committee-I and given the Investment to fraudulently avail a fresh loan for closing the NPA Account of M/s WinWind Oy(A-7) to ensure not to enforce its Corporate Guarantee of M/s Siva Industries and Holdings Ltd (A-6) which was under custodial guarantee of the Bank Thus Shri Viney Kumar (A-24) in conspiracy with other accused without ensuring proper due diligence facilitated the borrower to fraudulently avail a fresh loan for closing the NPA Accounts of Siva Group companies to ensure not to enforce Corporate Guarantee of M/s. Siva Industries and Holdings Ltd (A-6) and Collateral Security of M/s. Sterling Agro Processing Pvt Ltd (A-8) which were under the custodial guarantee of the Bank and thereby caused wrongful loss to the IDBI Bank and corresponding wrongful gain to the accused borrowers.

52. Shri B. Ravindranath (A-25) was working as Executive Director, Infrastructure Corporate Group, Mumbai from April 2014 to April 2015. He was Chairman of Executive Directors Rating Committee (EDRC), heading Risk Department, IDBI; Head Office, Mumbai from 2014 to 2015 and retired on 30.04.2015 as Executive Director. He was also heading Rating Committee-I held on 25.02.2014 as



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Chairman and also he was heading EDRC held on 26.02.2014 as Chairman for reviewing rating in the matter of credit ratings given to M/s. Axcel Sunshine Ltd. (A-1). When the Credit Rating of below investment grade (LCBB (3.94) (FR-2.CR-6)) was assigned to M/s Axcel Sunshine Ltd (A-1) in Rating Committee-I held on 25.02.2014, Dealing Group sought a review of rating by the EDRC as it has already been decided to sanction a fresh loan to Ms. Axcel Sunshine Ltd (A-1) at any cost. The EDRC meeting held on 26.02.2014 reviewed the rating assigned to M/s. Axcel Sunshine Ltd (A-1) by Rating Committee-I. The EDRC assuming that the security could improve the facility rating to FR 1, given directions and based on the directions the rating report with Company Rating BB (3.94), Facility Rating (FR1) and Combined Rating (CR 5) was upgraded to Investible Grade. However, sanction itself on the primary security of unlisted shares is in utter violation of the RBI Master Circular which envisages that no loan shall be sanctioned on the 'Primary Security' of shares.

53. That, further, he had presented and forwarded the Memorandum to Executive Committee of the Board of IDBI Bank Ltd on 25.11.2014 for (i) for granting time up to April 1, 2015, for creation of collateral security of Sterling Agro Product Processing Private Limited (ii) Granting 180 days lime for creation of additional pledge of shares of TTSL from the date of proposed disbursement, so as to make good of the security short fall and (iii) Release of 2 disbursement of Medium Term loan of USS 1.55 Mn.. to service the interest due on 01.10.2014 in order to avoid the account becoming NPA. Thus, Shri B. Ravindranath (A-25)



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in conspiracy with other accused without ensuring proper due diligence facilitated the borrower to fraudulently avail a fresh loan for closing the NPA Accounts of Siva Group companies to ensure not to enforce Corporate Guarantee of M/s. Siva Industries and Holdings Ltd (A-6) and Collateral Security of M/s. Sterling Agro Processing Pvt Ltd (A-8) which were under the custodial guarantee of the Bank and thereby caused wrongful loss to the IDBI Bank and corresponding wrongful gain to the accused borrowers.

54. *Shri Rajkumar Bansal (A-26) was an Executive Director in IDBI Bank Ltd, Mumbai and retired on 15.03.2017 in the same capacity, He was a member of Credit Committee-I held on 26.02.2014 which recommended to Executive Committee for sanction of Secured Overdraft Facility/Medium Term Loan of US\$ 83 Mn for which it was otherwise not eligible in all aspects viz. proposed security and purpose of the loan etc. He was also the member of Executive Directors Rating Committee (EDRC) which has given Investible Grade to M/s. Axcel Sunshine Ltd (A-1) Thus Rajkumar Bansal (A-26) in conspiracy with other accused without ensuring proper due diligence facilitated the borrower to fraudulently avail a fresh loan for closing the NPA Accounts of Siva Group companies to ensure not to enforce Corporate Guarantee of M/s. Siva Industries and Holdings Ltd (A-6) and Collateral Security of M/s. Sterling Agro Processing Pvt Ltd (A-8) which were under the custodial guarantee of the Bank and thereby caused wrongful loss to the IDBI Bank and corresponding wrongful gain to the accused borrowers.*



