IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

Reserved on : 09.02.2024
Pronounced on: 26.04.2024

1. CRM-M-13400-2021
Vinod kumar ...Petitioner
VERSUS
State of Haryana & Others ...Respondents

2. CRM-M-13443-2021
Vinod kumar ...Petitioner
VERSUS
State of Haryana & Another ...Respondents

3. CRM-M-13227-2021
Vinod kumar ...Petitioner
VERSUS
State of Haryana & Another ...Respondents

4. CRM-M-12874-2021
Vinod kumar ...Petitioner
VERSUS
State of Haryana ...Respondent

5. CRM-M-13293-2021
Vinod kumar ...Petitioner
VERSUS
State of Haryana & Another ...Respondents

6. CRM-M-13292-2021
Vinod kumar ...Petitioner
VERSUS
State of Haryana & Another ...Respondents

7. CRM-M-13399-2021
Vinod kumar ...Petitioner
VERSUS
State of Haryana & Another ...Respondents

8. CRM-M-13184-2021
Vinod kumar ...Petitioner
VERSUS
State of Haryana ...Respondent

9. CRM-M-14417-2021
Vinod kumar ...Petitioner
VERSUS
State of Haryana ...Respondent

10. CRM-M-12433-2021
Vinod kumar ...Petitioner
VERSUS
State of Haryana ...Respondent

CORAM: HON'BLE MR. JUSTICE HARKESH MANUJA

Present : Mr. Chetan Mittal, Senior Advocate with
Ms. Sehaj Sandhawalia, Advocate,
for the petitioner (in all petitions).

Mr. Gurmeet Singh, AAG, Haryana.

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HARKESH MANUJA, J.

CRM-M-13400-2021, CRM-M-13443-2021 & CRM-M-13227-2021

1. This common order of mine shall dispose of aforementioned petitions under discussion as the common issues/ question of law and facts are involved. For convenience, facts are being taken from CRM-M-13400-2021.

2. By way of present petition filed under Section 482 Cr.P.C., prayer has been made for quashing the FIR No. 273 dated 26.04.2018 U/S 406, 420, 120B IPC & U/S 3 of the Haryana

Protection of Interest of Depositors in Financial Establishments, Act, 2013 (hereinafter referred as “HPIDFE Act”) registered at PS Sector 31, Faridabad and all other consequential proceedings arising therefrom.

3. Briefly stated, facts of the case are that FIR NO. 273 dated 26.04.2018 U/S 406, 420, 120B IPC & U/S 3 of the HPIDFE Act was registered against the petitioner including others, on the basis of a complaint made by Abhinav Garg, wherein, it was alleged that a sum of Rs.94.5 Lacs was deposited by respondent No 2 w.e.f July 2015 to December 2015 in FD Scheme floated by M/s SRS Ltd. in which petitioner happened to be Non-Executive Director. It was further alleged that all officials named in the FIR lured the complainant to deposit money and promised a handsome rate of interest but except payment of interest till March 2017, nothing was paid back. It was also stated that SRS Ltd. went to NCLT for extension of time which was earlier granted vide order dated 20.10.2016, but subsequently vide order dated 20.12.2017 NCLT Chandigarh bench refused to extend the time and also directed Registrar of Companies to proceed under Section 74(3) of the Companies Act, 2013 against the SRS Limited.

3.1 It was further alleged in the FIR that despite of deposing at different forums that they will sell some of their subsidiaries to return the amount due towards the depositors, no effective step was taken in this direction, rather the amount received after the sale of subsidiaries of the companies were siphoned off in a well planned conspiracy for the private benefits, thereby committing a fraud upon the depositors.

3.2 Side by side, consequent to order dated 20.12.2017 passed by NCLT, Chandigarh, Deputy Registrar of Companies initiated proceedings against the Company & its officials u/s 74(3) of the Companies Act and vide order dated 01.08.2018 by the Ministry of Corporate Affairs (hereinafter referred as 'MOCA'), enquiry by the Serious Fraud Investigation Office (SFIO) was ordered which after investigation filed two reports before the Special Court-Additional Sessions Court, Gurgaon. While COMA 17-2021 dealt with offences punishable under Sections 360 r/w 447, 448 and 143 of the Companies Act, 2013 and Sections 227 and 628 of the Companies Act, 1956, in which the petitioner was arrayed as an accused though he was implicated as an accused only in COMA-18-2021 in which charges were u/s 92, 137, 134, 128 and 129 of the Companies Act, 2013 and 209, 211, and 217 of the Companies Act, 1956.

