

IN THE HIGH COURT AT CALCUTTA
Civil Appellate Jurisdiction
Appellate Side

Present:

The Hon'ble Justice Debangsu Basak

And

The Hon'ble Justice Prasenjit Biswas

MAT 1823 of 2023

With

IA No : CAN 1 of 2023

Union of India and Anr.

Vs.

Prashant Bothra and Ors.

With

MAT 1889 of 2023

With

IA No : CAN 1 of 2023

Bank of Baroda

Vs.

Prashant Bothra and Ors.

For the Appellants in
MAT 1823 of 2023/SFIO

: Mr. Dhiraj Kumar Trivedi, Ld. DSGI
Mr. Sukanta Chakraborty, Adv.
Mr. Soumava Ghosh, Adv.
Ms. Isabella Pal, Adv.
Mr. Venkateshwar Sonkar, Adv.

For the Appellant in
MAT 1889 of 2023

: Mr. Jishnu Chaudhury, Sr. Adv.
Mr. Soumabho Ghose, Adv.
Mr. S.K. Singhi, Adv.
Mr. Ayant Shaw, Adv.
Mr. Jhanvi Jain, Adv.

For the Respondents
Nos. 1 & 2 in both
Appeals

: Mr. Sabyasachi Chowdhury, Sr. Adv.
Mr. Rajashree Dutta, Adv.
Mr. Sanjib Dawn, Adv.
Ms. Shreyaan Bhattacharyya, Adv.

For the Respondent No. 6
in MAT 1823 of 2023, for
Respondent No. 5 in MAT

: Mr. Ranajit Chowdhury, Adv.
Ms. Sampooma Saha, Adv.

1889 of 2023

For the Respondent no. 4 : Mr. Victor Dutta, Adv.
In MAT 1889 of 2023 &
Respondent no. 5 in MAT
1823 of 2023

Hearing Concluded on : August 5, 2025
Judgement on : August 21, 2025

DEBANGSU BASAK, J.:-

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Preface

1. Two appeals have been heard analogously as they emanate out of the same impugned judgment and order dated September 5, 2024 passed by the learned Single Judge in WPA 25668 of 2022.
2. Bank of Baroda has filed MAT 1889 of 2023 while Union of India and its functionaries have filed MAT 1823 of 2023 assailing the same impugned judgment and order.
3. Bank of Baroda had, sought leave to withdraw its appeal on July 17, 2025 when, after observing that Bank of Baroda is the lead banker of a consortium of bankers who lent and advanced various credit facilities to the borrower company, we postponed the decision on the request of Bank of Baroda not to proceed with their appeal.

Contentions of SFIO

4. Mr. Sukanta Chakraborty, learned Advocate appearing for the appellants in MAT 1823 of 2023 (for the sake of convenience, the appellants therein are referred to as SFIO) has contended that, SFIO issued a Look Out Notice in terms of the Issuance of Look Out Circular. He has submitted that, such Look Out Circular was amended from time to time and ultimately, on October 12, 2018. He has contended that, the

private respondent attempted to leave the country as will appear from the pleadings in the writ petition filed by the private respondent. He has referred to paragraph 10 of the writ petition in this regard.

5. Learned Advocate appearing for SFIO has referred to the order of the Central Government passed under Section 212 of the Companies Act, 2013 dated June 3, 2020. He has contended that, the borrower company suffered proceedings under the provisions of the Insolvency and Bankruptcy Code, 2016 and that, a Resolution Professional was appointed in respect of the borrower company. The Resolution Professional had made a representation to the Central Government and consequently, Central Government authorised SFIO to nominate inspectors to investigate into the affairs of the borrower company.

6. Learned Advocate appearing for the SFIO has contended that, from time to time, personnel of the investigator was changed. SFIO has undertaken the investigation as directed. SFIO has submitted charge sheet before the jurisdictional Court.

7. Learned Advocate appearing for the SFIO has contended that, his client applied before the National

Company Law Tribunal (NCLT), Kolkata Bench in CP 365 (KB) 2022 IA 1 (KB) 2023 for various reliefs. NCLT by an order dated February 7, 2023, had directed the borrower and others to disclose on affidavit their assets. NCLT had also issued various other directions.

8. Learned Advocate appearing for the SFIO has contended that, subsequent to the conclusion of the investigations, SFIO filed a complaint, seeking prosecution against the private respondents amongst others, for violation of and offences punishable under the Companies Act, 1956 and Companies Act, 2013. He has pointed out that, Ministry of Company Affairs, by a writing dated April 1, 2024 granted approval for necessary action against the private respondents herein under Section 212 (14) of the Act of 2013.

9. Learned Advocate appearing for the SFIO has contended that, since, there are materials on record to establish that, the private respondents committed fraud and that, it was in public interest that, none of the private respondents leave the country, the decision to issue the look out notice should not be faulted. He has contended that the banks and financial institutions of the country stood

defrauded of a sum of Rs. 2,677 crores at the behest of the private respondents.