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55. *Shri Srinivasan Kothandaraman Vaidyanathan Srinivasan (A-27). was an Executive Director in IDBI Bank Ltd and retired on 31.07.2016 in the same capacity. He was also a member of Credit Committee-I held on 26.02.2014 which recommended to Executive Committee for sanction of Secured Overdraft Facility/Medium Term Loan of US\$ 83 Mn for which it was otherwise not eligibli in all aspects viz. proposed security and purpose of the loan etc. He was also the member of Executive Directors Rating Committee (EDRC) which has given Investible Grade to M/s. Axcel Sunshine Ltd (A-1) and thus facilitated to avail the loan for closing the NPA Account of M/s. WinWind Oy (A-7) to ensure not to enforce its Corporate Guarantee of M/s. Siva Industries and Holdings Ltd (A-6) which was under custodial guarantee of the Bank. Thus Shri Srinivasan Kothandaraman Vaidyanathan Srinivasan (A-27) in conspiracy with other accused without ensuring proper due diligence facilitated the borrower to fraudulently avail a fresh loan for closing the NPA Accounts of Siva Group companies to ensure not to enforce Corporate Guarantee of M/s. Siva Industries and Holdings Ltd (A-6) and Collateral Security of M/s. Sterling Agro Processing Pvt Ltd (A-8) which were under the custodial guarantee of the Bank and thereby caused wrongful loss to the IDBI Bank and corresponding wrongful gain to the accused borrowers.*

The IDBI Bank Ltd in its 11 Credit Committee-I meeting held on 06.06.2013 gave in-principle approval for issuance of in-principle support letter for restructuring under REA Finland. The Finnish Court declared M/s. Winwind Oy (A-7) bankrupt on 03.10.2013. IDBI Bank,



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Dubai issued recall notice on 31.10.2013 for the sanctioned financial assistance to M/s. Winwind Oy (A-7). Further, on 17.11.2013 DIFC, Dubai invoked the Corporate Guarantee of M/s. Siva Industries and Holdings Ltd(A-6). On 07/02/2014, IDBI Bank filed Claim Suit against M/s. Winwind Oy at High Court of London. Subsequently, on 26.03.2014, the entire outstanding amount of US\$ 65 million in the account of M/s. Winwind Oy (A-7) was remitted by M/s. Siva Industries and Holdings Ltd (A-6) from the funds disbursed through loan sanctioned to M/s. Axcel Sunshine Ltd (A-1) and the account was closed. Thereafter, Shri V. Srinivasan (A-14).. CEO, Siva Group requested Shri M. S. Raghavan(A-15), CMD of IDBI Bank vide his letter dated 01.04.2014 to withdraw the suit filed by it before the High Court of London. Accordingly, IOBI filed withdrawal petition in January/February 2015. The consent for withdrawal order by High Court of Queen's bench dated 03/02/2015 was received.

33. No doubt, some of the petitioners are experts in finance and banking. That is the reason why they have been nominated by the Central Government as Directors of IDBI which is substantially held by the Central Government and its undertaking. The competent authority had declined to accord sanction to prosecute under the Prevention of Corruption Act, primarily for the reason that there is no evidence of abuse of position to obtain pecuniary advantage. At the same time, the Competent Authorities



have not given a clean chit to these officials. On various places dereliction been noted and the said dereliction has resulted in pecuniary gain to the Siva Group of Company which has floated several shell Companies to accommodate transfer of funds. Particularly, in the forensic audit report conducted by Sadurvedic and Co., it is observed that there do not appear to be any offence of misappropriation of fund by any individual, any criminal intention of negligence or cheating or forgery on the part of the officers of the bank. Also the report of the Staff accountability Committee which has examined the various role of the officers had held that the accounts of M/s WWO and M/s ASL from the stage of sanction till the account turned NPA does not reveal any misappropriation of fund by any individual. However, the procedural lapse were observed in the internal investigation report and the same has been conveyed to RBI.

34. Therefore, the decision to deny sanction to prosecute the petitioners under the provision of PC Act on being prima facie satisfied that there was no misappropriation or criminal intention of cheating or forgery. Whereas, it is contended by the learned Special Public Prosecutor for CBI Cases that the denial of sanction to prosecute under PC Act cannot automatically extend the protection from prosecuting them for offence under



IPC. The reason for denial to grant sanction under PC Act will not apply to the offence committed under IPC Act. As far as these petitioners are concerned, from the inception till the end at every stage their intention to cover up the loan sanction to M/s WWO which became bankruptcy be seen. The said intention *per se* is not bonafide but an act of malafide intention to delay the exposure of their improper handling of loan advanced to Siva Group of Companies. The RBI had sought clarification regarding irregularities over M/s WWO and M/s ASL account. It is contended that the bank has replied and RBI has not reacted to their reply therefore, it is to be presumed that their explanation has been accepted.