4. Learned Senior Counsel for the petitioners made submissions on various grounds. Firstly, he submitted that the primary grievance of respondent No.2 was the non repayment of fixed deposit/interest by the company which was squarely covered u/s 73, 74 and 76A r/w 447 of Companies Act, 2013 and when investigation by SFIO was already completed and proceedings were initiated by Special Court for non refund of FD, there was no scope of

investigation by the police on the basis of same set of allegations in view of Sections 212 & 436 of the Companies Act,2013 (for short 'the Act'). Relevant sections relied upon by the ld. Senior Counsel are reproduced herein:-

> *"**212. Investigation into affairs of Company by Serious Fraud Investigation Office.—***
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> *(2) Where any case has been assigned by the Central Government to the Serious Fraud Investigation Office for investigation under this Act, no other investigating agency of Central Government or any State Government shall proceed with investigation in such case in respect of any offence under this Act and in case any such investigation has already been initiated, it shall not be proceeded further with and the concerned agency shall transfer the relevant documents and records in respect of such offences under this Act to Serious Fraud Investigation Office.*
>
> *(15) Notwithstanding anything contained in this Act or in any other law for the time being in force, the investigation report filed with the Special Court for framing of charges shall be deemed to be a report filed by a police officer under section 173 of the Code of Criminal Procedure, 1973 (2 of 1974).*
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> *(17)(a)In case Serious Fraud Investigation Office has been investigating any offence under this Act, any other investigating agency, State Government, police authority, income-tax authorities having any information or documents in respect of such offence shall provide all such information or documents available with it to the Serious Fraud Investigation Office;*
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> *****
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> ***436. Offences triable by Special Courts.—***
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> *(1) Notwithstanding anything contained in the Code of Criminal Procedure, 1973 (2 of 1974),—*
>
> *(a) all offences specified under sub-section (1) of section 435 shall be triable only by the Special Court established for the area in which the registered office of the company in relation to which the offence is committed or where there are more Special Courts than one for such area, by such one of them as may be specified in this behalf by the High Court concerned;*

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(2) When trying an offence under this Act, a Special Court may also try an offence other than an offence under this Act with which the accused may, under the Code of Criminal Procedure, 1973 (2 of 1974) be charged at the same trial."

4.2 While drawing attention of the Court towards these provisions, Id. Senior Counsel submitted that in view of section 436(2) of the Companies Act, 2013, Special Court when trying an offence under the Companies Act may also try an offence with which the accused may be charged under Code of Criminal Procedure (CrPC), 1973. Further, it was also submitted that as per Section 212(2), where a case was assigned by the Central Government to SFIO for investigation, no other investigating agency of the Central Government or any State Government could proceed with parallel investigation. Drawing strength from these provisions, he submitted that when investigation was already being concluded by SFIO, Investigation by the Economic Offences Wing (EOW) in present case should not proceed further and the concerned agency was to transfer the relevant documents and records in respect of such offence under the Companies Act to SFIO.

4.3 Secondly, he contended that a bare perusal of the FIR reveals that there were no specific allegations against the petitioner who was named in only one FIR i.e. FIR No. 273 and in all other FIRs, he was not even named. He further submitted that merely because allegations were raised against the company in which he was a Director, vicarious criminal liability could not be imposed upon him in the absence of any specific allegations being made against him.

4.4 He further submitted that on the basis of the same set of allegations, petitioner was arrayed as an accused in COMA-17-2021. Petitioner was arrayed as accused only in COMA-18-2021, in which charged offences itself reflects that petitioner was unaware and was not a party to transactions of M/s SRS Limited or its group companies

4.5 Thirdly, he submitted that the petitioner was not authorised to carry out any transaction related to Fixed Deposits. Placing reliance upon MoM dated 28.07.2014 (Annexure P-13) of M/s SRS Ltd., he submitted that Sunil Jindal (Managing Director), Raju Bansal (Whole Time Director), Bhagwan Dass (Chief Financial Officer) were only authorised persons on behalf of the company to issue non- transferable fixed deposit receipts, sign & issue interest warrants, make entries in the fixed deposit register & refund the deposits on maturity, prepayment or otherwise, file necessary returns with the ROC or any other concerned authority. Accordingly, in the event of default of any payment in relation to these FDRs, he could not be made criminally liable as he was not having any authority in this regard.