Contentions of Private Respondents

10. Learned Senior Advocate appearing for the respondent Nos. 1 and 2 has submitted that, the respondent No. 1 was stopped by the Immigration Authorities at the international airport at Kolkata on June 9, 2022 from boarding an aircraft to depart for Nepal. It is at that stage, the respondent Nos. 1 and 2 had become aware of the Look Out Circular (LOC) issued by the Bank of Baroda and SFIO. He has submitted that, despite request, copies of the LOC were not made over to his clients.

11. Learned Senior Advocate appearing for the respondent Nos. 1 and 2 has contended that, Ministry of Home Affairs, Foreigners Division, (Immigration Section) from time to time issued office memorandum indicating the guidelines to be followed by the originating agencies for making request for issuance of LOC against a particular person. He has contended that, all office memoranda were consolidated in the memorandum issued on February 22, 2021. According to him, it is incumbent upon SFIO to follow the guidelines contained in the office memorandum dated February 22, 2021. He has

drawn the attention of the Court to the affidavit filed by the SFIO in this regard before the learned Single Judge.

12. Learned Senior Advocate appearing for the respondent Nos. 1 and 2 has contended that, apart from authorizing SFIO to nominate inspectors nothing has been done. He has contended that, SFIO did not cross the stage of Section 212 (4) of the Act of 2013. In this regard, he has referred to the affidavits filed by the SFIO before the learned Single Judge.

13. Learned Senior Advocate appearing for the respondent Nos. 1 and 2 has contended that, there was no material before the Bank of Baroda to classify the account as a fraud in terms of the Reserve Bank of India (Fraud Classification and Reporting by Commercial Banks and Selected FIs) Directions, 2016 (hereinafter referred to as Master Directions on Frauds). He has contended that none of the conditions laid down for issuance of an LOC exist in the facts and circumstances of the present case.

14. Referring to the provisions of Section 212 of the Act of 2013, learned Senior Advocate appearing for the respondent Nos. 1 and 2 has contended that, no cognizable offence was committed by the respondent Nos. 1 and 2 for the office memorandum dated February 22, 2021 to be invoked. He has

referred to such office memorandum and in particular to clause 11 thereof.

15. Learned Senior Advocate appearing for the respondent Nos. 1 and 2 has contended that, his client participated in the investigation conducted by SFIO. He has contended that, SFIO failed to disclose any document prior to November 2022 to suggest that the respondents were found guilty of any cognizable offence under the Indian Penal Code or any Penal Law. Consequently, he has contended that, the appeal filed by the SFIO should be dismissed.

Issues

16. The issues that have fallen for consideration are as follows:-

- (i) Can SFIO issue LOC during conducting investigations under Section 212 of the Companies Act, 2013?
- (ii) Can a Bank issue LOC without classifying the account of the borrower as fraud in terms of the Master Directions on Frauds?
- (iii) To what relief or reliefs are the parties entitled to?

Events

17. Respondent Nos. 1 and 2 have claimed themselves to be directors of Kohinoor Power Private Limited (KPPL) (hereinafter referred to as the borrower).

18. The borrower had availed of credit facilities to the extent of Rs. 244 crores from a consortium of banks of which, Bank of Baroda was the lead banker. An application under Section 9 of the Insolvency and Bankruptcy Code, 2016 had been filed in respect of the affairs of the borrowers before the National Company Law Tribunal (NCLT), Kolkata.

19. Borrower had proposed to set up a 66 MW coal-based thermal power plant at Jharkhand. Borrower had proposed to commission the project by January 2013 and subsequently shifted it to January 2015 and thereafter to December 2016. Borrower had expressed its inability to infuse fresh capital into the project and the same could not be completed. Bank of Baroda had classified the account of the borrower as Non-Performing Asset (NPA) on September 1, 2015.

20. In such proceedings, a Resolution Professional had been appointed. During the Corporate Insolvency Resolution Program forensic audit of the affairs of the borrower for the period from August 2, 2016 to August 3, 2018 was directed

when, forensic auditor had pointed out various irregularities. Such Resolution Professional had made a representation to the Central Government with regard to the affairs of the borrower.

21. NCLT had passed an order dated June 28, 2019 for liquidation of the borrower company.

22. The Central Government, apparently acting on the basis of the representation of the Resolution Professional, by a writing dated June 3, 2020 had authorized SFIO to nominate inspectors under Section 212 (1) of the Act of 2013 to investigate into the affairs of the borrower. Such order had provided that, the inspector so appointed shall exercise of powers available under Sections 217 and 219 of the Act of 2013. From time to time, SFIO had appointed inspectors for the purpose of investigating the affairs of the borrower. The last of such orders of appointment is dated January 23, 2023 passed by the SFIO.

23. Acting in terms of the Master Directions on Fraud, Bank of Baroda had complained to the CBI by a letter dated December 3, 2020 which CBI has claimed not to have received. However, CBI has admitted receipt of the subsequent letter of complaint.

24. SFIO had issued a Look Out Circular (LOC) dated August 2, 2021 against the respondent Nos. 1 and 2. Respondent nos. 1 was intercepted at the Kolkata Airport when he had tried to board an aircraft to travel to Nepal on June 9, 2022. Thereafter the respondent Nos. 1 and 2 had filed a writ petition which resulted in the impugned judgment and order.

