

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION**

WRIT PETITION NO. 3632 OF 2024

GTL Infrastructure Limited } Petitioner
versus
Central Bureau of Investigation & Anr. } Respondents

Mr. D. P. Singh, Senior Advocate with Mr. Sajal Yadav, Ms. Sonam Gupta, Ms. Apoorva Agrawal, Mr. Prasad Lotlikar, Mr. Essaji Vahanvati, Ms. Aparna Kulkarni, Mr. Suyash Gadre, Mr. Abhishek Thote i/b. Mr. Harsh Ghangurde, Advocates for the Petitioner.

Mr. Kuldeep Patil with Mr. Sumitkumar Nimbalkar, Ms. Sanika Joshi, Mr. Anay S. Joshi and Ms. Saili Dhuru, Advocates for Respondent No.1-CBI.

Ms. M. M. Deshmukh, In-Charge Public Prosecutor with Mr. S. V. Gavand, APP for Respondent No.2.

**CORAM: SHREE CHANDRASHEKHAR, CJ. &
GAUTAM A. ANKHAD, J.**

Reserved on : 12th December 2025
Pronounced on : 27th February 2026

JUDGMENT

Per, Shree Chandrashekhar, CJ :

The GTL Infrastructure Limited (in short, GTLIL) which is a public limited company incorporated under the Companies Act, 1956 seeks quashing of the First Information Report registered on 16th August 2023 by the Central Bureau of Investigation (in short, CBI) vide RC2192023E0022 alleging commission of the offence under section 120-B read with section 420 of the Indian Penal Code and section 13(2) read with section 13(1)(d) of the Prevention of Corruption Act, 1988. It has invoked the jurisdiction of this Court under Article 226 of the Constitution of India read with section 482 of the Code of Criminal Procedure, 1973

(corresponding to section 528 of the Bharatiya Nagrik Suraksha Sanhita, 2023). This First Information Report is registered against the GTLIL, unknown public servants and unknown others.

2. On the basis of the information dated 14th July 2021, a Preliminary Enquiry vide PE 2192022E0001 was initiated by the CBI to inquire into the financial impropriety and irregularity by the GTLIL in availing credit facilities from the consortium of 19 banks and financial institutions. The basis for registering the FIR against the GTLIL and the unknown public servants is said to be the facts revealed in course of the Preliminary Enquiry. It is stated that the GTLIL was referred for the Corporate Debt Restructuring (in short, “CDR”) upon expressing its inability to service interest and pay installments on the credit facilities availed by it from various banks and financial institutions and its inability to raise equities and shortfall in the revenues. The CDR approved package for restructuring dated 23rd December 2011 did not work out and the lender banks decided in the year 2016 to invoke the Strategic Debt Restructuring (in short, SDR) and out of a total loan of Rs.11,263 crores, the debt of Rs.7,200 crores was converted into equity shares and the balance amount of Rs.4063 crores was to be paid to the lender banks and financial institutions. According to the CBI, the GTLIL diverted a substantial amount of the loan funds through different vendors which were not repaid and goods were not supplied but, later on, written off. This is a fact revealed during the Preliminary Enquiry that the funds so diverted through the vendors were invested in M/s. European Projects and Aviation Ltd. (in short EPAL) or M/s. Chennai Network Infrastructure Limited (in short, CNIL) or GTLIL during the period 2011-2012 to 2013-2014. As on 30th June 2018, the GTLIL had outstanding dues of Rs. 4063.31 crores and this debt was proposed to be

assigned to M/s. Edelweiss Asset Reconstruction Company (in short, EARC) but the proposal of assignment of the said debt to the EARC was not accepted by the Canara Bank which dissented on the ground that there was no fresh valuation of the hypothecated/mortgaged assets of the GTLIL to justify the offer of Rs. 2354 crores by the EARC. The total depreciated value of the plants and equipments of the GTLIL as on 31st March 2018 was Rs. 7944.50 crores and it had 27729 Telecom towers with useful life of 35 years which could be valued at Rs. 10330 crores considering the similar deals between M/s. ATC Telecom Infrastructure and M/s. Vodafone India Ltd. The Preliminary Enquiry further revealed that huge wrongful loss was caused to the banks on account of the assignment of 79.3% outstanding dues valued at Rs. 3224 crores by 13 lender banks including the Union Bank of India for a consideration of approximately Rs.1867 crores. Though the lender banks were holding 64.97% equity in the GTLIL by way of 1212.17 crores shares, the lender banks did not sell their equity in block deal while assigning the debt to the EARC nor did they proceed against the GTLIL under the Securitization and Reconstruction of Financial Institutions and Enforcement of Security Interest Act, 2002 (in short, SARFAESI Act) to secure their loan from the collateral securities which has depreciated value of about Rs.7944.50 crores. On the contrary, the lender banks adopted ARC route with *mala fide* intention and caused huge wrongful loss to the banks.

