



Crl.O.P.No.20121 of 2023

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Reserved on	:	13.09.2023
Pronounced on	:	27.09.2023

G. CHANDRASEKHARAN, J.

This Criminal Original Petition is filed to enlarge the petitioner on bail in F.No.3/61/2018/CL-II(SR) on the file of the respondent.

2. The gist of the complaint in Spl.C.C.No.01 of 2023 pending on the file of the Vth Additional City Civil Court, Chennai is as follows,

(i) Ministry of Corporate Affairs, GOI, vide order No.F.No.3/61/2018/CL-II dated 28.03.2019, ordered an investigation into the affairs of Surana Industries Limited and 14 other companies by Serious Fraud Investigation Office. Surana Group of Companies consists of three flagship companies namely,

- (a) Surana Industries Limited (SIL)
- (b) Surana Corporation Limited (SCL)
- (c) Surana Power Limited (SPL).

3. These companies have made bank borrowings and have been declared as Non-Performing Assets (NPA) and are presently under liquidation proceedings under Insolvency and Bankruptcy Code, 2016. Under IBC, the liquidator had adjudicated the dues of the SIL, SCL and SPL to a total liability of Rs.10,238 crores. SIL's business was to manufacture and trade in steel items such as TMT Bars, Mild Steel Scrap (MS Scrap) and Structural Steel items. The manufacturing units for TMT Bars



was located in Gummuniipondi Chennai, Integrated Steel Plant was set up at Raichur, Karnataka and a small TMT rolling facility was functioning in Madhavaram, Chennai. SIL had borrowed funds from banks for expansion of the Integrated Steel Plant, which was not implemented.

(ii) SCL was engaged in the business of wholesale and retail trade of gold and silver.

(iii) SPL was operating a 35 MW Thermal Power Plant at Raichur, Karnataka. It was also in the process of setting up 2x210 MW Thermal Power Plants at Raichur, Karnataka and that project was not implemented, despite borrowing Rs.1596.33 crores from banks and financial institutions.

(iv) Surana Group of Companies was controlled and operated by Gauthamraj Surana, Shanthilal Surana, Vijayraj Surana and Dineschand Surana. SIL, SCL and SPL borrowed money from various banks and financial institutions between 31.03.2007 to 31.03.2017 from Rs.336.05 crores to 5549.30 crores.

(v) Investigation revealed various counts of siphoning of funds, diversion of funds and creation of assests utilizing siphoned out funds. Surana Brothers had floated various shell or puppet companies, partnership and proprietorship by making employees its director, partners or proprietors for the purpose of money laundering. The total amount involved in this fraud is Rs.9,593 crores (10238-645 crores).



Therefore, this complaint.

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4. It is the submission of the learned counsel for the petitioner that, petitioner was arrested by Serious Fraud Investigation Office (SFIO) on 02.08.2022 in this case, since then he is in judicial custody.

4.1. SFIO has completed its investigation and filed a private complaint, arraying 90 accused and 125 witnesses. The private complaint runs to 10,600 pages, there are over 1,00,000 pages of documents filed in support of the private complaint. The Special Court rejected the bail petition, filed by the petitioner on 02.12.2022. The case is pending in SPL.CC No.01 of 2023 for issuance of summons to the accused.

4.2. The allegations mainly pertain to the affairs of Surana Industries Limited ("SIL"), Surana Power Limited ("SPL") - wholly owned subsidiary of SIL and Surana Corporation Limited ("SCL"). Both SIL and SCL are public limited and listed companies. The sum and substance of the allegation is that, these entities have not utilized the funds borrowed from banks, for the purposes, it was borrowed and in fact, have siphoned off the bank funds through shell companies.

4.3. SCL was incorporated on 10.05.1991 by the Surana Brothers, having equal shareholding in the capacity of co-promoters and co-founders. The shares were



equally held by Surana Brothers, approximately 12.5% each. At no point of time, since the incorporation of SCL, Mr. Dineshchand Surana was involved in the day-to-day affairs of SCL. Neither did he take any decision, nor did he give any instruction to anyone in SCL to manage the affairs of SCL. SCL always carried out its business, independently and without his involvement. Petitioner always remained as a shareholder of SCL, without getting involved in the affairs of SCL, at all points of time. There is no evidence to show that, he is involved either directly or indirectly in managing the affairs of the SCL and on the total borrowing of SCL at Rs. 1188 Crores.

4.4 SIL was incorporated by Mr. Gautamraj Surana, Mr. Shantilal Surana, Mr. Vijayraj Surana and Mr. Dineshchand Surana (DCS) as promoters. The company's affairs, till the time it went into liquidation, were managed by Mr. Gautamraj Surana and Mr. Dineshchand Surana. Dineshchand Surana was the Managing Director of SIL and his elder brother, Mr. Gautamraj Surana was the Executive Chairman. It is a Public Limited and a Listed Company, engaged in the business of manufacturing plain carbon steel and specialized in steel products namely TMT bars, CR Bars, Alloy Steel Rounds, Structural steels, Billets and Ingots and trading of Iron and Steel products.

4.5. During the year 2004-05, SIL intended to go for value-added products and



also backward integrated steel plant and therefore, planned to set up an Integrated Steel Complex at Raichur, Karnataka. The project was to be completed at the cost of Rs. 650 Crores.

4.6. When the project was on, during the year 2011, iron ore mine was banned by the Hon'ble Supreme Court of India in Karnataka. There was a huge shortage in the supply of raw materials. It drastically affected the performance of the Plant. At that point of time, already mined out Iron Ore Fines were abundantly available for a much cheaper price, which could be used as raw material, if it is converted into iron pellets through the process of Beneficiation and Pelletisation. SIL decided to establish a 1.3 Million Tonnes Per Annum (MTPA) Beneficiation Plant and 1.2 MTPA Pelletisation Plant at Raichur, Karnataka ("P&B Plant"- Phase-II).

4.7. In November 2011, an independent valuation (feasibility of the said plant with cost) of the P&B project, Phase-II was carried out by M/s. Mott Mac Donald, on the advice of State Bank of India and an appraisal report was submitted with a positive recommendation. The said appraisal report of M/s. Mott Mac Donald was submitted to M/s.SBI Capital Market Pvt Ltd., who in turn submitted the Information Memorandum to SBI.