25. During the pendency of the writ petition, SFIO had applied before the NCLT for order under Section 241 of the Act of 2013 which was granted on February 7, 2023. SFIO has since filed chargesheet against several persons including the Respondent no. 1 and 2 before the jurisdictional Court on January 10, 2024. Directions under Section 212(14) of the Act of 2013 had been passed on April 1, 2024.

26. Central Government has issued an office memorandum dated February 22, 2021 consolidating the guidelines for issuance of Look Out Circulars in respect of Indian citizens and foreigners. The office memorandum dated February 22, 2021 has taken into account judicial pronouncements on the subject. It has consolidated the guidelines in paragraph 6 of the office memorandum. It has prescribed that, request for opening a Look Out Circular (LOC)

would be made by the originating agency to the Deputy Director, Bureau of Investigation. Request for opening LOC must be issued with the approval of an originating officer not below the rank of the officer specified therein. It has allowed an officer of the SFIO not below the rank of an Additional Director to issue the LOC. It has also noticed that in exceptional cases LOCs can be issued for cases which are not covered by the guidelines.

Analysis on Issue No. 1

27. It is the contention of the respondent Nos. 1 and 2 that, there was no fraud committed in respect of the account of the borrower and in any event, SFIO did not have any materials before it to issue the LOC.

28. SFIO had issued the LOC on August 2, 2021. Such LOC had been issued subsequent to the borrower coming under the Insolvency and Bankruptcy Code, 2016 and a Resolution Professional being appointed therein. Resolution Professional of the borrower had reported to the Central Government of fraud committed in the account of the borrower. Pursuant to such representation of the Resolution was Professional, Central Government had authorized SFIO to

undertake investigations under Section 212 of the Act of 2013.

- Sections 211, 212 and 447 of the Companies Act, 2013

29. While Section 211 and Section 212 of the Act of 2013 have been placed under Chapter XIV which deals with Inspection, Inquiry and Investigation. Sections 447 is under Chapter XXIX deals with miscellaneous provisions.

30. Section 211 of the Act of 2013 has provided for the establishment of SFIO to investigate frauds relating to a company. It has also laid down the nature of experts which should constitute the SFIO.

31. Central Government has been empowered under Section 212 (1) of the Act of 2013 to assign the investigation into the affairs of a company to the SFIO without prejudice to the provisions of Section 210.

32. Section 212 (2) has specified that, no other investigating agency of the Central Government or any State Government shall proceed with investigation in respect of any offence under the Act of 2013 and in case any such investigation has already been initiated, it shall not be proceeded further with and the concerned agencies shall

transfer the relevant documents and records in respect of such offences under the Act of 2013 to the SFIO.

33. Section 212 (3) of the Act of 2013 has mandated that the SFIO shall conduct the investigation in the manner and follow the procedure provided in Chapter XIV of the Act of 2013 and submit its report to the Central Government.

34. Section 212 (4) of the Act of 2013 has empowered the Director, SFIO to cause the affairs of the company to be investigated by an investigating officer who has been given the powers of the inspection under Section 217.

35. Section 212 (5) of the Act of 2013 has mandated the company and its officers and employees who are or have been in employment of the company to provide all information, explanation, documents and assistance to the investigating officer as may be required for the conduct of the investigation.

36. Section 212 (6) has stipulated that notwithstanding anything contained in the Code of Criminal Procedure, offences covered under Section 447 of the Act of 2013 shall be cognizable and no person accused of any offence under Section 447 of the Act of 2013 shall be released on bail or on his own bond unless, the conditions enumerated therein stands satisfied. Subsection (7) of Section 212 of the Act of

2013 has laid down that the limitations on granting bail specified in subsection (6) are in addition to the limitations under the Code of Criminal Procedure or any other law for the time being in force on granting of bail.

37. Subsection (8) of the Act of 2013 has empowered an officer not below the rank of Assistant Director of SFIO to arrest any person when, such officer has reasons to believe on the basis of the materials in his possession that such person is guilty of any offence punishable under Section 447 of the Act of 2013.

38. Section 212 (9) of the Act of 2013 has mandated that, the officer authorised under subsection (8) shall immediately after arrest of such person forward a copy of the order along with the material in his possession referred to in subsection (8) to the SFIO in a sealed envelope which shall keep such order and material for such period as may be prescribed.

39. Under subsection (10) of Section 212 of the Act of 2013, every person arrested must be produced before the designated court within 24 hours of such arrest.

40. Subsections (11), (12) and (13) of Section 212 of the Act of 2013 have dealt with reports of the SFIO. SFIO may submit an interim report in terms of subsection (11) and on

completion of the investigation, SFIO has to submit the investigation report to the Central Government in terms of subsection (12). Subsection (13) has permitted any person concerned to obtain a copy of the investigation report by making an application to the Court.

41. Under subsection (14) of Section 212 of the Act of 2013, the Central Government, upon receipt of the investigation report, may after examining the report and after taking such a legal advise as it may deem fit, direct the SFIO to initiate prosecution against the company and its officers or employees who are or have been in employment of the company or any other person directly or indirectly connected with the affairs of the company.