3. In its defence, the GTLIL states that it was incorporated in the year 2004 and engaged in the business of providing passive Telecom infrastructure which was registered as an Infrastructure Provider Category-1 with the Department of Telecommunication, Government of India. The GTLIL ventured into the network

outsourcing and passive infrastructure sharing which is a globally well accepted model and it was offered projects from the leading players in the CDMA and GSM space. It claims that it worked with Hutch, Bharti, Aircel, Idea, BSNL, MTNL, Spice in the GSM space and Reliance and Tata Indicom in the CDMA space and established itself as a leading player in the network sharing and passive Telecom infrastructure without having an operator background. It was awarded for its outstanding contribution to the Telecom sector and earned and generated revenue to the tune of Rs.49.66 crores in 2006-07 (EBITDA-Rs.33.61 crores); Rs.124.58 crores in 2007-08 (EBITDA-Rs.63.16 crores) and Rs. 220.84 crores in 2008-09 (EBITDA-Rs.114.09 crores). It was able to make timely repayment to its creditors and earned lenders' trust. The increasing growth of the Telecom sector in India included growing new players such as Swan Telecom, Unitech Wireless, Shyam Systema, Reliance Telecom, Loop, Videocon Telecom, S Tel etc. This led to huge opportunity and increase in demand for number of towers and network plans. With a plan for 23,700 Telecom towers by FY-2011, the GTLIL availed credit facilities from several banks for the proposed expansion. Around 2010, the GTLIL had a long-term commercial arrangement to take over 17,500 Telecom towers with 21,000 committed tenancies. It had owned a further commitment to build 20,000 new sites from the Aircel. Ultimately, the Aircel's tower portfolio was acquired by it through a Special Purpose Vehicle, namely, CNIL for a consideration of Rs.8026 crores.

4. It is further stated that a consortium of 19 lender banks led by the Union Bank of India provided a debt of Rs.5000 crores and the promoters infused Rs.3036 crores. For installation and commencing of the Telecom towers, the GTLIL needed a strong

and robust supplier base and several vendors were appointed in consultation with the Aircel. To meet the obligation in timely manner, the GTLIL provided advance to the vendors so that the stringent timelines could be met and any penalty for time overrun could be avoided. The GTLIL narrates several incidents such as registration of a criminal case against new players, tabling of the report of the DoT regarding allocation of 2G Spectrum, incessant increase in rate of interest by the RBI etc. which constituted a kind of *force majeure* events. Eventually, the GTLIL lost tenancies and the revenue generation was not on expected lines. Compelled, the GTLIL opted for the restructuring of its debt under the CDR mechanism. On 31st December 2011, a Master Restructuring Agreement was executed with the CDR lenders after the restructuring package of the GTLIL was approved with thorough due diligence, audit and independent scrutiny by the SBI Capital Markets Ltd. The lender banks and financial institutions had agreed to the restructuring package because the GTLIL had chances of revival. Soon thereafter, the judgment in 2G Spectrum case was delivered and all licences granted in 2009 were canceled. The GTLIL suffered huge loss by losing more than 6000 tenancies in 2011-12. Due to the investigation in the Aircel-Maxis deal, the Aircel did not honor its commitment of more than 20,000 tenancies and, therefore, the GTLIL had to cancel its contract with the vendors which had supplied materials in parts. Adding to the woes of the GTLIL, the lender banks invoked the SDR mechanism in terms of the RBI Notification dated 8th June 2015. As part of the SDR scheme, the CNIL was merged into the GTLIL on 22nd December 2017 and a part of the debt was converted into equity with the lender banks holding 51% equity stake. The lender banks appointed Ernst & Young to run the process for bringing new

investors but the lender banks could not induct a new investor. In the meantime, the RBI issued a circular withdrawing the SDR scheme and the Telecom sector witnessed continuous dip in the market. The lender banks abandoned the SDR and explored the possibility of assignment of debt to an ARC. There were other events in the interregnum which severely affected the market condition and the viability of the GTLIL, such as, Aircel which was an anchor client accounting for 43% of the revenues went into insolvency and the Reliance Communications and Tata Group decided to exit the industry.

