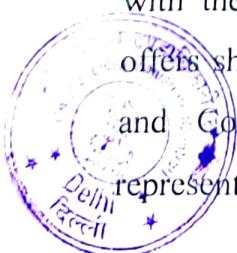


24.01.2026

Present: Sh. Prateek Som, Sh. Aditya Shukla and Sh. Chinmaya Tripathi, Ld. Counsel for the complainant.

ORDER ON THE APPLICATION UNDER SECTION 175(3) BNSS

1. This Order shall dispose of an application seeking directions for registration of a First Information Report against the proposed accused persons (i.e. borrowers, mortgagors, and guarantors) for commission of cognizable offences under Sections 316/318/336(3)/340/61 Bharatiya Nyaya Sanhita, 2023 (old Sections 406/420/465/468/470/471/120B of the Indian Penal Code, 1806) and other provisions of the BNS, arising out of the fraudulent availing and subsequent diversion of loan funds sanctioned by the applicant–finance company.
2. The complainant filed a complaint against M/s Gagan Lifespace, Vishal Ghanshyam Agarwal, Ghanshyam Gangaram Agarwal, M/s Gagan Associates, Shushil Ghanshyam Agarwal, Dimple Alnesh Somji, Hanif Gulamali Somji, Rajeev Sachanand Jagwanee, Sachanand Relumal Jagwani, Alnesh Somji, Nikunj Arun Sanghavi and M/S Raisonni Vastushilpa Associate for having committed cheating with the complainant for an amount of Rupees One Hundred Seven Crores Seventy-Seven Lakhs approximately, till 22nd August, 2023. The Complainant is registered as a non-banking financial company (NBFC) with the Reserve Bank of India and provides financial solutions and offers short term, medium-term and Long-term Financing, Equity Loan, and Corporate Lending Services. The proposed accused persons represented themselves to be engaged in construction and development



business and approached the complainant at their Delhi Office, seeking a Term Loan for the construction of their Project 'Gagan Nulife', a Senior Citizen Housing Scheme situated in Pune, Maharashtra, with an assurance that the Loan will be repaid along with the stipulated interest and charges within prescribed time. During 2017, the proposed accused persons availed a Term Loan facility of Rupees Eighty-Five Crores, through misrepresentation and falsehood. To get the said Loan Amount released, the proposed accused persons executed a Demand Promissory Note dated 13.08.2017 to the tune of Rupees Eighty-Five Crores, together with interest, costs, expenses, and charges due etc., in favour of DMI Finance Pvt. Ltd. They also mortgaged some properties to the complainant by executing registered indentures of Mortgage signed by both the parties. An undertaking was also given by them that they will not sell or transfer the properties without the consent of the complainant and the entire money from the sale of the mortgaged Units will be deposited directly into the Escrow Account as per the Term Loan Agreement and other transaction documents. Despite giving such an undertaking, they had already dishonestly sold 5 units of the 34 units (mortgaged property) and still shown them as a part of the mortgaged properties. It is alleged that after disbursement of the Loan Facility, several irregularities, and anomalies in the financial dealings of the proposed accused persons came to the knowledge of the complainant. The complainant came to know that instead of utilizing of the said Loan Facility towards the completion of Project 'Gagan Nulife', the proposed accused persons had illegally and in criminal conspiracy with each other, dishonestly utilized such Loan for their personal benefits. They had siphoned the sale proceeds of the hypothecated /mortgaged properties for their personal benefits and to repay other liabilities. They were siphoning off the said Loan Amount for their personal gains and for building up their other personal businesses.

The complainant further alleged that the proposed accused persons had fabricated various documents including sale deeds of the properties which were already mortgaged with the complainant. They used the loan amount for repayment of personal loans, unsecured loans from promoters and towards service of loans to other unsecured lenders etc. Upon being confronted by the Complainant, the proposed accused persons visited the Complainant's Delhi Office and gave false assurances that all the conditions under the Term Loan Agreement will be fulfilled. They further requested for the additional financial assistance from the Complainant to complete the Project and to enable themselves to repay the Loan Amount. After several meetings at Delhi, the proposed accused persons finally succeeded in inducing the Complainant to grant a fresh loan of Rupees Forty-Five Crores Fifty Lacs by way of the Second Term Loan Agreement dated 16.07.2018. The said Second Term Loan Agreement dated 16.07.2018 was thereafter modified and the availability period was amended to 20 months from the execution of the Agreement. The proposed accused persons repeated the sequence of events in the said Second Term Loan as well and again executed multiple Documents as required under the Second Term Loan Agreement, with an intent to not make any repayment of the Term Loan but again solely to misrepresent the Complainant to get the Loan Amount disbursed and to divert and siphon the same for their personal use. From the very inception, the proposed accused persons had the intent to cheat and defraud the Complainant. They had mortgaged the Units Gagan Emerald with the complainant and the same were not to be sold without the prior approval and no objection certificate issued by the Complainant. Further, the Receivables from the sale were only to be deposited in the Escrow Account. However, the proposed accused persons again defaulted in the payment of the EMI and sold the mortgaged Units without obtaining no