42. Subsection (14-A) of section 212 of the Act of 2013 has empowered the Central Government to file an application before the Tribunal for appropriate order with regard to disgorgement of such assets, property or cash, if the report under subsection (11) or subsection (12) states that fraud has taken place in a company and that due to such fraud any director, key managerial personnel, other officer of the company or any other person or entity has taken undue advantage or benefit thereof.

43. Subsection (15) of Section 212 of the Act of 2013 has provided that, notwithstanding anything contained in the Act of 2013 or any other law for the time being in force, the investigation report filed with the relevant court for framing of charges shall be deemed to be a report filed by police under Section 173 of the Criminal Procedure Code.

44. Subsection (16) of Section 212 of the Act of 2013 has provided that, any investigation or action taken or initiated by the SFIO under the provisions of the Companies Act, 1956 would continue to be proceed in with under the Act of 1956 as if the Act of 2013 was not passed.

45. Section 212 (17) of the Act of 2013 has made provisions for sharing of information and documents in respect of offences under the Act of 2013 with other investigating agencies and vice versa.

46. Section 447 of the Act of 2013 has described the punishment for fraud. It has also defined fraud in relation to the affairs of the company as also what would constitute wrongful gain and wrongful loss.

47. What is of significance is the quantum of punishment that Section 447 of the Act of 2013 has prescribed for a person found guilty of fraud defined therein. The quantum of

punishment varies from six months to ten years. Importantly the minimum quantum is three years if the fraud involves public interest.

48. The quantum of punishment specified for fraud under the Act of 2013 is distinctly larger and higher than what Bharatiya Nyaya Sanhita (BNS), 2023 has provided for in respect of cheating under Section 318 or fraudulent misappropriation of property under Sections 320, 321, 322 and 323 thereof.

49. Section 447 of the Act of 2013 has treated fraud involving public interest on a different footing prescribing a much higher minimum punishment than a fraud not involving public interest. Aspect of involvement of public interest has to be kept in mind while dealing with an investigation directed under Section 212 of the Act of 2013, involving recovery of public money. NPA has been judicially recognized to be a cost to the economy. Reference may profitably be made to paragraph 13 of **2008 Volume 1 Supreme Court Cases 125 (Transcore vs. Union of India and Another)**. Efforts to recover dues involved in an NPA therefore has public interest ingrained.

50. The Act of 2013 has placed at least 2 limitations in addition to the limitation for grant of bail under the Criminal Procedure Code to an accused who is being investigated into by the SFIO.

51. The provisions of the Act of 2013 therefore have placed an offence under Section 447 of the Act of 2013 on a different pedestal than the offence of cheating and fraudulent misappropriation of property under the BNS. Public interest is inherent in an NPA by its nature as it is judicially recognized to be cost to the economy.

52. In the facts and circumstances of the present case, the Central Government has acted on a representation made by the Resolution Professional appointed in respect of the affairs of the company, by the National Company Law Tribunal (NCLT). Central government has formed an opinion with regard to the requirement of an investigation by the SFIO on the basis of such representation of the Resolution Professional. Private respondents have not challenged the representation of the Resolution Professional. The decision of the Central Government directing SFIO to investigate has also not been assailed by the private respondents.

- Memorandum dated February 22, 2022

53. SFIO issued the LOC on August 21, 2021 and therefore, such LOC has to be adjudged on the basis of the memorandum dated February 22, 2021 issued by the Government of India, Ministry of Home affairs, Foreigners Division (Immigration Section) in this regard.

54. Clause 6 of the memorandum has stipulated that all concerned for the purpose of issuance of LOC shall follow the guidelines stipulated in the memorandum dated February 22, 2021. Clause 6 (xiv) of such memorandum has noticed that, an officer of the SFIO not below the rank of Additional Director can issue a LOC.

55. Clause 6 (H) of such memorandum has stipulated that, recourse to LOC is to be taken in cases of cognizable offences under Indian Penal Code or other penal laws. Clause 6 (L) thereof has provided for the exceptional cases when LOC can be issued. It has provided that in cases which may not be covered by the guidelines above, a LOC can be issued, inter alia, when the economic interest of India is at stake.

56. In the facts and circumstances of the present case, the default of the borrower and the private respondents to a consortium of Banks have been claimed to be in excess of Rs.

2,500 crores. SFIO should not be questioned for having invoked the memorandum of February 22, 2021 taking into account the quantum of money involved in the fraud.

57. Investigations under the Act of 2013 which SFIO is statutorily required to undertake and has been authorised by the Central Government to do so, would necessarily mean not only considering documents but also questioning the persons involved. Involvement of the private respondents in the events relating to the investigations cannot be overlooked. Apprehension of SFIO that, the private respondents would have fled the country without the LOC in place cannot be said to be without any basis. One of the private respondents had been stopped at the Kolkata Airport attempting to board a flight to Nepal.

58. Clause 6(H) of the memorandum dated February 21, 2022 is not qualified with the requirement of the person concerned to have suffered a conviction in a criminal case. The only qualification imposed is that the concerned person is investigated in respect of cognizable offences under the Indian Penal Code, now BNS, or any other Penal law. Sections 447 of the Act of 2013 has prescribed a punishment of 10 years for offences committed thereunder when it was investigating

matters which may result in a conviction under Section 447 of the Act of 2013 economic offences have a different ramification and should be treated with seriousness. Invocation of the memorandum dated February 22, 2021 on the basis of clause 6 (H) thereof by the SFIO cannot be faulted.