5. It is further stated that the JLF appointed M/s. Chokshi & Chokshi LLP to carry out the forensic audit of the GTLIL's accounts in compliance with a communication issued from the Department of Financial Services, Ministry of Finance to examine a possible fraud angle across the banking sector. The Forensic Audit Report was submitted on examination of the documents such as statutory auditor's reports, internal audit reports, concurrent audit reports, flash report, transfer pricing report, lenders insurance advisory report etc. But no abnormal transaction in the books of accounts of the GTLIL was detected. The Union Bank of India (lead bank) through its communication dated 16th October 2019 informed the lender banks that no instance of any fraud/diversion of funds was detected by the auditors. In the Swiss auction process, the Edelweiss-ARC and Bank of America Merrill Lynch submitted bid for Rs.2000 crores on full cash basis which was increased to Rs.2113 crores and later on Rs.2400 crores. The EARC was finally declared as the highest bidder and the sale was approved by the consortium of lender banks for Rs.2400 crores.

6. Mr. D. P. Singh, the learned senior counsel for the GTLIL contended that no fraud was detected in the Forensic Audit Report and the allegation of causing loss to the lender banks while assigning the debt of the GTLIL to the EARC is based on assumptions inasmuch as the statutory auditors and the statutory Commission of the Income Tax, etc. recorded a clear finding that even an iota of evidence was not produced in the proceedings before them to disclose fraudulent transactions. The Forensic Audit Report records a clear finding that no advances were given to the vendors during the check period and no payment was routed back to the GTLIL or CNIL or EPAL through the vendors. The GTLIL pursued the resolution plan through its letters dated 27th March 2018 and 27th April 2018 for recovery of the debt amount *qua* the assignment of debts to the ARC. The JLF minutes disclosed that the lender banks were opposed to equity dilution and the sale of debts to the EARC was an unanimous decision. Any representative of the GTLIL was not present in the meeting of the JLF held on 3rd March 2018 and, in fact, the Union Bank of India which is the lead consortium bank of the JLF admitted that the GTLIL was regularly servicing the monthly interest on the balance debts.

7. The learned senior counsel for the GTLIL further submitted that the CBI could not identify any public servant involved in the alleged conspiracy who caused financial loss to the lender banks and registration of the FIR is barred under section 17A of the Prevention of Corruption Act, 1988. The GTLIL has paid Rs.19,253 crores as on 30th September 2025 which includes Rs.1,868 crores paid to the lender banks under the assignment by the EARC as against the borrowing of Rs.11,263 crores. The Canara Bank which was a dissenting voice has received full settlement amount

under the One Time Settlement (in short, OTS) and has issued a discharge letter to the GTLIL on 18th September 2025. The Forensic Audit by M/s. Chokshi and Chokshi LLP did not observe any fraud or funds diversion and the transactions in the books of the borrower were not abnormal. It was a commercial decision of the lender banks and financial institutions not to sell their equity in the GTLIL and opted for revival and the CBI cannot exercise its own wisdom over the lenders' choice. The dissent by a few lender banks and financial institutions was a dispute *inter se* the lender banks and the assignment of the debts of the GTLIL was within the parameters of the RBI Master Circular.

8. The GTLIL states that it was provided advances to the vendors to ensure compliance within the timelines under the Aircel deal for commissioning of more than 23,000 towers. The vendors were not the related parties nor any director was common to the GTLIL. Moreover, the advances provided to the vendors were from its own funds available to the GTLIL. The vendors received advances during the FY 2010-2011 and the investments in the EPAL and CNIL were made in FY 2011-2012 to 2013-2014. In the Swiss auction by the lender banks and financial institutions, the GTLIL had no role to play and it was conducted as per the RBI Master Circular. The GTLIL states that the lender banks and financial institutions considered the developments in the interregnum such as the Aircel-Maxis investigation, Sector Y restructuring, large number of exits in Telecom sector and 2G Spectrum judgment on account of which the milestones under the CDR were not achieved. Clause 3.1.5 of the RBI Master Circular on prudential guidelines on restructuring of advances provided that a borrower is eligible for debt restructuring if it is not involved in fraud or malfeasance. We further find that the inquiry into the

matter expands over a decade and there are reports of the independent auditors against whom no allegation of collusion is made. The OTS with the lender banks such as Canara Bank, Punjab National Bank, IDBI Bank, SIDBI etc. and the decision by the Income Tax Settlement Commission are such factors which *prima facie* controvert the allegation of cheating and conspiracy. A number of documents including the Forensic Audit Report are said to be examined by the CBI in course of the Preliminary Enquiry and the CBI admits that it received other documents as well which are produced by the GTLIL. However, the CBI has taken a stand that it is still investigating the matter and examining a few persons to get clarity in case of any doubt.