objection certificate/ prior approval of the Complainant. They *again* misrouted/ siphoned of the said Receivables to their other accounts *for* their personal gain. Despite having means to repay the Loan Amount, they failed to repay the loan with a dishonest intention. They misrepresented to the Complainant of having a certain Loan liability in crores from one Bavaria Motors and stated that the Loan Amount was paid to them. The said Bavaria Motors was owned by one of the accused persons. One of the accused persons, namely Mr. Sushil Ghanshyam Agarwal, in his written-reply dated 18,08,2022 to the show cause notice, admitted to having sold multiple units without first obtaining the mandatory No Objection Certificates (NOCs), thereby wilfully bypassing essential regulatory requirements. On inspection of part of the Monthly Monitoring Data, which the proposed accused persons reluctantly shared, the financial irregularities came to light. It was evident that the proposed accused persons had sold various Units to the third parties without the prior approval or knowledge of the Complainant, thereby violating the agreed covenants of the Term Loan Agreements. On account of the said fraudulent conduct of the proposed accused, the complainant had incurred huge loss of public money. It was stated that several meetings were conducted between the parties at New Delhi but to no avail as the proposed accused persons kept misusing the disbursed loan amount for their personal gains. After much deliberation and pressure, they paid the First Tranche of Rs. 59,81,451/- (Rupees Fifty-Nine Lakhs Eighty-One Thousand Four Hundred and Fifty-One Only) on 12.08.2022 and the Second Tranche, which was due by 07.09.2022, was cleared on 12.09.2022 vide deposition of 1,15,40,000/- (Rupees One Crore Fifteen Lakhs Forty Thousand Only). Ever since then, they had evaded making payments. As on 22.08.2023, the outstanding liabilities of the Accused Persons were to the tune of Rupees One Hundred Seven Crores Seventy-

Seven Lakhs approximately. The complainant had sent a complaint dated 22.08.2023 to the SHO, EOW, Mandir Marg, New Delhi. However, no action was taken on the said complaint. Even complaints to senior police officials (a complaint to DCP, EOW, Mandir Marg, New Delhi vide D.D. No. D-2039, dated 28.08.2023 and further before the Deputy Commissioner of Police, Economic Offences Wing, PS Mandir Marg) went unheeded and hence, the present application was filed seeking directions for registration of the FIR. It is stated that since the proposed accused persons were guilty of fabrication of various documents with intent to cheat the complainant, they had committed a cognizable offence. It is further alleged that the proposed accused persons had committed these criminal offences in active collusion with each other and as a part of the criminal conspiracy hatched by them and hence, they were also guilty of offences under Section 61(2) of BNS, 2021 (Corresponding Section 120-B of IPC).

3. Succinctly put, the case of the applicant is that the proposed accused persons approached the applicant—finance company for sanction of a loan for construction of specific projects. Based on representations made by them regarding the nature of the project, its feasibility, and the intended end-use of the funds, the loans were sanctioned and disbursed in tranches. The borrowers were contractually and fiduciarily obliged to utilise the loan amount exclusively for construction of the projects and to disclose the manner of utilisation to the lender. It is alleged that contrary to the representations made and assurances given, the borrowers did not utilise the loan amounts for construction of the projects for which the loan was sanctioned. Instead, the funds were diverted to other businesses and ventures controlled by the borrowers. The finance company was allegedly kept completely in the dark regarding such diversion, and false assurances were continued to be extended regarding progress of



construction and utilisation of funds. The complainant asserts that the diversion of funds came to light only upon inspection and scrutiny of accounts, whereafter it was discovered that the projects for which the loans were obtained were either incomplete or substantially non-existent, while the loan amounts had been siphoned off to unrelated business activities. The grievance of the complainant is that the borrowers had no intention to utilise the funds for the stated purpose and had dishonestly induced the finance company to disburse the loans.

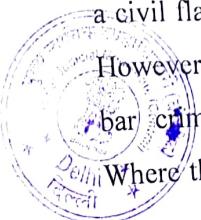
4. In the ATR filed by the Enquiry Officer, it is stated that during enquiry, it came to light that the complainant had already started arbitration proceedings against the proposed accused persons and the arbitration proceedings were being conducted by Hon'ble Mrs. Justice Indu Malhotra (Former Judge, Supreme Court of India). The Enquiry Officer had submitted a report that no cognizable offence was made out and the complaint had been closed.

5. At the outset, it is necessary to note that at this stage the Court is not required to conduct a detailed inquiry into the truth or otherwise of the allegations. The limited question before the Court is whether the complaint and the material placed on record disclose the commission of cognizable offences warranting investigation by the police. The allegations, as set out, *prima facie* disclose that the loan amount was entrusted to the borrowers for a specific purpose, namely construction of a particular project. The alleged act of diverting such funds to other businesses, without the knowledge or consent of the lender, and while continuing to represent that the funds were being utilised for the sanctioned purpose, constitutes a clear allegation of dishonest misappropriation and deception. The element of *mens rea* is evident from the conduct alleged, namely, suppression of material facts from the finance company, diversion of funds in breach of trust, and continued

concealment of such diversion. Such allegations go far beyond a mere breach of contractual terms or failure to repay a loan. They strike at the root of the transaction and *prima facie* attract the ingredients of offences punishable under Sections 316/318/336(3)/340/61 Bharatiya Nyaya Sanhita, 2023 (Old Sections 406/420/465/468/470/471/120B of the Indian Penal Code, 1806) and other allied provisions, as may be revealed during investigation.