59. In the facts and circumstances of the present case, the private respondents, as on the date of the issuance of the LOC, were being investigated into by the SFIO for offences punishable under the provisions of section 447 of the Act of 2013. Both the private respondents were therefore, facing criminal investigation involving penal laws which provide for sentence for a term of 10 years. Therefore, clause 6 (H) of the memorandum dated February 22, 2021 stood satisfied.

60. It is nobody's case that, the person who had issued the LOC was below the rank specified under the memorandum dated February 22, 2021.

61. Therefore, on the date of issuance of the Look Out Circular on August 2, 2021, SFIO was validly activated by the Central Government to investigate into the affairs of the borrower company under the provisions of the Act of 2013.

Admittedly, the Respondent no. 1 and 2 were the directors of such borrower company as on such date.

62. Consequently, we are unable to accept the contention of the respondent Nos. 1 and 2 that as on the date of issuance of the LOC being August 2, 2021, there was no material before the SFIO to issue the LOC.

- SFIO and its actions

63. Learned single judge has noted that, till the date of hearing of the writ petition, all that the SFIO had succeeded in doing was continue with the investigation without any result being shown.

64. With the deepest of respect, the nature of the investigations is such that, in a given factual matrix, it may require requisite time for its completion. The legislature being aware of the complexities of the investigations and its nature, has therefore, provided for experts of different fields to constitute members of the SFIO under Section 211 of the Act of 2013. The nature of experts that has been specified in Section 211 (2) of the Act of 2013 highlights the quality of the investigation that, SFIO may be required to undertake.

65. In the facts and circumstances of the present case, SFIO had demanded and obtained various documents,

informations and particulars from the private respondents till the time of the impugned judgment and order. SFIO has subsequently filed a chargesheet before the jurisdictional Court and that, such Court has taken cognizance of the offences. Therefore, it cannot be said that, there was no substance to the investigations undertaken or that, SFIO had idled away time.

66. True, investigations under Section 212 of the Act of 2013 should not be equated with a conviction of an offence under Section 447 thereof but at the same time, it has to be kept in mind that, for the purpose of investigations, the presence of the private respondents within the country is required. It is not uncommon for persons who have defaulted in payment to Banks to flee the country and thereby make themselves unavailable to criminal justice system and prevent the discovery of the fraud and recovery of the amount due. Moreover, in the facts and circumstances of the present case, clause 6 (H) of the memorandum dated February 22, 2021 has stood satisfied.

Answer to Issue No. 1

67. In view of the discussions above the first issue is answered in the affirmative and in favour of SFIO.

Analysis on Issue No. 2.

68. There are facts which are startling in the present matter. Bank of Baroda had filed a recovery proceeding before the Debts Recovery Tribunal which was dismissed on the grounds that, the borrower company was under liquidation. The company being sent to liquidation, does not in any manner wipe away the liability of such company. In any event, the guarantors of the borrower company continue to remain liable and their liability is coextensive that of the principal borrower.

69. Despite the Debts Recovery Tribunal dismissing the proceedings for recovery, Bank of Baroda had chosen not to prefer any appeal therefrom within the period of limitation before the Debts Recovery Appellate Tribunal. During the pendency of the appeal of the Bank of Baroda before the Court, directed against the impugned judgment and order passed in the writ petition, when Bank of Baroda was questioned about the same, adjournments were sought for and obtained. We have been informed that Bank of Baroda subsequently filed an application for recalling of the order of dismissal of the recovery proceeding passed by the Debts

Recovery Tribunal. These incidents have occurred prior to Bank of Boroda seeking leave to withdraw its appeal.

70. Bank had complained to the Central Bureau of Investigation (CBI) with regard to the fraud committed by the private respondents along with the others by a letter dated December 3, 2020. Learned Advocate for SFIO has made over a copy of the letter dated July 22, 2025 of CBI to Court in course of hearing of the appeals which relates to complaints made by Bank of Baroda and the Stand of CBI with regard thereto.

71. CBI has claimed in its letter dated July 22, 2025 that, it did not receive the complaint dated December 3, 2020 but received another complaint dated December 22, 2020. By the letter dated July 22, 2025, CBI has stated that, the complaint dated December 22, 2020 was registered for verification and that, after verification the complaint was returned to the CVO of the Bank by a letter dated June 24, 2022 with the request to find out the elements of fraud and cheating in the entire episode and bring out the related facts and circumstances so that the same can be acted upon. Thereafter, CBI had sent a letter dated December 20, 2024 to the CVO of the bank requesting for a fresh complaint after incorporating a

paragraph which it wanted to be in terms of the judgement of the Supreme Court reported at **2023 volume 6 Supreme Court Cases 1 (State Bank of India and others vs. Rajesh Agarwal and others)**. In response to such letter of the CBI, bank had sent a letter dated December 31, 2020 mentioning that no opportunity of being heard is required before a FIR is lodged and registered.