4.6 Lastly, he contended that when investigation under the provisions of Companies Act was already completed, no investigation could be conducted under the HPIDFE Act, as in that event provisions of HPIDFE Act becomes repugnant and inconsistent with the provisions of Companies Act, 2013. He also submitted that Section 406 and Section 409 IPC were antithesis of each other and could not be applied together.

4.7 In support of his contentions, he placed reliance upon the following judgments:

i. **"SHIV KUMAR JATIA VS STATE OF NCT OF DELHI"** reported as (2019) 17 SCC 193

ii. **"RAVINDRANATH BAJPE VS MANGALORE SPECIAL ECONOMIC ZONE LTD AND OTHERS"** reported as 2021 SCC Online SC 806

iii. **"GHCL EMPLOYEE STOCK OPTION TRUST Vs INDIA INFOLINE LIMITED"** reported as (2013) 4 SCC 505

iv. **"SHARAD KUMAR SANGHI Vs SANGITA RANE"** reported as (2015) 12 SCC 781

v. **"SUSHIL SETHI AND ANOTHER Vs STATE OF ARUNANCHAL PRADESH"** reported as (2020) 3 SCC 240

vi. **"N. GOPINATH Vs STATE OF ANDHRA PRADESH"** in case bearing No Criminal Petition No. 315 of 2021

vii. **"SHARAT BABU DIGUMATI Vs GOVERNMENT (NCT OF DELHI)"** reported as (2017) 2 SCC 18:

viii. **"A.V PRATHAP REDDY VS M/S INTELLECTUAL EDUCARE PVT LTD"** in case Crl. P. No. 3999 of 2018

ix. **"SHILPA AJWANI & ORS. VS U.T. CHANDIGARH"** reported as 2020(1) R.C.R.(Criminal) 934.

5. On the other hand, learned State counsel submitted that SRS Ltd., in which petitioner was a director for approximately 15 years, was involved in cheating the small investors through a well-

planned conspiracy amounting to thousands of crores. Though, on many occasions, it was deposed before the NCLT that they will sell their subsidiaries to return the amount of investors, however, income from these sales was siphoned off for the personal benefits. Learned State counsel submitted that offences detailed in the complaint registered by respondent No.2 were duly covered under Section 3 of HPIDFE Act as well as the provisions of IPC. He further submitted that the scope of investigation under both the acts was separate and accordingly, investigation by the EOW was in no way hindered by the investigation conducted by the SFIO. Ld. State Counsel further submitted that there were numerous precedents wherein different agencies were made entitled for conducting the parallel investigation.

5.1 It was also submitted that while the investigation by the SFIO was limited to the offences under the Companies Act, 2013 only and even from the language of Section 212(17)(b), it was more than apparent that parallel investigation by other agencies was not ruled out. For ready reference, Section 212 (17) (b) of the Act is reproduced hereunder:-

> *"212.****
> *(17)(b) The Serious Fraud Investigation Office shall share any information or documents available with it, with any investigating agency, State Government, police authority or income-tax authorities, which may be relevant or useful for such investigating agency, State Government, police authority or income-tax authorities in respect of any offence or matter being investigated or examined by it under any other law."*

5.2 It was also contended by learned State counsel that while it was not possible for the depositors to know the exact role played by each director, however, in view of the fact that petitioner was a Whole Time Director (in short "WTD") for approximately 15 years, including the period of default as well, his role could not be ruled out and exact role played by him in this entire scheme of events could be seen only after the investigation. It was further contended that from the perusal of FIR, it cannot be held that no offence was made out against the petitioner or the present case was an abuse of the process of law and therefore, this Court would not exercise the discretionary powers in favour of the petitioner to quash the FIR and consequential proceedings.

6. I have heard learned counsel for the parties and gone through the paper book. I do not find much substance in the submissions made on behalf of the petitioner.

7. Firstly, argument raised by ld. Senior Counsel that once investigation has been completed by the SFIO, investigation by any other agency is not permissible, is required to be considered. The above said preposition was also followed by Delhi High Court in **"Ashish Bhalla v. State & Anr"**, reported as 2023 NCDHC 6808 and it was held by the Hon'ble Court that SFIO has the exclusive jurisdiction in such cases. But this Court is in respectful disagreement with the same as there are many other considerations which were not discussed by the Court besides, the different factual position of the present case.

