IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : **05.07.2024**

CORAsM :

THE HONOURABLE MR. JUSTICE VIVEK KUMAR SINGH

W.P.No.16029 of 2024

State Bank of India,
Represented by its Regional Manager,
K.Seetharaman,
State Bank of India, RBO-I,
Kurinji Complex, State Bank Road,
Coimbatore South, Tamil Nadu 641 018. ... Petitioner

Vs.

Central Bureau of Investigation,
Rep by Joint Director & Head of Zone,
Banking Securities and Fraud Zone,
V Floor, CBI Head Quarters,
No.5B, CGO Complex-Lodhi Road,
New Delhi 110003. ... Respondent

PRAYER: Writ Petition filed under Article 226 of Constitution of India, pleased to issue a Writ of Mandamus, directing the respondent to register a First Information Report (FIR) / Regular Case (RC) on the basis of the complaint dated 22.05.2023 lodged by the petitioner with the respondent.

For Petitioner : Mr.Vaibhav R.Venkatesh

For Respondent : Mr.K.Srinivasan
Special Public Prosecutor for CBI.

O R D E R

The Writ Petition has been filed seeking a direction to the respondent to register a First Information Report (FIR)/ Regular Case (RC), on the basis of the complaint dated 22.05.2023 lodged by the petitioner with the respondent.

2. The submissions of learned counsel Mr.Vaibhav R.Venkatesh appearing for the petitioner is as follows:-

2.1. The petitioner Bank is a Public Sector Bank and being the largest Bank in India, there are lakhs of persons, who are on the payrolls of the petitioner Bank.

2.2. The petitioner Bank has numerous branches all over India and one of its branches namely, Coimbatore City Branch (Branch Code-00990), which is situated at No.718-719, Oppanakara Street, Coimbatore District. The said branch sanctioned various loans namely, Housing, Personal and SME segment.

2.3. M/s. Everon Castings Private Limited is a private limited company incorporated under the Companies Act, 1956 having its registered office at No.30/1, East West Street, Lakshmipuram, Coimbatore. The said Company is engaged in the business of manufacturing of Carbon Steel, Alloy

Steel, Stainless Steel and Super Duplex Casting component. The said company represented by its Managing Director approached the petitioner Bank for sanction of various credit facilities for its business purpose. The petitioner Bank had considered the request of the company and sanctioned credit facilities of Rs.44.98 crores, vide sanction letter dated 16.02.2017. In consideration of grant of the above mentioned credit facilities, Shri.Rajesh, Smt.R.Andal, Shri.M.S.Balaji and Smt.S.Dhanalakshmi as directors of the borrower company have executed necessary loan documents. The petitioner Bank executed Guarantee Agreement with the aforesaid directors for repayment of credit facilities on 22.02.2017.

2.4. Though the said company had availed the credit facilities, they could not adhere to the repayment schedule in terms of the sanction letter issued by the petitioner Bank. It would not be out of place to mention herein that the said Company was initially banking with SBI, Commercial Branch, Coimbatore during the year 2013. The loan facilities were later taken over by the Karur Vysya Bank, R.S.Puram branch on 18.02.2016 and subsequently, the said Company vide its letter dated 02.07.2016, requested Coimbatore City Branch for takeover of their existing loan of Rs.18 crore along with other financial facilities from KVB. The said Company has suppressed various material facts by way of concealment at the time of take over of loan by the

Bank from KVB. Due to the irregularities committed by M/s.Everon Castings Private Limited in honouring the terms and conditions of the loan sanctioned by the petitioner, the loan amount was declared as Non-Performing Asset on 25.03.2018, as per the guidelines of Reserve Bank of India.

2.5. Further, on the basis of the Report of Forensic Audit, which was conducted against the company at the instance of Resolution Professional appointed by NCLT, Chennai, the petitioner has declared that the loan account of the said Company as 'Fraud' on 31.01.2023. Thereafter, the petitioner Bank initiated recovery proceedings against the guarantors of the said Company under the provisions of SARFAESI Act .

2.6. In the meantime, one of the operational creditors of the said Company has filed an application for initiation of Corporate Insolvency Resolution Process (CIRP) against the company before the National Company Law Tribunal (NCLT), Chennai and the same was admitted by the Tribunal through appointment of a Resolution Professional. Due to failure of CIRP, the NCLT, Chennai had issued an order for liquidation of the company and one Sivasailam was appointed as Liquidator.

2.7. Due to the fraud committed by the accused persons, the petitioner Bank filed a complaint before the respondent on 22.05.2023. For the non-response of the complaint, the petitioner again sent a letter regarding status of the complaint on 28.07.2023. In response to the same, the respondent had sent a communication on 23.08.2023 stating that the complaint was verified and for registering a Regular Case, they requested State Government for consent under Section 6 of DSPE Act, 1946 and the same is awaited. Subsequently, the respondent issued similar communications on 25.09.2023 and 09.11.2023 stating that the consent of the State Government is awaited.