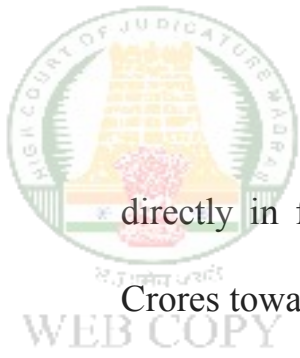
4.8. In April 2012, EPC contract was executed with M/s.Vinayaga Infra



Limited (VIL). In June 2012, SBI had appointed M/s. MECON Limited for carrying out an independent analysis on the report submitted by M/s. Mott Mac Donald and it submitted the report to SBI for the P&B Project. After being satisfied with the report, sanctions were received from the five lender's banks, SBI being the lead banker, for the P&B Project for a sum of Rs.750 Crores as against the required amount of Rs.702 Crores for the Project. Rs.702 Crores has to be funded by the lenders and remaining Rs.551 Crores was to be invested by SIL, by way of equity. The total cost of the Project was envisaged at Rs.1,253 Crores.

4.9. On 09.11.2012, in a Joint Lenders meeting, the banks had discussed and finalized the appointment of M/s. Tata Consulting Engineers Limited (TCE), Kolkata as the Lenders Independent Engineers (LIE). The entire funds released by the Banks were released directly in favour of the EPC contractors, after thorough verification, physical inspection and certification by the LIE, TCE. TCE had also submitted its report to SBI, confirming the cost of the project proposed and compliance of all statutory mandates and approving the technology for the P&B Plant. It confirmed that, the project was technically and financially feasible.

4.10. In April 2013, SBI backed out from P&B Project, due to gloomy industrial outlook. Due to this, other banks also backed out and the project came to a standstill. The Banks had released funds approximately to the tune of Rs.184 crores,



directly in favour of the EPC contractors. The promoters also pumped in Rs.280 Crores towards their equity contribution.

4.11. In December 2013, a Forensic Audit was conducted at the instance of the consortium of banks by M/s. T.R.Chadda & Co on the affairs of SIL, for the period from April 2012 to September 2013. It included operations of Phase-I and Phase-II of the Project. The said report did not note any fraud being committed while managing the affairs of SIL.

4.12. In February 2014, Company went into Corporate Debt Restructuring and LOA was issued by CDR-EG. After considering the forensic audit report of T.R. Chadda, Master Restructuring Agreement (MRA) was signed. Abandonment of the P&B project was discussed, deliberated and recorded in the Joint Lenders Meeting (LM) in June 2015.

4.13. In August 2015, Lenders deliberated amongst themselves and decided to consider Strategic Debt Restructuring (SDR) mechanism. The company agreed for the same, even when it required for its promoters to give up their equity.

4.14. On 31.03.2016, IDBI declared SIL's account as NPA, but with effect



from 31.12.2013. The total funds received by SIL for the P&B plant was only Rs.184.77 Cr as against a sanction of Rs.750 Cr. The promoters brought in Rs.280 Cr as against the total equity requirement of Rs.551 Crores. Investment proposal submitted by M/s. TCP Limited was discussed in April 2016, and in January 2017, Joint Notice issued u/s. 13(2) of SARFAESI Act by the Lenders. Forensic & Investigative Audit Report of Chaturvedi and Co., for the period from October 2013 to December 2016, state that, they could not find any transaction, which could be termed as fraudulent transaction.

4.15. In May 2017, Raichur Plant, Gummidipoondi & Flat at Bangalore -Possession was taken by IDBI on behalf of consortium of banks.

4.16. In January 2018, SIL admitted to insolvency under Section 9 of IBC by National Company Law Tribunal (NCLT), Chennai. During the CIRP period, the liquidator had appointed M/s. Haribakhti & Co. LLP to carry out a transaction audit, for the period January 2016 to January 2018 to establish, if there is any element of fraud in terms of the RBI guidelines. The report concluded eliciting some unusual irregularities in the transactions of the company and stated that, a few instances mentioned therein, may be classified as fraud. Neither the banks nor the liquidator has either revived the project or sold the assets worth hundreds of crores till today.

SIL was a profit-making and dividend paying entity. SIL was providing employment



to more than 1000 people at the relevant point of time.

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4.17. On 28.03.2019, Central Government led by Ministry of Corporate Affairs ordered investigation. On 01.11.2019, complaint was given by IDBI Bank to CBI in relation to misappropriation and criminal breach of trust into the affairs of Surana Industries Limited. When the complaint states that, the amount of fraud or liability was around Rs.1,083 Crores, it was also mentioned that SIL's fixed assets were valued at Rs.1,038 Crores during November 2013. On 01.11.2019, based on the said complaint, the CBI had registered an FIR bearing no.CBI/BSFB/BLR/2019 under Sections 120B r/w 420, 467, 468 and 471 of Indian Penal Code and Sections 13 (2) r/w 13 (1)(d) of the Prevention of Corruption Act, 1988 against SIL and Ors. On 27.12.2019, ECIR in CEZO-1/05/2019 was registered by the Enforcement Directorate against Surana Industries Limited and Ors. The same was registered based on the FIR of CBI.

4.18. On 15.02.2022, NCLT appointed an IRP. Petitioner was arrested in this case on 02.08.2022 and after investigation, a private complaint was filed on 09.09.2022.

4.19. On 19.03.2008, SPL was incorporated in Raichur, Karnataka. It intended to establish a 2 x 210 MW coal based Thermal Power Plant at Raichur. It approached



M.N. Dastur & Co. and it submitted Detailed Progress Report.

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4.20. In February 2010- June 2010, on an independent appraisal of the plant by IDBI, the project cost was ascertained at Rs.2,400 Crores and the consortium had sanctioned the loan with a debt equity ratio of 75%: 25%. Thus, the total loan amount sanctioned by the consortium was Rs.1800 Crores and SPL was required to infuse a sum of Rs.600 Crores. 40% of the equity was to be brought upfront by the promoters. Entire project was monitored by the Consortium of Bankers through the Lenders Independent Engineer (M/s. Mott MacDonald Pvt Ltd), Management Committee, Board of Directors (with Nominee Director from IDBI) and Tata Consulting Engineers (Owner's Independent Engineer). The entire disbursement of the funds was done by the consortium of banks through a Trust and Retention Account (TRA) handled by IDBI directly in favour of the contractors. Expenditures were also released from the TRA, based on the certification of LIE and certificate by the CA of the borrower. In March 2010, Letter of Award (LOA) was issued to M/s. Bharat Heavy Electricals Ltd (BHEL) for BTG package and further contract was signed in July 2010 for Rs. 980.71 Crores.

4.21. In June 2010, IDBI appointed M/s. Mottmac Donald as Lender Independent Engineers (LIE). Only based on the certification of LIE, the funds were disbursed by the banks in favour of the contractors through the TRA Account.



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4.22. The main equipment (BTG) supplier was BHEL and the balance of plant (BOP) Packages, as well as offsite facilities were being executed by various reputed Indian Suppliers and Contractors. As it would be a difficult task for SPL to interact and effectively monitor 28 individual packages, it was judiciously decided by the Board of Directors and the Lenders to compartmentalise the 28 Packages under 6 groups and 6 Engineering Procurement and Construction (EPC) Agencies were identified for acting as nodal agencies or single point contacts for project monitoring, interface coordination, etc.