72. Bank of Baroda had sought leave to withdraw its appeal against the impugned judgment and order dated September 5, 2024, on July 17, 2025. We had postponed the decision on the issue of withdrawal to a later date. Significantly, Bank of Baroda did not apply formally by way of a written application for withdrawal. Bank of Baroda had however, through the learned Senior Advocate appearing for it made an oral request for withdrawal on the basis of a written communication that the advocate-on-record of Bank of Baroda had received from Bank of Baroda.

73. Although, Code of Civil Procedure, 1908 does not apply *stricto sensu* in a writ proceedings, however, principles thereof would apply. Principles akin to Order XXIII Rule 1 of the Code of Civil Procedure, 1908 if applied, for the consideration of the prayer of withdrawal of the appeal then, Bank of Baroda has

not placed any materials to suggest let alone establish that, the appeal must fail by reason of any formal defect or that, Bank of Baroda has sought to institute a fresh appeal.

74. Bank of Baroda had issued an LOC which has been quashed by the impugned judgment and order. Bank of Baroda had issued the LOC on the basis of the frauds discovered in the account and the complaint to the CBI. Bank of Baroda had issued the LOC under the Master Direction on Frauds. ***Rajesh Agarwal (supra)*** has noted that, a criminal complaint can be lodged in terms of the Master Directions on Frauds and that decision thereof need not be preceded by an opportunity of hearing to the borrower. Therefore, the complaint of Bank of Baroda with the CBI, had to be registered as a First Information Report since, it disclosed commission of cognizable offences.

75. Since, Bank of Baroda did not apply by way of a written application for withdrawal and since, we are not satisfied that, the appeal must fail by reason of some formal defect, we are unable to grant leave to Bank of Baroda as has been prayed for on July 17, 2025. We however, leave the issue as to re-working of the decision to classify the account of the borrower as a fraud for the purpose of attracting the civil

consequences under the Master Directions on Frauds, to the decision of Bank of Baroda to be arrived at in terms of the Master Direction on Frauds.

- Tools of Recovery

76. A Bank or a financial institution has many tools at its disposal to recover debt due to it. These tools have been made available to them in order to ensure that public money is recovered expeditiously. Some tools have been made available to the Banks and Financial institutions to proceed appropriately against unscrupulous borrowers.

77. As the law presently obtains a Bank or a financial institution can recover its debts by invoking anyone or none of the following:-

- (a) Recovery of Debts and Bankruptcy Act, 1993
- (b) Securitisation and Reconstruction of Financial Assets and Security Interest Act, 2002.
- (c) Companies Act, 2013.
- (d) Insolvency and Bankruptcy Code, 2016.

78. Banks and financial institutions have been empowered by the Reserve Bank of India to proceed against unscrupulous borrowers under:-

- (a) Master Circular on Wilful Defaulters.

(b) Master Directions on Frauds.

79. Banks and financial institutions have been empowered by the Memorandum dated February 22, 2022 to issue LOC against any of its borrowers or guarantors, who in the view of the originating agency, is guilty of commission of a cognizable offence.

80. Banks and financial institutions have also been empowered to issue LOC under the memorandum dated February 22, 2022 on the satisfaction of the conditions laid down therein. One of the requirement is the involvement of the persons against whom the LOC is issued are involved in the commission of penal offences.

81. Banks and financial institutions can invoke the Insolvency and Bankruptcy Code, 2016, Recovery of Debts Due to Debts and Bankruptcy Act, 1993, Securitisation and Reconstruction of Financial Assets and Security Interest Act, 2002, and also Companies Act, 2013, either singularly or cumulatively as the occasion requires. Invocation of provisions of statutes is not dependent upon the result of proceedings if any, under the Master Directions on Wilful Defaulters or the Master Circular on Frauds.

Statutes and the Circulars noted in the two preceding paragraphs above have largely provided for the civil consequences. However, Companies Act, 2013 has prescribed penal provisions. Master Directions on Frauds has permitted lodgement of criminal complaint.

82. The trigger point for the four statutes noted in paragraph 77 are not the same. Declaration of the account as an NPA is sine quo non for the invocation of SARFAESI Act, 2002. For the other three statutes noted in paragraph 77, it is not so. However, the fact the account stands classified as an NPA adds weightage to the urgency of the claim and the gravity of the efforts for recovery on the anvil of NPA is a cost to the nation.

- NPA and its impact

83. The regime for recovery brought about by various statutes and circulars of RBI are focused on elimination of NPA from the Banking system as efficiently as possible. The regime for recovery seeks to minimise the NPA's cost to the economy.

84. The Master Circular – Income Recognition, Asset Classification, Provisioning and other Related Matters issued by RBI deals with classification of NPA. It provides mechanism

of identification for NPA, restricting of accounts. It requires NPA classification as borrower wise and not account wise.

85. NPAs across the Banks and Financial Institutions unless treated timely and adequately would adversely affect the economic health of the nation. The regime in place for recovery of NPA seeks to address the issue of economic wellbeing of the nation.

86. Any NPA should be viewed as part of the problem contributing adversely to the economic health of the nation. The individual NPA is a part of the pool of the NPA. Taking an individual NPA out of the pool to accord a special treatment due to its minimal value or otherwise would be counter productive to the overall negative impact of NPA on the economy.

87. Any NPA irrespective of the quantum involved should be treated as creating a negative impact on the economy and dealt with accordingly.