9. In our opinion, this is of considerable importance that the CBI could not identify the accused in course of the Preliminary Enquiry and the First Information Report has been lodged against unknown. This is also of equal importance that the CBI is unable to identify an accused even today. This is an admitted position that the source information dated 14th July 2021 which triggered the Preliminary Enquiry did not provide adequate materials and the First Information Report was not lodged on that basis. If this is to be assumed that the CBI in course of the Preliminary Enquiry gathered sufficient material which *prima facie* disclosed commission of a cognizable offence then the CBI must indicate the name of the accused person or persons or a public servant who committed serious misconduct to cause loss to public exchequer. The paragraph no.7.15 of the Manual provides that a regular case should be registered when sufficient material is collected and it is felt that outcome of the investigation is likely to culminate in prosecution. The Manual puts a note of caution under paragraph no.7.2 that the important difference between a business risk and a

mala fide conduct of the public servant should be kept in mind. However, there is no indication, not even a whisper, in the counter affidavit filed by the CBI that the witnesses made a statement during the Preliminary Enquiry regarding any foul play on the part of the GTLIL. There is no statement in the First Information Report that the witnesses stated anything about the role played by the GTLIL and collusion or conspiracy between the GTLIL and the vendor-entities or the bank officials. The order dated 5th December 2025 passed in the present proceedings records the statement made in the Court on behalf of the Investigating Officer that statements of certain individuals have been recorded wherever there was any doubt as regards any transaction. It was observed by this Court that the counter affidavit filed on behalf of the CBI is unsatisfactory but no fresh affidavit was filed by the CBI indicating the result of investigation conducted so far and only a vague statement was made in the Court. The order dated 5th December 2025 passed by this Court reads as under :-

“The original source of information and a copy of the assessment made by an officer of the Central Bureau of Investigation (CBI) in a sealed cover are produced in the Court. The said complaint was made on 14th July 2021. These documents are returned in a sealed cover to the Investigating Officer who is present in the Court.

2. Mr. Kuldeep Patil, the learned counsel for the CBI has taken us through the Forensic Audits Report at page page no.344 onwards. He has mainly argued on the basis of the counter affidavit filed on behalf of the CBI and emphasized that the matter is still under investigation. The learned counsel for the CBI, on instructions from the Investigating Officer who is present in the Court, states that wherever some doubt or suspicion had arisen, the Investigating Officer recorded the statements of a few of the directors of the vendor company and the auditors. The learned counsel for the CBI further states that the Investigating Officer has yet not formed his opinion and he is scrutinizing the materials on record. In course of the Preliminary Enquiry, commission of cognizable economic offence which affects the financial stability of the country was found and, therefore, the First Information Report has been lodged and now the CBI has a right to investigate the matter to take it to its logical conclusion.

3. Post the matter on 9th December 2025. To be listed first on Board.”

10. Chapter XII of the Code of Criminal Procedure, 1973 deals with the information to the police and their powers to investigate. The right, discretion and powers of the police to investigate a case which may *prima-facie* disclose the commission of a cognizable offence was considered unfettered for some time. However, over a passage of time the right of the police to investigate a cognizable offence is no longer considered unfettered and the Courts have held that the police cannot proceed to investigate a case where there is no criminality or a legal bar. The day when the CBI conducted the Preliminary Enquiry and lodged a First Information Report bearing no. RC2192923E0022 on 16th August 2023, the Prevention of Corruption (Amendment) Act, 2018 was on the statute book. Section 17A which was inserted in the Prevention of Corruption Act puts a bar to conduct any inquiry or investigation into any offence by the police officer alleged to have been committed by a public servant where the alleged offence is relatable to any recommendation made or decision taken by such public servant in discharge of his official functions or duties without the prior approval of the appropriate government or the competent authority as the case may be. The bank officials are public servants who are provided a protective umbrella under section 17A to shield them from frivolous complaints. The bank officials of the consortium banks were discharging their official duties and there is no allegation that they violated any provision under the extant circular, guidelines or rules with dishonest intention. The decision of the Consortium of Banks is approved in the lenders meeting and the Ministry of Finance has control over them. Against them, neither any inquiry nor investigation has been sought be conducted. In our opinion, this cannot be an argument that the purpose of present investigation is to ascertain

the identity of unknown accused persons including unknown bank officials. Such exercise was to be conducted in course of the Preliminary Enquiry. Surprisingly, not a single individual was identified by the CBI in the course of the Preliminary Enquiry and the First Information Report seems to have been lodged only for making a roving and fishing inquiry.