4.23. In November 2013, the lenders like L& T Infrastructure, PNB & LIC had suddenly withdrawn and there was a delay in disbursements of loan. It slowed down the project, resulting in increase in project cost to almost Rs.2900 crores initially and Rs.3090 crores later. IDBI has sanctioned both cost overruns. However, some of the lenders did not sanction the same. The sudden withdrawal resulted in the project being stalled with 58% of the physical progress. Till this period, the consortium of banks had released a sum of Rs.1495.76 Crores. Out of this amount, Rs.586 Crores was adjusted by the banks towards interest during construction and the promoters had infused equity of a sum of Rs.350 Crores.



4.24. On 23.12.2013, a Forensic Audit was conducted at the instance of IDBI Bank by M/s. T R Chadda & Co on the affairs of SPL for the period from April 2012 to September 2013. The said report did not note any fraud being committed, while managing the affairs of SPL. Banks had stopped releasing funds from June 2013. This ruled out the possibility of siphoning off.

4.25. In April 2013, Accounts of SPL with all the lenders were declared as NPA. On 14.08.2015, SARFAESI Notice was issued by IDBI and followed by other lenders. On 19.02.2018, Corporate Insolvency Resolution Process (CIRP) was ordered by National Company Law Tribunal.

4.26. On 12.12.2018, a forensic audit was conducted by IDBI through M/s. Kirtane & Pandit, who had submitted a biased report with incomplete information, without even considering the earlier Forensic Audit Report issued by M/s. T.R. Chaddha and the valuation reports. On 28.01.2019, SPL was ordered for Liquidation by NCLT. Till today, neither the company has been revived nor the assets have been liquidated, despite the fact that, the project got stalled in the year 2013 itself. Based on the forensic report of M/s. Kirtane & Pandit, the liquidator had filed an application bearing no. M.A. 244 of 2019 in CP/646/IB/2017 under Section 66 of the Insolvency



and Bankruptcy Code, 2016 before the National Company Law Tribunal, Chennai.

On 03.09.2020, IDBI Bank gave a complaint to CBI in relation to misappropriation and criminal breach of trust into the affairs of Surana Power Limited based on the forensic audit report of Kirtane & Pandit,. When the alleged fraud or liability was around Rs.1,495.76 Crores, SPL's fixed assets were valued at Rs.1,805 Crores. Based on the said complaint, on 08.09.2020 the CBI had registered an FIR bearing no. CBI/BSFB/BLR/2019 under Sections 120B r/w 420, 467, 468 and 471 of Indian Penal Code and Sections 13 (2) r/w 13 (1)(d) of the Prevention of Corruption Act, 1988 against SPL and Ors. On 27.12.2019. ECIR registered CEZO-1/37/2020 by the Enforcement Directorate against Surana Power Limited and Ors. The same was registered based on the FIR of CBI. NCLT appointed an IRP in an application filed under Section 95 of the IBC. NCLT passed an order on 27.06.2022 that there is no instance of any fraudulent activity or siphoning of funds in SPL.

4.27. From the date of NPA till today assets of SPL have not been sold. Assets of SIL have been sold partly for an amount of Rs.150 Crores. Even when shares of SIL went up to Rs.500 per share, not a single share has been sold by petitioner.

4.29. There is no nexus to show the routing of money from SIL to petitioner account illegally. This money is shown in petitioner's IT returns. Purchase of windmills was through SARFAESI proceedings. Provision is legally allowed, but this



word is omitted in counter.

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4.29.The co-accused, Mr. K.E. Devarajan has been granted bail by a co-ordinate bench of this Court in Crl. O.P No. 22595 of 2022 on 11.10.2022.

4.30.The projects had to fail, for the reason that, the Banks had abruptly withdrawn from the project and stopped advancing funds, as per their commitment. There was a shortfall of raw material and various other circumstances beyond the control of the company led to non-completion of the project and failure in the business. There is no evidence to show that, accused in this case, especially the petitioner had diverted the Bank loans obtained, for their own personal use and siphoned off the funds. Failure in business, ipso facto, does not amount to fraud or cheating. This case is pending at the stage of service of summons. It would take years for the case to get disposed, considering the voluminous complaint and voluminous documents filed in this case. Petitioner is already in jail for more than a year and he cannot be made to undergo pre-trial detention unnecessarily. Unless he is released on bail and permitted to instruct his counsel to conduct the case, he would be seriously pre-judiced. Though there are twin conditions to be satisfied under Section 212(6) of Indian Companies Act, 2013 for the grant of bail, the satisfaction, Court has to reach for forming reasonable belief that, petitioner has not committed the offence and he will not commit the offence while he is on bail, is only on the basis of prima-facie



evidence available. At this stage of considering the bail, it is not necessary to conduct a roving enquiry. The statement of the witnesses cannot be relied on at this stage to deny bail to the petitioner.

5. Learned Special Public Prosecutor appearing for the respondent strongly opposed this petition on the ground that, Ministry of Corporate Affairs in order dated 28.03.2019, ordered to investigate affairs of Surana Industries Limited & 14 Others. SIL, SCL and SPL borrowed loans from the Banks and later, liquidator had adjudicated the dues of the SIL, SCL and SPL and admitted a total liability of Rs.10,238 Crores. The available assets under these companies has been valued under IBC between Rs.215 Crores to Rs. 645 Crores. This is only 2 to 6% of the assets available against the liabilities of Surana Group of Companies.

5.1. SIL's business was trade & manufacture of steel (TMT Bars), SCL's business was wholesale trade in gold bullion and retail trade in gold and silver item, SPL was operating a 35 MW Thermal Power Plant at Raichur, Karnataka and was also in the process of setting up 2x210 MW Thermal Power Plants. The Management of SIL, SCL & SPL had made various false representations pertaining to Revenue generation, share capital contribution and profitability of Surana GOC. Based on their representations, public sector banks have lent monies to these companies and the total adjudicated financial liability of the three companies is Rs. 10,238 Cr. Out of



which, dues to financial creditors is Rs.8006 Cr. The total fraud amount involved is over Rs.9500 Crores.

5.2. SFIO submitted its investigation report dated 18.08.2022 to Central Government and sanction for prosecution was issued on 08.09.2022. The Criminal Complaint has been filed before this Court on 09.09.2022. The petitioner is the 4th Accused and he is guilty of offences punishable under Section 447 of the Companies Act, 2013. The petitioner was arrested and remanded to judicial custody on 02.08.2022.