35. The fact that for the foreign company the loan been sanctioned initially showing the corporate security available in India. Later converted it into a letter of comfort, which is unknown to Indian Banking practice and same not akin to guarantee. The observation of the forensic auditor regarding irregularities in compliance of the RBI guidelines cannot be whittled down by the petitioners by contending that the loan sanction has come back to the bank and Rs.5.5 lakhs of M/s Tata Tele Service Limited shares pledged as security is now transferred to the bank which would worth approximately Rs.5.50 crores.



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36. On behalf of the petitioners lengthy argument by the learned Counsels and voluminous documents placed to justify sanctioning loan to the tune of Rs.600 crores to M/s ASL to recover the loan outstanding of Rs.391 crores at the cost of discharging the corporate guarantee worth Rs.5462 crores replaced by Rs.5.50 lakhs of M/s Tata Tele Service shares, an unlisted company. In the commercial wisdom of these experts in banking 83 million USD dollars sanctioned to M/s ASL Company for non-productive purpose under the garb of restructuring the loan outstanding of about 390 crores from M/s.WWO and Siva Groups of Company is a prudent action. But, even a common man with less prudence would have proceeded against the Corporate Security for the recovery of outstanding of Rs.391 crores instead of advancing further two hundred crores of rupees to a company which had no prospect of commercial survival. Instead of advancing loan of 83 million dollar to M/s.ASL for non-productive purpose had IDBI kept quite, that would have saved IDBI atleast two hundred crores of rupees. By spending good money over a bad debt except getting Rs.5.5 crores shares in TTSL transferred in the name of IDBI which is subject to realising its value by liquidating it, nothing worthy available to recover the debt. Now exceeding Rs.600 crores.



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37. Knowing well that Siva Group of Company is not performing well and financially unsatisfactory, as evergreen process, loan for non-productive purpose was granted violating banking guidelines. It cannot be believed that all these decisions were taken innocently in the process of NPA management or without knowledge. Further, the CBI is still in pursuit of investigating the trail of money borrowed by M/s WWO and M/s ASL.

38. Sanction to prosecute under P.C Act declined on being satisfied that there is no material to show misappropriation or cheating. They are all exonerated in the departmental enquiry by the officials. These factors by itself cannot be a reason to quash the criminal complaint which is not on the same set of facts but overlapping of facts. In addition to the material which was considered by the department during investigation and staff accountability committee, sanctioning of loan to M/s.WWO as well as M/s.Axcel Sunshine Ltd without even taking note of its financial background indicates something more than error of judgment. It is for the trial Court to look into the material placed and frame appropriate charges against these petitioners. The fact that, the Counsels for the petitioners emphasis to consider the records in-depth and to arrive at conclusion summarily itself an



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indication that a judicial scrutiny requires regarding these documents. Under Section 482 of Cr.P.C the credibility of the documents cannot be decided summarily in a criminal case.

39. The only point which needs consideration is whether the denial of sanction by the Government as well as by the Bank for prosecuting these petitioners under P.C Act will extend the protection to the petitioners for I.P.C offence also.

40. In this regard, it is profitable to refer the decision of Hon'ble Supreme Court in ***Prof.N.K.Ganguly -vs- CBI, New Delhi*** reported in **(2016) 2 SCC 143**. In this case also the Competent Authority declined sanction to prosecute some of the accused under P.C Act. However, prosecution was launched for conspiracy under Section 120-B of I.P.C and other offences, without obtaining sanction under Section 197 of Cr.P.C. The Hon'ble Supreme Court has clarified when sanction under Section 197 of Cr.P.C is required for prosecuting a Public Servant removable by the Government. The rival contention and the conclusion of the Apex Court is extracted below:-



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“14.....The learned Senior Counsel appearing on behalf of some of the appellants that no prior sanction was obtained from the Central Government, which was mandatorily required under Section 197 CrPC as the appellants were employed as public servants at the time of commission of the alleged offences. It is contended by them that the transfer of the plot in question occurred when the appellants were holding public office and the alleged offences were committed by them, if at all, in discharge of their official duty. Thus, the learned Special Judge erred in taking cognizance of the offences alleged against the appellants without prior sanction of the Central Government having been obtained by the respondent. The learned Senior Counsel further contended that the learned Special Judge should not have taken cognizance in the absence of prior sanction obtained from the Central Government, especially in light of the fact that taking cognizance of the alleged offences and setting the wheel of the criminal justice system in motion is a matter which could affect the fundamental rights guaranteed to the appellants under Articles 14, 19 and 21 of the Constitution of India.

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“18. In sum, the sine qua non for the applicability of this section is that the offence charged, be it one of commission or omission, must be one which has been committed by the public servant either in his official capacity or under colour of the office held by him.”