- Application of Ratio of Rajesh Agarwal (supra)

88. *Rajesh Agarwal (supra)* has noticed that, there are both criminal and civil consequences which, in the Master Direction on Fraud issued by the Reserve Bank of India seeks to address. In paragraphs 37, 38 and 98.1 it has observed

that, principles of natural justice are not applicable at the stage of reporting a criminal offence. Paragraphs 37, 38 and 98.1 are follows : –

“37. While the borrowers argue that the actions of banks in classifying borrower accounts as fraud according to the procedure laid down under the Master Directions on Frauds is in violation of the principles of natural justice, RBI and lender banks argue that these principles cannot be applied at the stage of reporting a criminal offence to investigating agencies. At the outset, we clarify that principles of natural justice are not applicable at the stage of reporting a criminal offence, which is a consistent position of law adopted by this Court.

38. In Union of India v. W.N. Chadha [Union of India v. W.N. Chadha, 1993 Supp (4) SCC 260 : 1993 SCC (Cri) 1171] , a two-Judge Bench of this Court held that that providing an opportunity of hearing to the accused in every criminal case before taking any action against them would “frustrate the proceedings, obstruct the taking of prompt action as law demands, defeat the ends of justice and make the provisions of law relating to the investigation lifeless, absurd, and self-defeating” [Id, SCC p. 293, para 98.] . Again, a two-Judge Bench of this Court in Anju Chaudhary v. State of U.P. [Anju Chaudhary v. State of U.P., (2013) 6 SCC 384 : (2013) 4 SCC (Cri) 503] has reiterated that the Code of Criminal Procedure, 1973 does not provide for right of hearing before the registration of an FIR.

.....

98.1. No opportunity of being heard is required before an FIR is lodged and registered.”

89. In **Rajesh Agarwal (supra)** Supreme Court has considered the challenge to the Reserve Bank of India (Frauds

Classification and Reporting by Commercial Banks and Select FIs) Directions, 2016. It has held that, the Master Directions on Frauds gave rise to both criminal and civil liability. In respect of criminal liability, when, the bank is seeking to lodge a criminal complaint, then, the principles of natural justice are not attracted.

90. *Rajesh Aggarwal (supra)* should not be construed to mean that, a LOC cannot be issued without adhering to the principles of natural justice when, the bank has lodged a criminal complaint. The memorandum dated February 22, 2022 has allowed an investigating agency such as SFIO to issue a LOC as also a bank to do so. The requirement of issuance of a LOC and the validity thereof has to be construed on the basis of the memorandum dated February 22, 2022.

- Master Directions on Frauds

91. Account of the borrower has been classified as NPA on September 1, 2015. Any NPA in any bank account of any bank or financial institution has to be considered as a cost to the nation. It has to be considered as an event hurting the economic interest of the nation.

92. While classification of a borrower as a Wilful Defaulter is governed by the Master Circular on Wilful Defaulters,

classification of an account of a borrower as a fraud is governed by the Master Direction on Frauds. Master Direction on Frauds have come in to being in order to provide a framework to banks and financial institutions to detect and report frauds, taking expeditious measures both in preventing and bringing the fraudsters to book as well as monitoring staff accountability.

93. Master Direction on Frauds has vested the responsibility of fraud risk management, fraud monitoring and fraud investigation with the Chief Executive Officer of the Bank Audit Committee of the Board and the Special Committee of the Board. Under Clause 2.1. Banks have to frame an internal policy for fraud risk management, fraud investigation, function based on Government standard relating to the ownership of the function and accountability. Bank has to nominate an officer of the rank of General Manager to be responsible for submitting of reports with the Reserve Bank of India.

94. Clause 4.4 of the Master Direction on Frauds has mandated the banks to constitute a Special Committee of the Board for monitoring and follow up of the cases of fraud involving amounts of Rs. 10 million and above, exclusively. It

has noted that, while Audit Committee of the Board shall monitor all cases of the frauds in general, Special Committee of the Board shall monitor cases of fraud as of specified value.

95. Chapter VIII of the Master Direction on Frauds has dealt with loan frauds. Clause 8.3 has dealt with Early Warning Signal and Red Flag Accounts. Clause 8.3.5 has mandated with the officer responsible for the operation of the accounts by whatever designation, should be sensitized to observe and report any manifestation of the Early Warning Signal promptly to the Fraud Monitoring Group or any other group constituted by the bank for such purpose, immediately. Consequence of failure of non-reporting has also been laid down.

96. Under Clause 8.3.6, the Fraud Monitoring Group or any other group constituted by the bank for such purpose has to consider the issue of classification of the account as a Red Flag Account. Such Fraud Monitoring Group has to transmit its report on the Red Flag Account to the Special Committee of the Board for monitoring and follow up of frauds.

97. Under Clause 8.11.1 of the Master Direction on Frauds, banks have to lodge a complaint with the law enforcement agencies, immediately on detection of frauds.

This clause has recognized the obligation of a bank to lodge a criminal complaint on the detection of commission of a cognizable criminal offence, under the provisions of the Indian Penal Code, 1860 and now the Bharatiya Nyaya Sanhita (BNS), 2025.