7.1 Scope of investigation by the SFIO is limited to the offences under the Act only, which is also apparent from the language of section 212(2) itself, whereby, investigation by any other agency would be barred *"in respect of any offence under this Act"*. But on that basis, it would be preposterous to hold that investigation even under the offences of any other Act would also be barred. In the present case, FIR has been registered u/s 3 of HPIDFE Act along with the provisions of IPC and accordingly, there cannot be any restriction on investigation as per the provisions of HPIDFE Act & CrPC.

7.2 The factum of different scope of investigation under the Act and HPIDFE Act, is further substantiated from the scope of investigation spelled out in summoning order dated 16.08.2021 with synopsis, which has been annexed by the petitioner as Annexure P-16. Para 7 of the same reads as under:

> *"7. The facts, revealed during investigation, showing commission of offences as complained of, are mentioned under the following headings:*
> *I. FALSE STATEMENT WITH RESPECT TO SRS GROUP OF COMPANIES INCLUDING A1-A8*
> *II. FRADULENT REPRESENTATION BEFORE BANKS FOR OBTAINING CREDIT FACILITIES BY A1, A3-A6*
> - *ROLE OF INDIVISUALS IN THE AFORESAID FRADULENT INDUCEMENTS OF THE BANKS/ FINANCIAL INSTITUTIONS*
>
> *III. SIPHONING AND DIVERSION OF FUNDS RECEIVED AS LOAN FROM BANKS/FINANCIAL INSTITUTIONS, PUBLIC DEPOSITS, AND BOOKING AMOUNT FROM CUTOMERS AGAINST FLATS*
> - *INSTANCES OF SIPHONING*
> - *INSTANCES OF DIVERSION*

- *ROLE OF INDIVISUALS IN THE AFORESAID SIPHONING & DIVERSIOB OF FUNDS*

IV. MATERIAL MIS-STATEMENT IN THE FINANCIAL STATEMENTS OF THE SRS GROUP COMPANIES"

7.3 Perusal of the commission of offences in relation to which investigation was conducted appropriately reveals the scope of investigation by the SFIO, which is primarily related to the irregularities/illegalities in operations of company in violation of relevant statutes, rules and regulations governing the administration of a company. On the other hand, scope of offences under the IPC and HPIDFE Act is much wider and investigation in this regard has to be conducted on the basis of allegations levelled in the FIR after taking into consideration the version of the victim/ investors.

7.4 Undisputedly, in the present case, investigation by the SFIO was the outcome of the direction issued by NCLT, Chandigarh Bench. The Bench vide order dated 20.12.2017 asked the Registrar of Companies to initiate prosecution under Section 74(3) of the Companies Act, 2013 before the Special Court. As a result of the same, MOCA vide order dated 01.08.2018 ordered investigation by the SFIO. In the scheme of Companies Act, 2013, scope of investigation by SFIO at the behest of victims of fraud committed by a company, is very narrow and it can be ordered only by Central Government in accordance with section 212 of the Act. For that reason, involving the victims in the investigation is not mandatory as is the scenario in the present case as well as it is the admitted position of fact that in investigation by the SFIO, neither the complainants have been given a hearing nor is the investigation in the line of allegations made by them.

7.5 Parallel investigation under other laws by different agencies is not ruled out from the scheme of Companies Act, 2013 itself as in Section 212(17)(b) it is envisaged that SFIO shall share any information or documents available with it with any other investigating agency **"in respect of any offence or matter being investigated or examined by it under any other law"**. Thus, parallel investigations by different agencies, as permitted by law, are not precluded. The allegations under the HPIDFE Act involve separate aspects of the alleged financial irregularities/illegalities and cannot be considered redundant merely due to SFIO investigation under the Companies Act, 2013.