5.3. Petitioner operated a list of Puppets Entities, using his employees and had inflated the revenue of SIL by conducting paper trade. The financial statement was falsified by material omission of this critical disclosure and by showing trading revenue as manufacturing revenue. Petitioner had also overseen the profit manipulation of SIL for Rs 121 Cr during the FY 2012-13 and false capitalization of this profit in FY 2013-14. Petitioner willfully failed to make disclosure of related party transactions with Puppets between FY 2013-14 to FY 2016-17. As a part of the Board of Directors (BOD) of SIL, petitioner approved the falsified financial statements. He approached the lending banks for Corporate Debt Restructuring (CDR) and lending banks had laid down a condition that, promoters ought to bring in capital for sanctioning CDR and further loans. With an ulterior motive to defraud



banks, petitioner siphoned off funds of SIL to an extent of Rs 33.3 Cr to Natural Coal Private Ltd on 04.04.2015. On the same day, this amount was transferred to his personal bank account and then transferred the funds to SIL bank accounts, thus, falsely showing share capital contribution into SIL.

5.4. SIL had applied for Corporate Debt Restructuring (CDR) on 27.08.2013. CDR was sanctioned on 20.03.2014 by IDBI. One of the pre-conditions for CDR was contribution of Share Capital from promoters to an extent of Rs.51.72 Cr between FY 2014 and 2015. Petitioner orchestrated siphoning off funds from SIL and SCL of Rs.34.97 Crores between the year 2006 to 2010. The funds were rotated using various intermediate puppet entities and were brought back into his personal bank accounts and then the funds were transmitted to SIL bank accounts as his own capital contribution into SIL. In the process, he had not only cheated the banks but also had increased his proportion of shareholding and other public shareholders and has illegally derived benefit in the form of dividend distributed by SIL. It is called round tripping. Petitioner orchestrated Rs 350 Crore fraudulent share capital infusion into SIL in FY 2012-13 by siphoning off funds of SIL and bringing the same back into SIL through various Puppet entities. As a part of the Board of Directors of SIL, petitioner made various false representations to banks that, promoters brought investment of Rs.185 Crores and VIL group of companies invested Rs.385 Crores as share capital. Relying on his assertion, the bankers were fraudulently induced to



approve CDR of SIL. The investigation revealed that, the share capital investment of Rs.185 Crores by SBs in 2010 and Rs.350 Crores by Puppets were both shams and share capital contributions have not flown into SIL, rather funds of SIL were rotated to give an impression of share capital contribution.

5.5. Petitioner as Managing director of SIL, siphoned out Rs 115.99 Cr from SIL to Radha Industries Private Limited (RIPL) and Radha Vyapar (India) Private Ltd (RVPL). Petitioner floated an entity called BELL Tower enterprises LLP and acquired windmills of SIL and SCL by proper utilising the bank borrowings of SIL and SCL. It is not allowed under SARFAESI Act. Petitioner in connivance with his son RDS had orchestrated removal of steel stock from the books of SIL by following various dubious accounting treatment. They had written off steel from the books of SIL to the extent of Rs 191.31 Cr between FY 2015-16 to 2017-18. Petitioner had stated that, the loss in value of steel goods were due to deterioration and rusting. However, the experts from CECRI stated that "No significant impact of corrosion was observed." The creation of separate Tally for Madhavaram and to artificially and falsely show trading material loss of Rs 77.44 Cr, resulted in siphoning of stocks of SIL in FY 2015-16. As a part of the Board of Directors of SIL, petitioner approved the falsified financial statements.

5.6. Petitioner was the managing director of SPL, since its incorporation as a



sub-contract of these works to TCE recommended contractors at much lower rates.

The difference of amount in the contract value between SPL and Puppet Companies and TCE recommended contractors was pumped back into Surana Group of Companies as kickbacks, thus, causing inflation using puppet companies to enable SPL to avoid bringing in equity from promoters to the project. This was carried out with the intent to defraud banks without bringing in any promoter contribution. As MD of SPL, he had written off Rs 86.24 Crores receivable from VIL and BKPL.

5.8. Petitioner was one of the promoters of SCL. He jointly managed the affairs of SCL with his brother VR. He is also shown, in financial statement, as KMP under note 36 of Related Parties Disclosure for FY 2015-16. Petitioner has influence over SCL. He orchestrated siphoning off gold stock available with SCL by creating and implementing fraudulent accounting practice of booking wastage without undertaking any manufacturing activity. There is overwhelming evidence against the petitioner in committing offences as alleged in Spl.C.C No.1/2023. The order of rejection by NCLT was primarily based on the quality of the audit report prepared by an audit firm and submitted by the Resolution Professional, who did not possess any power of enquiry or investigation. In contrast, the respondent had collected required material evidences against petitioner based on a detailed investigation conducted. Lending banks are not parties before NCLT.



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5.9. The respondent has established not only a prima-facie but a solid case against the petitioner that, he was actively involved in obtaining bank loans and then diverted it, siphoned off to meet his personal ends. Only certain instances of fraud are now projected in the objections, however, there are many other instances of fraud actively committed by the petitioner. As against the fraud amount of Rs.10,238 crores, the assests available is only Rs.215 crores to 645 crores, which is sufficient only to meet 2 to 6 % of the total liability of Surana Group of Companies. It is not necessary that one should form a part of the company or to hold any position in the company for prosecution under Section 447 of the Indian Companies Act, 2013. Any person can be prosecuted, if it is found that, he is involved in the commission of offence of fraud. Petitioner has not satisfied the twin conditions under Section 212(6) of the Indian Companies Act, 2013, to grant bail. Thus, he prays for dismissal of this petition.

6. Considered the rival submissions and perused the records.

6.1. From the consideration of the complaint allegations and the submissions of the learned counsel for the parties, the allegations against the Surana Group of Companies namely, SIL, SPL and SCL are that, these companies have borrowed from banks, not used the money for the purpose of borrowal, created the Shell Companies,



diverted the bank borrowings to the Shell Companies and siphoned off the funds. The total liability of these companies stands at Rs.10,238 crores, with no assets to meet the liability.

6.2. The response of the petitioner is that, petitioner has no role, whatsoever in the management and day to day administration of SCL. Though he is one of the Directors of other two companies. He, or other directors, for that matter anybody in these Companies, were not responsible for the classifying the loan as Non Performing Assets. The project initiated had not been successful for various reasons, which are beyond the control of the Companies and its directors. After being certified, by M/s. Tata Consulting Engineers Limited (TCE), a renowned company about viability of the project- technically and financially, consortium of banks had approved the projects and sanctioned the loan. However, against the approved sanction of loan, the bank had sanctioned only a part of the loan amount and then withdrew from giving the financial support. That was the main cause for failure of the projects initiated by these Companies. Other intervening factors like COVID-19, non-availability of raw-materials etc., further contributed to the failure of the project. It happens in every business. For the failure of the projects, due to circumstances, beyond the control of the companies and its directors, the company and its directors cannot be burdened as involved in fraudulent activities to cheat the public sector banks.