11. The GTLIL states that the CDR was introduced because of the shortfall in revenue on account of the volatile telecom sector. It was a case of non-fulfilment of the contractual obligations on account of the circumstances beyond the control of the GTLIL. The GTLIL was not classified for CDR due to any fraud detection or diversion of funds and no ingredients of the offence of cheating has been, *prima facie*, shown by the CBI. The Income Tax Settlement Commission in its order dated 8th November 2013 clearly held that there was no bogus purchase or any evidence was found of purchases by accommodation bills. Such findings by the Income Tax Settlement Commission clearly held that the vendors were genuine and supplies were made. It is submitted that the entire edifice of lodging the FIR is built on assumptions, omissions and suppression of material information and documents. All the vendors and suppliers have been issued PAN and CIN numbers and provided identifiable addresses. They are registered with Service Tax and have been filing income tax returns. The advances were made by the GTLIL after taking due approval from its shareholders through postal ballots dated 28th January 2010. The OTS proposals were submitted to the lender banks and were accepted in principle as communicated to the GTLIL by the banks.

12. This is a very crucial aspect of the matter that everything

was under the purview of the RBI and the Ministry of Finance was aware of every development and decisions of the lender banks. The lender banks and financial institutions had full disclosures before them about the viability of the GTLIL and feasibility of the proposed assignment of debts to the EARC. The lender banks and the financial institutions made assessments on the basis of the Forensic Audit Report, prevalent market conditions and followed the RBI's Master Circular dated 1st July 2015. The decision was taken after due deliberations and the dissent by a few lender banks was on the ground that a fresh valuation of the assets and liabilities of the GTLIL was not made. Such dissent by itself cannot impute criminality to the collective business decision taken by the majority of the lender banks and financial institutions. The commercial wisdom and decision of the consortium of banks and financial institutions are of paramount importance and do not permit any inquiry or investigation where no case of collusion and fraud is made out. On the contrary, there shall be an assumption of the commercial decision being taken in *bona fide*. There is no allegation of collusion or conspiracy between the bank officials and the GTLIL to assign the debts of the GTLIL to the EARC. The GTLIL is not alleged to have made a false projection to deceive the lender banks and financial institutions. It is not said to have forged any document or manipulated the Forensic Audit Report. The decision to appoint M/s. Chokshi & Chokshi LLP was an independent decision taken by the lender banks and financial institutions. The Forensic Audit Report made a categorical observation that the verification of some of the parties (vendors) was carried out through the MCA Defaulter Company List/SEBI Shell Company List and no abnormality was detected in the dealings of such companies and they were not in the list of

shell companies. The relevant portions of the Forensic Audit Report are reproduced herein below :-

“FORENSIC AUDIT REPORT
OF
GTL INFRASTRUCTURE LTD
CHOKSHI & CHOKSHI LLP
CHARTED ACCOUNTANTS

7) *Write-off of Capital Advances to certain parties:- The borrower had given capital advances aggregating Rs. 575 crore prior to our period under audit, out of which, provision of Rs. 369 crore was made in respect of 8 parties during the FY 2013-2014 and written off during FY 2016-17 as per the audited financial statements. Based on audit procedures (viz visits, financial statements, balance confirmations), anomalies were identified as referred in the Para G & Exhibits 8 to 11. Certain transactions by certain parties as identified in the report, in regard to investments/write-off of advances carried forward, seemed to be unusual and hence explanations were sought.*

The borrower explained the rationale for such write off as being attributable to, subsequent cancellation of contractual commitments by AIRCEL and several external/internal business exigencies beyond management control viz, 2G spectrum, telecom operators, shut down, unfavorable Arbitration Awards dated 17th April 2017 by the Honorable Retd. High Court Judge, and the same have been relied upon. The borrower explained that as per the Order dated Nov 28th, 2013 of borrower by the Honorable Bench of the Settlement Commission, the Commission was of the considered opinion that, "Action u/s 132 and 133A did not bring out even iota of evidence to support that any purchase/expenses were in any bogus or not supported by paper documentation", which have been relied upon. (Refer Exhibits 12 & 13). Further, despite the limitation of audit period, a verification of some of these parties was carried out through the MCA Defaulter Company List/SEBI shell company list based on available information thereat. None of the said companies indicated any abnormalities against their names and also were not indicated to be part of the said Shell list of companies. The above is relied upon.