7.6 In the present case, the complainant has approached the police even before the investigation by the SFIO was ordered by MOCA on 01.08.2018 as FIR in the present case is dated 26.04.2018. At this stage it is also relevant to have a look at the definition of Section 17 of HPIDFE Act, which is reproduced below:

> *“ **Act to override other laws**.*
> *17. Save as otherwise provided in this Act, the provisions of this Act shall have effect, notwithstanding anything inconsistent therewith contained in any other law for the time being in force or any custom or usage or any instrument having effect by virtue of any such law.”*

7.7 In contradiction to Companies Act, 2013, HPIDFE Act specifically stipulates that Provisions of this Act shall have effect, notwithstanding anything inconsistent therewith contained in any other law. In that eventuality, provisions of HPIDFE Act would have effect and thus proceedings under this Act cannot be curtailed on account of the fact that investigation by the SFIO is complete and Special Court has taken cognizance under Companies Act, 2013. Therefore, In view of all these considerations held in forgoing paras, it cannot be held that SFIO has the exclusive jurisdiction for investigation in the present case.

8. Now other arguments raised by learned Senior counsel for the petitioner regarding absence of specific allegations as well as another contention that he did not have any authority with respect to FDRs, are required to be considered. In a case like the present one where deposits are being taken by the company, an ordinary individual depositor cannot be expected to know the complete hierarchy and role of each individual in the fraud committed by the company, which are committed by way of complicated nexus and conspiracy involving shell companies and multilayered siphoning off the money on large scale.

8.1 Though in a different context, but similar observations were also made by the Hon’ble Apex Court in **"S.P. Mani And Mohan Dairy v. Dr. Snehalatha Elangovan"**, reported as 2023(10) SCC 685, while discussing the role of a director under Negotiable Instrument Act 1881, relevant para of which is reproduced hereunder:-

> *"47. **Our final conclusions may be summarised as under**:-*
> *xxxxx*
> *b) The complainant is supposed to know only generally as to who were in charge of the affairs of the company or firm, as the case may be. The other administrative matters would be within the special knowledge of the company or the firm and those who are in charge of it. In such circumstances, the complainant is expected to allege that the persons named in the complaint are in charge of the affairs of the company/firm. It is only the Directors of the company or the partners of the firm, as the case may be, who have the special knowledge about the role they had played in the company or the partners in a firm to show before the court that at the relevant point of time they were not in charge of the affairs of the company. Advertence to Sections 138 and Section 141 respectively of the NI Act shows that on the other elements of an offence under Section 138 being satisfied, the burden is on the Board of Directors or the officers in charge of the affairs of the company/partners of a firm to show that they were not liable to be convicted. The existence of any special circumstance that makes them not liable is something that is peculiarly within their knowledge and it is for them to establish at the trial to show that at the relevant time they were not in charge of the affairs of the company or the firm."*

At this point, it is apposite to take note of the fact that section 3(2) of HPIDFE Act also envisages the vicarious liability of directors (including other persons) in case of default by the financial establishments. Relevant part of this section is reproduced here under:-

> *"**3. Fraudulent default by financial establishment**. - *****
> *(2) If any financial establishment defaults any repayment of deposit on maturity along with any benefit in the form of interest, bonus, profit or in any other form as promised or fails to render service as assured against the deposit, every person including the promoter, partner, director, manager or any other person or an employee responsible for the management of or conducting of the business or affairs of such financial*

establishment shall be punished with imprisonment for a term which may extend upto seven years and with fine upto two lakh rupees. Such financial establishment shall also be liable for a fine which shall not be less than five lakh rupees or where such deposit is quantifiable in terms of money twice the defrauded amount whichever is more:
Provided that in the absence of special and adequate reasons recorded, the imprisonment shall not be less than three years with fine which shall not be less than fifty thousand rupees as against each individual and not less than two lakh rupees against such financial establishment."

8.2 On the other hand the case of the respondent No 2, is that petitioner remained Director for approximately 15 years including the relevant time when the FDRs were taken from the victims. It is admitted case of the petitioner that he became a Whole- time Director on 01.10.2005, re-appointed on 01.06.2010, and retired on 31.05.2015. Thereafter he was appointed as Non-executive director but he was not working for the company since 01.04.2016 due to personal and health reasons and pursuant to the company letter dated 03.02.2017 he resigned as non-executive Director on 06.02.2017. Further, he was disqualified as director u/s 164(2) of the Act from 30.09.2017 to 30.09.2022. But document brought on record by respondent No.2 as Annexure R-2/5 shows that petitioner was re-appointed as a Whole-Time Director by the board of directors of M/s SRS Ltd. at its board meeting held on 22.05.2015 w.e.f. 01.06.2015. Relevant part of this document is reproduced hereunder:-