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6.3. In support of his submission, learned counsel for the petitioner brought to the notice of this Court certain aspects involving the proposed project, sanction of loan and classifying as NPA, giving criminal complaints, initiation of the proceedings by Enforcement Directorate etc.

6.4. Learned counsel for the petitioner mainly relied on the project assessment report submitted by M/s. Tata Consulting Engineers Limited (TCE) to State Bank of India with regard to 1.3 Million Tonnes Per Annum (MTPA) Beneficiation Plant and 1.2 MTPA Pelletisation Plant at Raichur, Karnataka by SIL. After thorough study, M/s. Tata Consulting Engineers Limited (TCE) concluded by saying that "In view of forgoings the proposed beneficiation plant and pellet plant are considered to be technically and financially viable". Prior to that, M/s. Mott Mac Donald submitted an Appraisal Report of this P&B project Phase-II with a positive recommendation. It was followed by SBI, appointing M/s. MECON Limited for carrying out an independent analysis on the report of by M/s. Mott Mac Donald. After being satisfied with the report, sanctions were received from five lender banks for a sum of Rs.750 crores. The fact that, M/s.Tata Consulting Engineers Limited (TCE) as a lender independent engineers, submitted a report to SBI confirming the cost of the project proposed and compliance of all statutory mandates and approving the technology for



the P&B Plant, stand testimony to the technical and financial viability of this project.

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6.5. After commencement of the project, SBI backed out of P&B project due to gloomy industrial outlook, followed by other banks taking the similar position, leading to the project to come to standstill. IDBI bank gave a complaint dated 01.11.2019 to the Superintendent and Head of Branch, Central Bureau of Investigation, Bangalore. However, it is submitted by the learned counsel for the petitioner, by referring to certain portions of this complaint that, the reason for classifying the account as NPA and subsequent recovering actions are that,

(i) Company started facing severe liquidity issues, since the beginning of the FY 2020, due to macro economic conditions, gloomy industrial outlook and sluggish demand from core sectors namely construction and infrastructure.

(ii) The company approached the lenders to consider the option of restructuring of its liabilities under CDR mechanism.

(iii) The restructuring package was prepared by IDBI Capital Markets Ltd, on the basis of the reports submitted by the stock Auditor, the assets valuers. As a part of CDR mechanism, a forensic Audit was carried out by M/s. T.R. Chaddha and Company for the period April 2012 to September 2013 and no element of fraud on the part of the company or its promoters was discernible from the report submitted



in December 2013.

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(iv) The relevant portion of the Forensic Audit Report by M/s. T.R. Chaddha and Company extracted in this complaint is also referred to show that, after detailed deliberations, member banks sought the Auditors views, on whether they were satisfied with the transactions of SIL with VIL and group of companies, to which the Auditors replied that by and large, they were satisfied with the documents provided by the Company and the transactions pursued by them.

6.6. The Special Investigative Audit by Chaturvedi and Company is extracted in the complaint is also referred to show that, the report was discussed at the JLM meeting held on May 12, 2017 and it was concluded that "the report had not categorically stated that there was any fraud perpetrated by the Company/promoters and there was no need to probe the matter further".

6.7. Learned counsel for the petitioner relied on the report of M/s.Tata Consulting Engineers Limited (TCE), the report of M/s. Mott Mac Donald, M/s. MECON Limited and M/s. T.R. Chaddha and Company and Audit Report of M/s.Chaturvedi and Company to buttress the point that, there was no need to declare the loan transaction as fraudulent transaction. Insofar as the SIL is concerned, even assuming that, there was some mishandling of the affairs of the Company, as per the



complaint, the aggregated value of the fraudulent transaction was about Rs.1083,14,35,709/- only as per the Annexure I of the complaint. The Company's fixed assets was Rs.1038.95 crores, in November 2013. The bank had not taken any steps for selling the assets and realise the loan amount. The total funds received by SIL for the P&B plant was only Rs.184.77 crores as against a sanction of Rs.702 crores.

6.8. SPL intended to establish 2x210 MW coal based Thermal Power Plant at Raichur and for that purpose, it approached M.N.Dastur and Company and submitted a detailed progress report. M/S.Tata Consulting Engineer was appointed as the Consultant for 2x210 MW project. The entire project was monitored by the Consortium of Bankers through the Lenders Independent Engineer, M/s.Mott MacDonald Pvt Ltd and management committee, Board of Directors, IDBI and Tata Consulting Engineer. The entire disbursement of the funds was done by the consortium of banks through a Trust and Retention Account handled by IDBI directly in favour of the contractors. Bharat Heavy Electricals Limited is one of the EPC contractors. Therefore, it is wrong to claim that contracts were awarded to Shell Companies.

6.9. He further submitted that, as per the terms of sanction, the disbursements and the Lending Confirmation Notices were based on Notice of drawdown, compliance of terms and conditions, Lenders' Independent Engineer's Progress



Reports, LIE disbursement certificates, utilization certificate from Chartered Accountant etc. SPL submitted Chartered Accountant's Certificate on various dates mentioned below, evidencing the end use of funds for the disbursement availed. He drew the attention of this Court by referring to the complaint dated 03.09.2020 given by IDBI against SPL and its Promoters/Directors to show that, "As per the 10th Construction Monitoring Report dated February 2014, the overall cumulative progress in the Project, based on the weighted average progress of basic and detailed engineering, procurement, manufacturing, construction and erection and commissioning was approximately 58%".

6.10. It is his further submission that, sudden withdrawal of some of the lenders namely L & T infrastructure, LIC etc, and delay in disbursement, slowed down the project, resulted in increase in project cost.

6.11. In 2019, a Forensic Audit was conducted by IDBI through M/s.Kirtane & Pandit, an Audit Report was submitted with incomplete information, without considering the earlier Forensic Report by M/s. T.R. Chaddha and Company and the valuation report.