It is difficult for us to comment upon the source of funds for investments or the rationale of any transactions/investments by such parties as limited information was indicated to be available of such parties financial statements (indicated to be not filed completely/parties seen under CIRP proceedings)

The replies to the clarifications sought by Canara Bank vide its letter dated Feb 02nd, 2019, to the extent appropriate and within the scope & audit period, have been incorporated under para L and (Refer

Exhibit 9 - Detailed profiling of parties along with Management comments).

8) *Operations in Bank account TRA & Non-TRA:- The verification of payment transactions on sample basis from the operations of the TRA and non TRA bank accounts indicate utilisation for operational purposes being capital/revenue expenditures, repayment of bank dues, tax payments, investments in liquid funds or for term deposits for temporary purposes.*

The borrower's explanations and review of information provided such as external evidences, viz the relevant Orders of the Honourable High Court, Honourable Retd. Judge of High Court's Arbitration Award, the Tax and Transfer Pricing Assessment Orders, the Settlement Commission orders, the reports of Concurrent auditors (on sample basis) specifically appointed by the lenders for verification of operations, revenue, pre-audit of expenditure and resource utilization for revenue generation and observations therefrom, about the borrower receiving funds from sales proceeds, redemption of investments, petty cash deposits, receipts from related parties, etc. in the TRA & Non TRA accounts and utilisation thereof for operational/capital/revenue expenditures, repayment of bank dues, tax payments, investments in liquid funds/for term deposits/for temporary purposes have been relied upon, which are not indicative of any unusual/abnormal transactions.

Based on review of reports on sample basis of other independent agencies for the audit period such as Statutory Auditors' Reports/ Internal Audit Reports/ Concurrent Audit Reports/ Flash Report/ Transfer Pricing Report/ Lenders Insurance Advisory Report, prima-facie nothing has come to our attention during our audit period which indicates that transactions in the books of account of the Borrower are abnormal inter-alia diversion of funds."

13. This is important to keep in mind that previously there was an inquiry into the matter and the CBI has taken a decision not to conduct a Preliminary Enquiry. This decision was taken by the CBI in the background of the inquiries made against the GTLIL under the supervision of the Ministry of Finance. Through the communication dated 9th October 2015, the details of GTL Limited, GTLIL and CNIL were provided to the Ministry of Finance. The Union Bank of India stated in the said communication that the GTLIL had been dealing with the bank since 2006 and availed credit facilities. Most importantly, the Union Bank of India

provided its opinion to the Ministry of Finance that the entities were generating profit. This communication summarizes thus:

“Conclusion:

M/s Mott MacDonald, who have done the due diligence of the telecom towers of CNIL in April 2015 have informed that telecom towers found to be in order and overall passive infrastructure of CNIL is in good condition.

Valuation of telecom towers at Rs.48.00 per tower is the valuations done in the similar structure i.e., Tatas with Quippo (Rs.61.00 lacs) and ATC with Scel Telecom (Rs.41.00 lacs per tower).

Revenue projections were based on long term commitment of Aircel Group on existing tower portfolio for 15 years and future tenancy based on Tenancy Study Report of KPMG.

M/s Barclays Capital and Citi Group's Global Markets India Pvt Ltd (financial advisor to ascertain the valuation of the transaction with Aircel) and SBI Capital Markets Ltd, advisors who carried out financial appraisal for the Aircel deal were independent agencies having a good reputation and did not form part of the consortium, valuations submitted by the consultants were considered Independently and without conflict of interest.

All the three group concerns namely M/s. GTL Infrastructure Ltd., M/s. GTL Ltd. and M/s. Global Holding Corporation Pvt. Ltd were generating profit.

In view of the foregoing, the bank has not identified the referred account (GTL) fit to be declared as fraudulent one as on date and the bank has not come across any adverse opinion on the private persons.

Therefore, we are of the opinion that there is no need to file a complaint with Central Bureau of Investigation in this regard.