*" **SPECIAL BUSINESS***
4. Re-appointment of Sh. Vinod Kumar (DIN: 00013729) as Whole-Time Director designated as Executive Director

> *To consider and if thought fit, to pass with or without modification(s), the following resolution as an ordinary resolution:*
>
> *"RESOLVED THAT in accordance with the provisions of Section 196, 197 and 203 read with Schedule V and other applicable provisions, if any, of the Companies Act, 2013 (hereinafter referred to as "Act") and the Companies (Appointment & Remuneration of Managerial Personnel) Rules, 2014 (including any modification(s) or re-enactment(s) thereof for the time being in force) and as recommended by the Nomination & Remuneration Committee and approved by the Board of Directors, the consent of the Members be and is hereby accorded for reappointment of Sh. Vinod Kumar (DIN: 00013729) as Whole-Time Director of the Company, designated as Executive Director, for a further period of 5 (Five) years w. e. fi from 1st June, 2015 on the terms & conditions as specified in the Statement pursuant to Section 107 of the Companies Act, 2013 annexed to this notice……"*

8.3 It is relevant to note at this stage that allegations in the present FIR pertain to Year 2015 onwards. Further, perusal of Form No. MGT7 brought on record as Annexure - "R2/3" dated 12.07.2017 pertaining to financial year 01.04.2014—31.03.2015 reveals that petitioner's name finds mention at Serial No 4 as a whole time director in details of directors and Key managerial person. In view of the above, it cannot be denied that during all these instances, the petitioner was a part of the top hierarchy of SRS Ltd. and thus was at the helm of affairs of the company. It is also relevant to notice here that with respect to these paras i.e. para 10 & 11, there is no specific denial by the petitioner in his counter to the written statement. In that circumstance, it is hard to believe that he was not having knowledge about all these illegalities/ irregularities or he was not a party to any such transactions. Even if there are no specific allegations against him or he was not named in the FIR or even if he was not having any authority with respect to FDRs, when allegations are against the company SRS limited, petitioner having a place in the top hierarchy of the company, his involvement cannot be completely ruled out at this stage.

8.4 The judgments relied upon by learned Senior counsel for the petitioner, regarding requirement of specific allegations, cannot be made applicable in the present case as Section 3 of HPIDFE Act specifically makes Directors and other persons, who are responsible for the functioning of financial establishment, vicariously liable in such cases. Judgments to the effect that special statue shall prevail over general law are also not applicable as HPIDFE Act is also a State specific special law to protect the interest of depositors in financial establishment and for matters connected therewith or incidental thereto which also received the assent of the President of India on the 27th October, 2014. Additionally, even if Section 406 and 420 of IPC are antithesis to each other, it cannot be a basis to quash the FIRs, in the given facts and circumstances.

9. It is not the case of the petitioner that there was no such fraud committed, rather from the reports of SFIO as well as different audit/bank reports brought on record by respondent No.2, it is apparent that a financial fraud/scams involving hundreds of crores was committed with thousands of depositors. Crux of some of these reports is as below:-

a) Transaction audit report by Grant Thornton, LLP Was taken into consideration by the NCLT Chandigarh bench in CA No 1171/ 2019, wherein, it was observed that the business of SRS Limited was carried on with the intent to defraud creditors including the applicant.

b) In action taken report dated 10.08.2020, it has been informed by the SBI to respondent No 1/EOW that account of SRS Ltd has been classified as fraud. Some of the points from this report are reproduced here under:

> *"v. SRS Limited Account has been classified as, "Fraud" and complaint has been lodged with CBI on 13.05.2018.*
> *vi. LOC has been approved against Promoters/ Guarantors by Fraud Monitoring Department,*
> *vii. Enforcement Directorate is also probing the Company for violations under PMLA. We have submitted all the details sought by them.*
> *vii. SRS Ltd, matters are being examined by CBI, SFIO and ED in the cases filed against Promoters/Guarantors/Directors of SRS Limited."*

c) Similar observations are also there in report dated 12.02.2020 provided by the Axis Bank to EOW/ respondent No 1.