6.12. Learned counsel for the petitioner submitted that in a proceeding initiated before National Company Law Tribunal, Division Bench-II, Chennai in



MA/244/2019 in CP/646/IB/2017 in Srikanth Dwarakanth Vs. Dineshchand Surana and 14 others seeking a direction to the respondents to pay a sum of Rs.172.31 crores

to the Corporate Debtor. It was observed as follows,

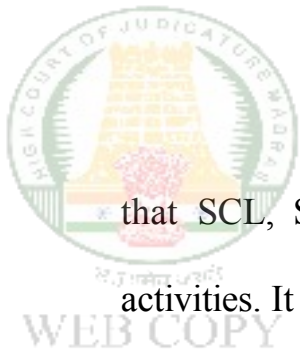
10.We have perused and considered the voluminous documents filed by the Applicant/ Liquidator and the 1st Respondent and we find force in the submissions made by the Learned Senior Counsel appearing for the 1st Respondent. It is evident that the business of the Corporate Debtor has been done with checks and balances at each level. It is also not in dispute that the proposed 2x210 MW Power Plant Project was funded by a consortium of banks with IDBI Bank Limited as the lead bank; that the entire cash flow was managed through a Trust and Retention Account handled by the lead banker, IDBI Bank Limited; that the entire project was monitored by the Consortium of Bankers through the Lenders Independent Engineer (LIE), Management Committee, Board of Directors (with Nominee Director from IDBI) and Tata Consulting Engineers; that only based on the reports submitted by LIE viz., M/s. Mott MacDonald, the disbursement of funds were made by IDBI Bank Limited on behalf of the consortium through a Trust and Retention Account handled by IDBI Bank Limited directly in favour of the concerned EPC contractor; that the project expenditures were also released from the Trust and Retention Account through Debit Notes approved by the IDBI Bank Limited after due verification of status of the project. Even the earlier



Forensic Audit Report prepared by M/s. T.R. Chaddha & Co. has not found any malicious or fraudulent transaction and the consortium has also disbursed loan amounts accepting the Audit Report of M/s. T.R.Chaddha & Co.

11.It may be true that certain decisions taken by the erstwhile management of the Corporate Debtor have not worked out as intended and have resulted in loss to the Corporate Debtor. However, merely because the Corporate Debtor has suffered loss, the commercial transactions cannot be termed as fraudulent or malafide. Commercial business decisions cannot be saddled with malice or criminality merely because they eventually turn out to be unsuccessful."

6.13. This observation abundantly makes it clear that, merely because a Corporate Debtor has suffered loss, the commercial transactions cannot be termed as fraudulent or malafide. Commercial business decisions cannot be saddled with malice or criminality merely because they eventually turn out to be unsuccessful. It was also further observed that the Forensic Audit Report dated 12.12.2018 prepared by M/s.Kirtane & Pandit LLP cannot be treated as a reliable piece of evidence to conclude that any of the transactions of the Corporate Debtor was done in a fraudulent manner or with a malafide intention to defraud the creditors. Thus, according to the learned counsel for the petitioner that, there is no reason to conclude



that SCL, SIL and SPL and its directors are involved in criminal or fraudulent activities. It is just business failure due to the circumstances stated above.

6.14. Learned Special Public Prosecutor appearing for the respondent brought to the notice of this Court the Statement of Bhanwarlal Sharma about his relationship with SIL and its group of companies. From his Statement, it is seen that he was a classmate of Dinesh Chand Surana. Till he was cheated by Dinesh Chand Surana in 2013-2014, he had good relationship with Surana family. After being cheated, he left Surana Group and started running a restaurant in a rented premise. When he was working as an employee in Surana Group, he was doing trading work on behalf of Surana Group. He was made the Director by Surana Brothers in various benami companies for the business expansion of Surana Group. Those companies are,

1 Vinayaga Infra Limited

2 BLS Power Solution Limited

3 R R Tools Private Limited

4 B.K Power & Machinery Pvt Ltd

5 Natural Coal Private Limited

6 Wealth Investment Traders Pvt Ltd

7 Bright Natural Infra Private Limited



8 Grant Logistics Limited

9 Fatheypori Gardens Private Limited

10 Praiseworth Infra Pvt Ltd

6.15. These Companies were formed to support the business development of Surana Group on the instructions of Dinesh Chand Surana. However, there were actually no business activities in these companies. When he was asked about contracts granted to VIL, VKPL, RRTPL and PLS PL to the tune of Rs.432 crores and subsequently increased to Rs.627 crores by SPL, he answered that, there is no difference between Surana Group or their benami companies. The contracts were granted so that the value of the project can be increased and shown in books for bank purposes. When asked about the sub-contracted works to various contracts, he said that sub-contractors like Alstom, Gannon Dunkerly Macawber etc were proper technical vendors who had the expertise to build a power plant and the benami companies used as intermediate layer to show high project cost. There were tri-party agreements with SPL to technical vendors through benami companies. The triparty agreements show that, SPL or Surana Group had full control over the technical vendors or sub-contractors.

6.16. To a question as to how VIL, BLSPL, BKPL and RRTPL used to inflate



project cost, he answered that, benami companies had entered into agreement with SPL for supply of steel to be used in construction of power plant, the supply of steel was highly increased to show high project cost.

6.17. When asked about payment of Rs.476 crores paid to the aforesaid companies and only Rs.90 crores was paid to the technical vendors and about remaining monies, he answered that, all monies had been returned back to Surana Group itself and he was instructed to sign the cheques for these benami companies.

6.18. T.Velayutham, Junior Executive in Accounts Department during the year 1997 in Surana Financial Corporation Limited, stated as follows,

"Q8. How the sales were made and sales accounting was carried out in SCL-Explain in detail separately for local sales and export sales including inventory accounting

Ans: Sales at showroom itself. Local sales were made at showroom by cash and on credit. The sales team at showroom sent the invoices to head office next day. Sales entries linked with Tally. Sales Tally was maintained in show room also and it was synchronized with Lathe Tally in HO. The sales entries made in show room would appear in Tally of HO on the ..next day and the entries automatically shown in our books of accounts. In Export, sales were made at FOU / SEZ unit only. They prepared the invoices and packing list and after export, they sent Export sales



invoices with packing list sent next day and we did the accounting SEZ tally as export sales.

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On accounting the sales made, automatically entries would be updated in the stock/inventory records in Tally.

There was a jewellery manufacturing unit at Todiarpur first and later at Madhavaram (Madhavaram no activity during 2016 to 2018). Stocks were transferred to manufacturing unit through Delivery Challans and on manufacture of jewellery, the jewellery would be received back in show room. The stocks would be accounted in factory based on the DCs and accounting of inventories would be made.

When the Tondiarpet unit was closed after change of Management from Vijayraj Surana to Dineshchand Surana approximately. The manufacturing unit was shifted to Madhavaram and for record purpose there was manufacturing process. However, no manufacturing activity was carried out there and only entries were made in the books based on the DCS prepared as if manufacturing activity was carried out.