Yours' sincerely,

*CK JA (VK JAIN)
GENERAL MANAGER*

Copy to: CVO, Union Bank of India, Central Office, Mumbai”

14. The whole case of the CBI seems to have been built on the Forensic Audit Report which did not confirm any diversion of funds. The vendor-companies were the registered entities and, in existence, which supplied goods. The Income Tax Settlement Commission recorded a categorical finding that the purchases were genuine and there was no fabrication of documents. The GTLIL engaged in negotiation with Aircel and secured Rs.900/- crores on

net basis. This is recorded in the Forensic Audit Report that petitioner-company did not make any fresh roll-out after the CDR implementation. To respond to the argument of the CBI that the debt/equity was wrongly converted at the face value, Mr. S. D. Singh, the learned senior counsel for the GTLIL contended that the loan agreements empowered the lender banks and financial institutions to convert the debt to equity. Section 53 of the Companies Act did not permit any discount and the shares were to be issued at the face value. It is further submitted that the fluctuations in the price was on account of the Aircel's insolvency and other market factors. The GTLIL had no role in determining the price of the shares and it was governed by the regulations. The lender banks and financial institutions were holding 64.9% equity in the GTLIL and there is no allegation of putting pressure on them by the GTLIL to take a particular decision. Moreover, this is an admitted position that the commercial decision taken by the lender banks and financial institutions have turned out to be a sound commercial decision and the petitioner-company has paid more than what was once due to the lender banks and financial institutions. The dissenting banks have also accepted the offer of the GTLIL under the OTS scheme.

15. A few directors in the vendor-entities are the common directors but they are not part of the GTLIL. Kizhakkeveetil Prakasan is a sole director of M/s. Venerate Trading Pvt. Ltd.. He is also one of the directors in M/s. Datalink Informatics Pvt. Ltd. Vinayak Harishchandra is one of the directors in M/s. Vinamra Multitrading Pvt. Ltd. and M/s. Acuity Trading Pvt. Ltd. Similarly, Kamlesh Devashankar Mehta is one of the directors in both, M/s. Vinamra Multitrading Pvt. Ltd. and M/s. Acuity Trading Pvt. Ltd.

The Forensic Audit Report of the GTLIL on which Mr. Kuldeep Patil, the learned counsel for the CBI placed heavy reliance confirms the existence of six vendor-entities which the CBI endeavoured to project as shell companies. The remark under Exhibit-9 of the Forensic Audit Report recorded that (i) the vendors have done business with the company in past before the CDR and (ii) the vendor-entities provided their respective balance-sheets which matched with the balance-sheet of the GTLIL. Mr. Kuldeep Patil, the learned counsel for the CBI emphasized the management response at S.No.3 that the physical letters sent to the vendor-entities were returned undelivered. However, it is indicated in the said remark that the letters were sent at the last known address and there was a possible location change. It is also indicated that some of the vendor-entities are in the process of liquidation before the NCLT.

16. The allegation of overpricing of the shares and the decision of the consortium of banks to accept the proposal cannot be examined with the standpoint of the Investigating Agency. The share market dynamics, the market forces and prevailing market conditions are important factors which decide the share price at a particular moment. The decision of the consortium of banks to wipe out a certain portion of the loan amount is a commercial decision. Except a lone dissent by the Canara Bank which also accepted the OTS proposal for the GTLIL, there was unanimity in the consortium of banks which accepted the proposal of the GTLIL. It was a commercial decision of the Canara Bank to dissent against assignment of the debts to the EARC but finally it has accepted for settlement of its dues with the GTLIL. The Preliminary Enquiry continued for 24 months but no specific

allegation of conspiracy between the bank officials and the GTLIL is stated in the First Information Report. This is unimaginable that 18 private/public sector banks joined hands and hatched conspiracy with the GTLIL to cover up siphoning of funds. The allegation of not proceeding against the GTLIL under the statutory regime for recovering the loan amount is merely *ipse dixit* of the Investigating Agency. There is no allegation in the First Information Report that the petitioner-company had dishonest intention at the beginning and it made projections knowing the same not to be true. The CBI collected 52 documents in course of the investigation and, as stated by the Investigating Officer during the Court proceedings, he has yet to make up his mind whether or not to file a charge-sheet.