2.8. The respondent ought to have registered a case and conducted the investigation in order to protect the interest of the Bank. Inaction on the part of the respondent is without any justification. Thereby, the present Writ Petition has been filed seeking to set aside the impugned communication of the respondent and direct the respondent to register a First Information Report on the basis of the complaint lodged by the petitioner to the respondent on 22.05.2023.

3. The Special Public Prosecutor for CBI cases on instructions from the respondent submitted that as per the directions of Reserve Bank of India vide its Master Circular dated 01.07.2016 (Frauds Classification and reporting by commercial banks and select FIs) in RBI/DBS/2016-2017/28 DBS.CO.CFMC.BC.No.1/23.04.001/2016-17, the Reserve Bank of India has classified the frauds committed and issued certain guidelines for reporting

frauds to Police/CBI in Chapter VI. He would submit that subject to the orders passed by this Court, the respondent is ready to proceed in accordance with law.

4. For better appreciation, the relevant Chapter (Chapter VI) of the Master Circular on "Frauds – Classification and Reporting" dated 01.07.2016 issued by the Reserve Bank of India under Section 35 A of the Banking Regulation Act, 1949 is extracted hereunder:-

CHAPTER VI

6. Guidelines for Reporting Frauds to Police/CBI

6.1 In dealing with cases of fraud/embezzlement, banks should not merely be actuated by the necessity of recovering expeditiously the amount involved, but should also be motivated by public interest and the need for ensuring that the guilty persons do not go unpunished. Therefore, as a general rule, the following cases should invariably be referred to the State Police or to the CBI as detailed below:

Category of bank	Amount involved in the fraud	Agency to whom complaint should be	Remarks
Private Sector/ Foreign Banks	Rs.10000 and above	State Police	If committed by staff
	Rs.0.1 million and above	State Police	If committed by outsiders on their own

Category of bank	Amount involved in the fraud	Agency to whom complaint should be	Remarks
			and/or with the connivance staff/officers. of bank
	Rs.10 million and above	In addition to State Police, SFIO, Ministry of Corporate Affairs, Government of India. Second Floor, Paryavaran Bhavan, CGO Complex, Lodhi Road, New Delhi 110 003.	Details of the fraud are to be reported to SFIO in FMR Format
Public Sector Banks	Below 30 million 1. Rs.10,000/- and above but below Rs.0.1 million	State Police	If committed by staff
	2. 01 million and above but below Rs.30 million	To the State CID/Economic Offences Wing of the State concerned	To be lodged by the Regional Head of the bank concerned
	Rs. 30 million and above and up to Rs.250 million	CBI	To be lodged with Anti Corruption Branch of CBI (where staff involvement is prima facie evident) Economic Offences Wing of CBI (where staff involvement is prima facie not evident)
	More than Rs.250 million and up to Rs.500 million	CBI	To be lodged with Banking Security and Fraud Cell (BSFC) of CBI (irrespective of the involvement of a public servant)
	More than Rs.500 million	CBI	To be lodged with the Joint Director (Policy) CBI, HQ New Delhi

6.2 All fraud cases of value below Rs.10,000/- involving bank officials, should be referred to the Regional Head of the bank, who would scrutinize each case and direct the bank branch concerned on whether it should be reported to the local police station for further legal action."

5. Heard the learned counsel for the petitioner and the learned Special Public Prosecutor for CBI cases and perused the materials available on record.

6. The complainant is a public sector bank. The value of the fraud alleged to be committed is Rs.25.62 Crores which would cause loss to the economic growth of the country. Further, the amount of fraud involved is more than three crores, as per the directions issued by the Reserve Bank of India in Clause 6.1, the respondent, the Anti-Corruption Branch of CBI has to register the case and proceed in accordance with law.

7. In view of the above, this Court directs the respondent to register the case, based on the complaint lodged by the petitioner on 22.05.2023 and to proceed in accordance with law and file a final report as expeditiously as

possible.

8. With the above directions, this Writ Petition is disposed of. No costs.

05.07.2024

Index : Yes / No
Speaking / Non-speaking
Neutral Citation : Yes / No
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To

1.The Central Bureau of Investigation,
Rep by Joint Director & Head of Zone,
Banking Securities and Fraud Zone,
V Floor, CBI Head Quarters,
No.5B, CGO Complex-Lodhi Road,
New Delhi 110003.

2. The Special Public Prosecutor,
High Court of Madras.

VIVEK KUMAR SINGH.,J

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