Q9. What was the sales realization pattern of domestic and export sales? Explain in detail

Ans: In domestic sales, showroom and management (Mr.Elamaran and Mr.Thigarajan and Mr.Vijayraj Surana and Mr.Shantilal Surana) give credit period to parties. Some parties get 1 or 2 days credit and some parties 30 days above also. This decision was taken by management only (i.e.) Vijayraj Surana only. The sales realization in domestic sales was through bank transactions like Cheque or Neft or Rtgs. All the realization cheques were through



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showroom itself. The credit to well known parties like GRT. Saravana Jewellers, Lalitha Jewellers etc. were for about a maximum period of one week based on the decision of Vijayraj Surana. There were some parties like Vinayaga Infra, BLS Power, RR Tools etc. in the initial period and these were well known companies to Management and Vijayraj Surana. The credit period to these parties were managed by MD and their brothers only.

I heard that the sales/ purchases from these entities were completely managed by Surana brothers only and there were chances of not making 100% sales through these entities. The sales and purchase invoices were created / records were made. Only Vijayraj Surana and his brothers and family members were fully aware of the details of transactions with these parties.

In Export sales, credit period of 60 to 180 days was given during various periods. The export realization information was from SEZ in-charge only (VP, or top Management) (Mr,Sandeep Surana and Mr.Vijayraj Surana). And realization document information was received from banking and SEZ unit. After that, we collect the bank advice and carried out entry."

6.19. This portion of his Statement is relied on, by the learned Special Public Prosecutor to show the actual involvement of the petitioner in running the affairs of SCL. He further brought to the notice of this Court, how gold wastage is manipulated in SCL at the instigation of petitioner. The relevant extraction is as follows,

13. Can you go through the audition financial statements of SCL from FY 2009-10 to FY 2016-17 and provide the gold wastage disclosed in the financial statements?



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Ans: For 2009-10 to 2014-15 data given below and for 2015-16 and 2016-17 no wastage was disclosed in financial statements.

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Particulars	FY 2009-10	FY 2010-11	FY 2011-12	FY 2012-13	FY 2013-14	FY 2014-15
Consumption of Bullion Gold	21,924	18,735	21,270	20,366	14,270	5,130
Finished Goods	21,854	18,698	21,237	20,271	13,837	4,693
Wastage	70	37	33	96	432	437

16. The wastage stock register shows both inward and outward entries for FY 2015-16 & FY 2016-17, please explain?

Ans: The value of wasted gold is nil or zero, hence we recorded both inward and outward, however wastage is there. This was instruction given by Dinesh Chand Surana to reduce the gold stock from the books of account by showing wastage. In FY 2015-16 or FY 2016- 17 there was no manufacturing of gold activity in SCL.

17. Please explain the reason why wastage in FY 2013-14 to FY 2016-17 is exorbitantly/very high when compared with FY 2009-10 to FY 2012-13?

Ans: As said above, this was done by booking wastage as per the instructions of Dinesh Chand Surana for FY 2015-2017, I am not able answer for FY 2013-14 and 2014-15."

6.20. As per the information furnished by SCL, petitioner is shown as Key Managerial person under the caption related party disclosure. Though it is stated that, lease rent was paid to petitioner, his role is more than receiving lease rent, as



discussed above. He further referred to Section 447 of Indian Companies Act to impress that it is not necessary that, one should form a part of the company or to hold any position in the company for prosecution under Section 447 of the Indian Companies Act, 2013. Any person can be prosecuted, if it is found that, he is involved in commission of offence.

6.21. It is relevant to extract Section 447 of Indian Companies Act,

"Without prejudice to any liability including repayment of any debt under this Act or any other law for the time being in force, any person who is found to be guilty of fraud, 1[involving an amount of at least ten lakh rupees or one per cent. of the turnover of the company, whichever is lower] shall be punishable with imprisonment for a term which shall not be less than six months but which may extend to ten years and shall also be liable to fine which shall not be less than the amount involved in the fraud, but which may extend to three times the amount involved in the fraud:

Provided that where the fraud in question involves public interest, the term of imprisonment shall not be less than three years.

2[Provided further that where the fraud involves an amount less than ten lakh rupees or one per cent. of the turnover of the company, whichever is lower, and does not involve public interest, any person guilty of such fraud shall be punishable with imprisonment for a term which may extend to five years or with



fine which may extend to 3[fifty lakh rupees] or with both.]

Explanation.- For the purposes of this section--

(i) “fraud”, in relation to affairs of a company or any body corporate, includes any act, omission, concealment of any fact or abuse of position committed by any person or any other person with the connivance in any manner, with intent to deceive, to gain undue advantage from, or to injure the interests of, the company or its shareholders or its creditors or any other person, whether or not there is any wrongful gain or wrongful loss.”

6.22. One more submission made by the learned Special Public Prosecutor is that, as per the Project Assessment Report of M/s. Tata Consulting Engineers Limited (TCE), the list of bidders is given in Appendix I to the technical evaluation report. However, the contract was not directly given to these bidders. Even, it has given, it was given to only some, not directly, but through the Shell Companies established by the accused companies. Shell Companies were paid higher amount. Inturn, Shell companies entered into sub-contract with the list of bidders, suggested by M/s. Tata Consulting Engineers Limited (TCE) for a lesser price. Difference amount went to the kitty of the accused. That is how the project cost have been inflated resulting in failure of the project and siphoning off the funds of the banks.



6.23. One of the legal submissions of the learned counsel for the petitioner is that, the Statement of the Witnesses cannot be considered, when considering a bail petition, for the reason that, no roving enquiry is required. In support of his submission, he relied on the judgment of Hon'ble Supreme Court of India in ***P.Chidambaram Vs. Directorate of Enforcement*** in Crl.A.No.1831 of 2019.

6.24. The reading of this judgment shows that, the question arose for consideration was whether the Court was empowered to look at the materials produced in a sealed cover to satisfy its judicial conscience? It was held that, the learned Judge ought not to have recorded finding based on the materials produced in a sealed cover. Though it is open for the Court to peruse the documents, it would be against the concept of fair trial, if in every case the prosecution presents documents in sealed cover and the findings on the same are recorded as if the offence is committed and the same is treated as having a bearing for denial or grant of bail.

It was further observed that,

"24. Having said so, in present circumstance we were not very much inclined to open the sealed cover although the materials in sealed cover was received from the respondent. However, since the learned Single Judge of the High Court had perused the documents in sealed cover and arrived at certain conclusion and since that order is under challenge, it had become imperative for us to also open the sealed cover and peruse the



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contents so as to satisfy ourselves to that extent. On perusal we have taken note that the statements of persons concerned have been recorded and the details collected have been collated. The recording of statements and the collation of material is in the nature of allegation against one of the co-accused Karti Chidambaram- son of appellant of opening shell companies and also purchasing benami properties in the name of relatives at various places in different countries. Except for recording the same, we do not wish to advert to the documents any further since ultimately, these are allegations which would have to be established in the trial wherein the accused/co-accused would have the opportunity of putting forth their case, if any, and an ultimate conclusion would be reached. Hence in our opinion, the finding recorded by the learned Judge of the High Court based on the material in sealed cover is not justified."