17. The registration of a crime by the police entails serious consequences. It has adverse impact on the business deals, present or future, of any business entity. It would certainly impact the commercial transactions and the business entity may be debarred from participating in any government contract. It may diminish its value with the banks, financial institutions and private arrangements with the other government or private entities. While all these aspects may not be a determinative factor but, the inquiry and investigation in a criminal case cannot go on only for the reason that the police has unfettered powers to investigate a crime.

18. The offence of cheating as defined under section 415 of the Indian Penal Code requires (i) deception of a person either by making a false or misleading representation or by other action or omission, (ii) fraudulent or dishonest inducement of other person to either deliver any property or to consent to the retention thereof

by any person or to intentionally induce that person to do or omit to do anything which he would not have done or omitted to do if he were not so deceived and (iii) that act or omission causes or is likely to cause damage or harm to that person in body, mind, reputation or property. In “*Hridaya Ranjan Prasad Verma*”¹, the Hon’ble Supreme Court observed that there is a fine distinction between mere breach of contract and the offence of cheating. Mere breach of contract cannot give rise to criminal prosecution for cheating unless fraudulent or dishonest intention is shown right at the beginning of the transaction. The Hon’ble Supreme Court further held that it is necessary to show that the accused person had fraudulent or dishonest intention at the time of making the promise and mere failure to keep up the promise subsequently is not sufficient. There was no deception at the inception or subsequently by the GTLIL. The alleged loss of public exchequer does not fall within the meaning of wrongful loss in absence of any evidence, intent and fraudulent act on the part of the GTLIL or omission by unknown bank officials. There is no allegation of any favor extended to the GTLIL which was all the time insisting on a resolution plan for its revival. The CBI could not detect any illegal act or deceit played by any of the directors of the GTLIL in the entire transaction. There seems to be an inseparable obstacle in the stand of the CBI that unknown persons were involved in the crime. In our opinion, the machinery of criminal justice system cannot be put in motion for making a roving inquiry. The CBI cannot be permitted to continue with the investigation in this matter in a hope that some day it may identify the offender where no offence is disclosed.

19. The CBI has taken a specific stand that the matter is still

¹*Hridaya Ranjan Prasad Verma & Ors. v. State of Bihar & Anr.*: (2000) 4 SCC 168.

under investigation and it has right in law to investigate the case which *prima facie* discloses commission of cognizable offence. However, the sphere of investigation is well demarcated and the case set up by the CBI in the First Information Report can be examined in the light of unimpeachable documents produced by the GTLIL. The registration of an FIR after the Preliminary Enquiry against unknown bank officials and unknown directors of the GTLIL indicates the fluid state of affairs. The scope of Preliminary Enquiry and investigation in a cognizable offence after an FIR is lodged are different. But then, it is difficult to accept the proposition that the CBI is still searching for the accused. The continuance of criminal proceedings against the GTLIL cannot be permitted on the ground that the Investigating Officer may some day find the real culprits and form an opinion to file a charge-sheet.

20. In "*Rashmi Kumar*"², the Hon'ble Supreme Court observed that such powers should be sparingly and cautiously exercised and only when the Court is of the opinion that otherwise there will be miscarriage of justice. The special features of a case and the defence set up by the accused person through uncontroverted document can be considered to arrive at a decision whether it is expedient and in the interest of justice to permit the prosecution to continue. The registration of the First Information Report affects the GTLIL in many ways. In a case like the present one, the High Court can examine the materials on record even though the investigation is said to be still continuing. On examination of the materials brought on record by the GTLIL which were collected by the CBI in course of the Preliminary Enquiry, if it is found that the allegations in the First Information Report are completely wiped

² *Rashmi Kumar v. Mahesh Kumar Bhada: (1997) 2 SCC 397.*

out then this Court should interfere in the matter and quash the First Information Report even if minor issues remain unresolved. There is no doubt that the High Court while taking into consideration the special facts of the case can quash the criminal proceedings at a preliminary stage. The power of the High Court is a wholesome power and seeks to achieve a public purpose that a criminal proceeding ought not to be permitted where it shall amount to miscarriage of justice.

21. As a result of the above discussions, we have formed an opinion that the investigation in RC2192023E0022 registered on 16th August 2023 cannot be permitted to continue any further. This First Information Report requires interference by this Court and is, accordingly, quashed.

22. Writ Petition No.3632 of 2024 filed by GTL Infrastructure Limited is allowed.

[GAUTAM A. ANKHAD, J.]

[CHIEF JUSTICE]

PRAVIN
DASHARATH
PANDIT

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