10. From all these reports it is manifest that complainants were lured to invest/deposit their hard earned money in the schemes projected by the company, wherein, lucrative returns were offered to them, but subsequently, SRS Ltd. did not returned any amount and thus causing immense financial loss to these persons. Merely,

because the provisions of HPIDFE Act are similar to the provisions of Companies Act, 2013 on certain aspects, it cannot be held that a person cannot be charged under these sections when from the allegations these offences are duly made out. Under the HPIDFE Act, the EOW would investigate offences related to the protection of depositors' interests and EOW's jurisdiction extends to a broader range of economic offences beyond corporate frauds, including scams related to financial establishments, Ponzi schemes, and other financial crimes.

11. Therefore, considering the parameters laid down by Hon'ble Supreme Court in **"State of Haryana and others vs. Ch.Bhajan Lal and others"**, reported as 1991 (1) R.C.R. (Criminal) 383, case of the petitioner does not fall in any of the specified parameters and there is no basis coming forth to invoke powers u/s 482 of CrPC to quash the impugned FIRs or consequential proceedings, especially when the investigation is yet to be completed.

12. In view of the discussion made above, all these petitions are dismissed.

<u>CRM-M-12874-2021, CRM-M-13293-2021, CRM-M-13292-2021, CRM-M-13399-2021 & CRM-M-13184-2021</u>

13. All these cases under present discussion belong to the FIRs filed on account of dishonor of cheques. Facts as taken from the case CRM-M-13399-2021, very briefly are that victims were

persuaded to invest their money in real estate schemes with assurance that they will be given plot or flat at a lower price alongwith interest @ 1.5% per month and one can either take that interest or reinvest the same. But subsequently, neither interest was given nor the money was returned and to assuage the victims, cheques of part amount were given, which were also dishonored. It has also been alleged that thousands of such cheques were issued.

14. In addition to the grounds taken in the petitions related to FDRs, which have already been rejected by this Court, two additional grounds were also taken in these petitions. Firstly, the petitioner was not Director of SRS Buildmart, the firm which issued these cheques. Secondly, these cheques were issued after the date of registration of FIR and post retirement of the petitioner.

15. On the other hand, the learned State counsel submitted that the parent company is SRS Limited only and there were numerous shell companies created to commit fraud with all its depositors.

16. I do not find much substance in these arguments raised by learned Senior Counsel. Even in the report of SFIO, it has been observed that there were around 88 subsidiary companies of the SRS Limited, which is the parent company. All these subsidiary companies were created to spread the business of SRS Limited and worked on its behalf only. In that case, it is immaterial whether the cheques were issued by SRS Buildmart, and when the petitioner is a

director in the parent company which was the ultimate beneficiary of all these transactions, his role and liability cannot be ignored at this stage of investigation.

16.1 Timings of these cheques also could not come to the rescue of the petitioner as it has to be ascertained during investigation that whether the petitioner had any role to play in entire sequence of events including the allegations of fraud and conspiracy as alleged by the complainants.

17. In view of the discussion made above, all these petitions are also dismissed.

CRM-M-14417-2021 & CRM-M-12433-2021

18. These two cases under discussion belong to the FIRs, on account of non-delivery of flats. Facts as taken from the case CRM-M-12433-2021, very briefly are that FIR has been filed against SRS Real Estate against offering of flats in SRS Royal Hills by alleging that builder enticed them to book e-flats by showing a brochure of the township being constructed. Booking of flats started in August 2012 and delivery of flats was to be given in 4 years but neither the flats have been delivered nor there is any refund of money.

19. In addition to the grounds taken in the petitions dismissed in the earlier part of the judgment, only additional grounds taken in these petitions is that proceedings under RERA have already been initiated and the criminal colour is being given to a civil dispute.

20. On the other hand, the learned State Counsel submitted that deposits from complainants were taken without there being any intention to deliver any flat and the only purpose was to cheat the complainants and therefore, it cannot be said that criminal proceedings cannot be initiated against the petitioner.

21. When the entire operations of the company in which petitioner was a director, are vitiated with frauds and numerous cases have piled up against them for money not being returned, then it cannot be simpliciter said that the present cases only relate to RERA. If entire scheme to deliver flats to homebuyers was cooked up to defraud them, it is not possible to hold that even such actions would be outside the purview of criminal proceedings.

22. In view of the discussion made above, both these petitions are also dismissed.

23. Pending miscellaneous application(s) in any of these petitions, if any, shall also stand disposed of.

26.04.2024 **(HARKESH MANUJA)**
sanjay **JUDGE**

Whether speaking/reasoned ? Yes/No
Whether Reportable? Yes/No