6.25. In the case before hand, the respondent has not relied on any materials produced in a sealed cover. In the case before hand, Statements of Witnesses had been recorded and produced in Court along with complaint. Some of the Statements of the Witnesses are now relied, to show the role of the accused in the commission of offence, alleged against him. The respondent has rightly relied on these statements, for the reason that, learned counsel for the petitioner has taken up a plea that, petitioner has not committed the offences alleged against him and he was prima-facie able to show that, petitioner has not committed any of the offence alleged against



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6.26. The judgment relied by the learned counsel for the petitioner in ***Mohd. Muslim Vs. State (NCT of Delhi)*** in **Criminal Appeal No.943 of 2023**, is a case concerning NDPS offence, with regard to the satisfaction of condition under Section 37 of NDPS Act. This judgment is relied on for the purpose that, the only manner in which such special conditions as enacted under Section 37 can be considered within constitutional parameters is, where the court is reasonably satisfied on a prima facie look at the material on record (whenever the bail application is made) that the accused is not guilty. Any other interpretation, would result in complete denial of the bail to a person accused of offences such as those enacted under Section 37 of the NDPS Act.

6.27. He further submitted that, Section 37 of NDPS Act is pari materia with Section 212(6) of Indian Companies Act, 2013. The interpretation given to Section 37 of NDPS Act squarely applies to Section 212(6) of Indian Companies Act, 2013.

6.28. There is no second opinion with regard to the legal proposition of this judgment. However, the question is whether, petitioner has prima-facie established



that, he is not guilty of the offence charged against him. The answer to this question is an empathic 'no'. The reason is that, from the submissions of the learned Special Public Prosecutor and materials produced it could be seen that, petitioner is one of the Directors of SIL, SPL and actively involved in the business transactions. Though he is not holding any position in SCL, it is seen from the Statements of the witnesses that he has taken major decisions in running the day-to-day affairs of this Company and in falsification of accounts. As per Section 447 of Indian Companies Act, it is not necessary for a person to hold a position in a Company. Any person can be prosecuted, if he is found committed fraud involving an amount of at least ten lakhs rupees or one percent.

7. There are materials to show that, though the petitioner is not even holding any managerial position in SCL, he was involved in major decision making and falsification of accounts. There are materials to show that he orchestrated siphoning off funds of SIL and SPL as detailed above. The materials produced show that there is more than *prima-facie* evidence to conclude that, petitioner had actively involved in commission of these offences.

7.1. The Hon'ble Supreme Court of India in ***Gautam Kundu Vs. Manoj***

Kumar, Assistant Director in Crl.A.No.1706 of 2015, while considering the grant of



bail in economic offence case, observed as follows:-

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"36. We do not intend to further state the other facts excepting the fact that admittedly the complaint was filed against the appellant on the allegation of committing offence punishable under Section 4 of the PMLA. The contention made on behalf of the appellant that no offence under Section 24 of the SEBI Act is made out against the appellant, which is a scheduled offence under the PMLA, needs to be considered from the material collected during the investigation and further to be considered by the competent court of law. We do not intend to express ourselves at this stage with regard to the same as it may cause prejudice the case of the parties in other proceedings. We are sure that it is not expected at this stage that the guilt of the accused has to be established beyond reasonable doubt through evidences. We have noted that in *Y.S. Jagan Mohan Reddy v. Central Bureau of Investigation*, (2013) 7 SCC 439, this Court has observed that the economic offences having deep rooted conspiracies and involving huge loss of public funds need to be viewed 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 country. In *Union of India v. Hassan Ali Khan*, (2011) 10 SCC 235, this Court has laid down that what will be the burden of proof when attempt is made to project the proceeds of crime as untainted money. It is held in the said paragraph that allegations may not ultimately be established, but having been made, the burden of



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proof that the monies were not the proceeds of crime and were not, therefore, tainted shifted on the accused persons under Section 24 of the PML Act, 2002. The same proposition of law is reiterated and followed by the Orissa High Court in the unreported decision of Smt. Janata Jha v. Assistant Director, Directorate of Enforcement (CRLMC No. 114 of 2011 decided on December 16, 2013). Therefore, taking into account all these propositions of law, we feel that the application for bail of the appellant should be seen at this stage while the appellant is involved in the economic offence, in general, and for the offence punishable under Section 4 of the PMLA, in particular.

37. We have further noted that the High Court at the time of refusing the bail application, duly considered this fact and further considered the statement of the Assistant General Manager of RBI, Kolkata, seizure list, statements of directors of Rose Valley, statements of officer bearers of Rose Valley, statements of debenture trustees of Rose Valley, statements of debenture holders of Rose Valley, statements of AGM of Accounts of Rose Valley and statements of Regional Managers of Rose Valley for formation of opinion whether the appellant is involved in the offence of money laundering and on consideration of the said statements and other materials collected during the investigation, the High Court specifically stated as follows:

“By making a pragmatic approach to the provision of Section 45(1) of the P.M.L. Act and on consideration of the antecedents



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of the petitioner in collection of money from open market for issuing secured debentures in violation of the guidelines of SEBI and on further consideration of the manner of keeping accounts of Rose Valley, I am unable to hold that the petitioner is not likely to commit any offence while on bail. As a result, I cannot persuade myself to grant bail to the petitioner at this stage. So, prayer for bail is rejected. The application is dismissed.”

38. In these circumstances, we do not find that the High Court has exercised its discretion capriciously or arbitrarily in the facts and circumstances of this case. We further note that the High Court has called for all the relevant papers and duly taken note of that and thereafter after satisfying its conscience, refused the bail. Therefore, we do not find that the High Court has committed any wrong in refusing bail in the given circumstances. Accordingly, we do not find any reason to interfere with the impugned order so passed by the High Court and the bail, as prayed before us, challenging the said order is refused. Consequently the appeal is dismissed.”

8. This is also a case, involving offence against economy of the Country. Huge amount was availed as loan from the Nationalized Banks, then the loan amount were not used for the purpose it was obtained and was diverted to the personal use of the borrowers. Borrowers, namely, the accused in this case had siphoned off the funds causing huge loss to the Bank and to the economy of the Country. Petitioner has not



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satisfied the twin conditions under Sections 212(6) of Indian Companies Act, 2013 for the grant of bail. In the view of the matter, this Criminal Original Petition is dismissed.

27.09.2023

gd

G. CHANDRASEKHARAN, J.

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