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30. The learned Senior Counsel further placed reliance on the decision of a Constitution Bench of this Court in R.S. Nayak v. A.R. Antulay [R.S. Nayak v. A.R. Antulay, (1984) 2 SCC 183 : 1984 SCC (Cri) 172] , wherein certain observations were made with regard to Section 6 of the PC Act, 1988, as under:

“23. ... Therefore, it unquestionably follows that the sanction to prosecute can be given by an authority competent to remove the public servant from the office which he has misused or abused because that authority alone would be able to know whether there has been a misuse or abuse of the office by the public servant and not some rank outsider. By a catena of decisions, it has been held that the authority entitled to grant sanction must apply its mind to the facts of the case, evidence collected and other incidental facts before according sanction. A grant of sanction is not an idle formality but a solemn and sacrosanct act which removes the umbrella of protection of government servants against frivolous prosecutions and the aforesaid requirements must therefore, be strictly complied with before any prosecution could be launched against public servants. ... The legislature advisedly conferred power on the authority competent to remove the public servant from the office to grant sanction for the obvious reason that that authority alone would be able, when facts and evidence are placed before him to judge whether a serious offence is committed or the prosecution is either frivolous or speculative. That authority alone would be competent to judge whether on the facts alleged, there has been an abuse or misuse of office held by the public servant.



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That authority would be in a position to know what was the power conferred on the office which the public servant holds, how that power could be abused for corrupt motive and whether prima facie it has been so done. That competent authority alone would know the nature and functions discharged by the public servant holding the office and whether the same has been abused or misused. It is the vertical hierarchy between the authority competent to remove the public servant from that office and the nature of the office held by the public servant against whom sanction is sought which would indicate a hierarchy and which would therefore, permit inference of knowledge about the functions and duties of the office and its misuse or abuse by the public servant. That is why the legislature clearly provided that that authority alone would be competent to grant sanction which is entitled to remove the public servant against whom sanction is sought from the office.”

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35. *From a perusal of the case law referred to supra, it becomes clear that for the purpose of obtaining previous sanction from the appropriate Government under Section 197 CrPC, it is imperative that the alleged offence is committed in discharge of official duty by the accused. It is also important for the Court to examine the allegations contained in the final report against the appellants, to decide whether previous sanction is required to be obtained by the respondent from the appropriate Government before taking cognizance of the alleged offence by the learned Special Judge against the accused. In the instant case, since*



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the allegations made against the appellants in the final report filed by the respondent that the alleged offences were committed by them in discharge of their official duty, therefore, it was essential for the learned Special Judge to correctly decide as to whether the previous sanction from the Central Government under Section 197 CrPC was required to be taken by the respondent, before taking cognizance and passing an order issuing summons to the appellants for their presence.”

41. This Court finds that, the I.P.C offence alleged against these petitioners for which final report filed is not in the course of discharging the official duty. Having initiated proceedings for recovery of loan sanctioned to M/s.WWO there was no necessity for the petitioners to withdraw the proceedings and extend loan to the new Company (M/s.Axcel Sunshine Ltd) to repay the debt of the defaulted Company namely M/s.WWO. This is not the process of recovery or restructuring which the petitioners have empowered and authorised to do. On illusion and self assumed power contrary to statute and guidelines loan to a magnitude of Rs.600 crores given to the Foreign Company which had no sign of Commercial productive activity.

42. IDBI Bank is a Private Banking Institution in which Government of India and LIC have major shares. Refusal to grant sanction by Competent



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Authority for prosecution under P.C Act certainly cannot be an umbrella for I.P.C offence also. The sanction of loan to a Company registered in Foreign to repay the loans of other Companies defaulted in India and Abroad does not sound prudent by any stretch of imagination, more so when the said loan remain unpaid. Without any compunction after causing several hundred crores of rupees loss to IDBI, these petitioners claim that the loan granted to M/s.ASL was cash neutral and the IDBI Bank had not incurred any loss, even though they have advanced Rs.600 crores to recover due of Rs.391 crores.

43. For the above said reasons, these ***Criminal Original Petitions are dismissed.*** Consequently, connected Miscellaneous Petitions are closed.

08.09.2023

Index : Yes.

Speaking order/non speaking order

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To,

1.Additional Chief Metropolitan Court, Egmore, Chennai.

2.The Superintendent of Police, CBI/BSFB/Bangalore.

3.Shri Praveen Sinha, Additional Secretary,

Central Vigilance Commission,

Satarkta Bhavan, GPO Complex,

Block-A, New Delhi 110023.

4.The Special Public Prosecutor for CBI Cases,

High Court, Madras.



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DR.G.JAYACHANDRAN,J.

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Pre-delivery Common Order made in
Crl.O.P.Nos.6249, 6254, 8540, 8581 & 9344 of 2023

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