98. Reserve Bank of India has issued the Master Direction on Frauds in exercise of its powers under Section 35A of the Banking Regulation Act, 1949. ***Rajesh Aggarwal (supra)*** has held that the Master Directions on frauds to be binding on the Banks and Financial Institution. Therefore, the mandate of Clause 8.11.1 of the Master Directions on Fraud being binding a bank has to follow the same.

- Civil and Criminal liability of banking transaction

99. An action of a borrower may incur a civil liability as also a criminal liability. It is trite law that, more than one obligation can arise out of the same transaction. Banks and Financial Institutions are at liberty to choose any or more of the tools noticed in paragraphs 73 to 75 herein to remedy the breach of any obligation by the borrower.

100. Banks and financial institutions are at liberty to lodge complaints with the investigating agency in respect of criminal liability of a borrower. In other words, when any official of the

bank and financial institution comes across commission of cognizable offence by any person, whether it be by a borrower or the official of the bank or financial institution or any other person in respect of the account of the borrower, it is obliged to lodge a criminal complaint. The investigating agency receiving such criminal complaint is also obliged to register a First Information Report on the basis of the complaint so long it discloses commission of a cognizable offence. This is provided for in the Master Circular on Frauds and as held in ***Rajesh Agarwal (supra)*** to be so.

101. Issuance of a LOC by a bank in terms of the memorandum dated February 22, 2022 must not be made dependent upon an account being declared as a fraud in terms of the Master Directions on Frauds. Declaration of an account to be a fraud under the Master Directions of Frauds, is an exercise which may result in civil consequences, if the account is so declared and therefore, has to adhere to the principles of natural justice. However, the same account of the borrower and persons involved with such account, may have committed fraud which involves criminal liability and for which, a criminal complaint is required to be lodged by a bank.

102. An official of the Bank is obliged to lodge a complaint with the Police once such official has come across materials constituting cognizable offences. An investigating agency is obliged to register the complaint disclosing commission of cognizable offences at a First Information Report. This obligations are not dependent upon an account being declared as a fraud or not under the Master Directions for Frauds, 2016. In a given case, there may be offences committed under the Prevention of Corruption Act or the Companies Act, 2013 or the BNS which may require urgent attention.

103. In such circumstances, requiring the bank to wait till it completes the procedure of declaration of the account as a fraud in terms of the Master Directions on Frauds would vitiate against the right of the bank to lodge the criminal complaint and to ensure that the persons involved does not leave the country to face the criminal charges.

104. In the facts and circumstances in of the present case, Bank of Baroda has complained to the CBI and thereafter issued the LOC. Ability of a bank to cause issuance of a LOC is recognised by the memorandum dated February 22, 2022. Contention of CBI that, Bank of Baroda has to await its decision on the Master Directions on Frauds for CBI to

register the complaint of Bank of Baroda is contrary to the ratio laid down in ***Rajesh Agarwal (supra)*** on which, CBI is relying heavily upon. Refusal of CBI to register the complain of Bank of Baroda violates the ratio of ***Rajesh Agarwal (supra)***.

105. In such circumstances, we find no grounds to interdict the issuance of a LOC by Bank of Baroda as against the private respondents.

Answer to Issue No. 2

106. The second issue is answered in the affirmative and in favour of the Bank.

Issue No. 3

107. CBI has not registered a complaint made by Bank of Baroda although obliged to do so. ***Rajesh Agarwal (supra)*** has specifically laid down that, for issuance of a complaint or its registration thereof, the borrower need not be heard. In other words, a criminal complaint has to be registered by the investigating agency so long the complaint discloses commission of cognizable offences, without awaiting the result of the determination of the civil liabilities under the Master Directions on Frauds.

108. In such circumstances the third issue is answered by issuing the directions as contained in the following paragraphs.

109. CBI shall register the complaint of Bank of Baroda as a First Information Report and proceed with the investigations thereof within 7 days from date. In the event, it does not do so, then, CBI shall transmit records pertaining to the complaints received from Bank of Baroda in this regard to the Deputy Commissioner of Police, Kolkata Police having jurisdiction over the registered office of the borrower company namely 16 A, Everest House, 46C, J L Nehru Road, Kolkata 700071 immediately on expiry of 7 days from date.

110. On receipt of such documents, jurisdictional Deputy Commissioner of Police, Kolkata Police will constitute a Special Investigating Team comprising of himself and at least 2 persons all of whom are to be chosen by him, given the nature of the complaint. Such Special Investigation Team shall proceed to investigate into the complaint, taking into account, provisions of Section 212 of the Act of 2013 which prohibits other agencies from investigating into the breaches under Section 447 thereof. Special Investigation Team is at liberty to investigate into the dealings, save to the extent

prohibited under the Act of 2013, including involvement of officials of the bank. Special Investigation Team will conclude the investigations as expeditiously as possible and submit its report to the jurisdictional Court.

Epilogue

111. Impugned judgement and order dated September 5, 2024 is set aside.

112. MAT 1823 of 2023 and MAT 1889 of 2023 along with all connected applications are disposed of accordingly without any orders to cost.

[DEBANGSU BASAK, J.]

113. I agree.

[PRASENJIT BISWAS, J.]