6. It is also to be noted that the said Bavaria Motors, to whom a part of the loan amount has been funnelled is owned and controlled by Urmila Ghanshyam Agarwal and Shweta Vishal Agarwal. The proposed accused persons have actively concealed the true end-use of the disbursed loan amount. The Borrowers failed to disclose material facts regarding the movement of funds following disbursement of the loan amount to them by the complainant. These transactions were omitted from regular reporting and misrepresented in financial disclosures to the lender. Audit trails shall indicate that the funds were transferred out of the primary business account and utilized to settle outstanding payments/liabilities of a separate entity, owned by the borrowers, thereby constituting self-dealing and conflict of interest. The use of funds for personal gain or to benefit an affiliated entity, without prior written consent, constitutes a fundamental breach of the Loan Agreement. This circular flow of money —where the borrower effectively pays themselves using credit—is classified as ‘siphoning of funds’ and ‘related-party diversion’ under standard banking and regulatory guidelines.

7. The Court is conscious that loan transactions ordinarily have a civil flavour and may also give rise to contractual or arbitral remedies. However, it is well settled that the availability of a civil remedy does not bar criminal proceedings where the allegations disclose criminality. Where the borrower is alleged to have dishonestly induced the lender to



part with money and thereafter misappropriated the same by diverting it for unauthorised purposes, the criminal law must be permitted to take its own course.

8. The contention that the pendency of arbitration proceedings between the borrowers and the finance institution bars the registration of a FIR is wholly misconceived and untenable in law. It is a settled principle that the existence of a civil remedy, including arbitration, does not eclipse or override the jurisdiction of the criminal law where the allegations disclose the commission of a cognizable offence. Arbitration is a consensual mechanism for adjudication of contractual disputes and enforcement of civil rights arising out of agreements. Its scope is confined to determining *inter se* liabilities of the parties under the contract. In contrast, criminal law is concerned with acts which have a deleterious impact on society at large and involve elements such as deception, dishonesty, or misappropriation, which attract penal consequences. Where material placed on record *prima facie* indicates that the borrower, at the time of availing the loan or during the subsistence of the loan transaction, deliberately suppressed material facts, diverted or misappropriated the loan funds, or otherwise acted in a manner calculated to keep the lending institution in the dark, the necessary ingredients of offences such as cheating and criminal breach of trust are clearly attracted. Such acts cannot be sanitised or reduced to a mere contractual breach merely because the loan agreement contains an arbitration clause or because arbitral proceedings are pending.

9. The Supreme Court has consistently held that criminal proceedings cannot be thwarted merely by clothing a transaction with a civil or commercial flavour. If the allegations disclose dishonest intention from the inception or subsequent dishonest misappropriation of entrusted funds, the criminal law must be permitted to take its own course. The

registration of an FIR is not dependent upon the outcome of arbitration proceedings, nor can the investigating agency be restrained from discharging its statutory duty under the guise of contractual dispute resolution. It is equally well settled that arbitration proceedings and criminal proceedings operate in distinct and independent fields. The findings, if any, of an arbitral tribunal pertain to contractual rights and liabilities and do not preclude investigation into criminality, particularly when the alleged acts involve diversion of funds, falsification of records, or conscious concealment of material facts from the lender. Permitting borrowers to evade criminal prosecution merely by initiating or relying upon arbitration proceedings would amount to granting immunity to economic offenders and would defeat the very object of criminal law. Such an approach would encourage misuse of contractual dispute resolution mechanisms as a shield against legitimate criminal action. Accordingly, where the complaint and accompanying material *prima facie* disclose that the borrower has misappropriated loan funds or has acted dishonestly by keeping the finance institution in the dark, the pendency of arbitration proceedings does not constitute a legal bar to the registration of an FIR or to the continuation of criminal investigation. Both proceedings may proceed simultaneously, each in its own domain, without one impeding the other.

10. Permitting such allegations, as the ones in the present case, to be brushed aside on the ground that the dispute arises out of a loan agreement would amount to giving a licence to borrowers to misuse public and institutional funds under the cloak of commercial transactions. Economic offences involving diversion of loan funds have serious societal ramifications and require thorough investigation.

11. The material placed on record, including the loan documents, utilisation conditions, inspection reports, and account

statements, *prima facie* indicate commission of cognizable offences. The inaction of the police, despite disclosure of such offences, cannot be countenanced.

12. In these circumstances, this Court is of the considered opinion that a direction for registration of an FIR is warranted so that a fair, impartial, and effective investigation may be carried out to unearth the truth, trace the diverted funds, and fix criminal liability, if any.

13. **Accordingly, the application is allowed. The SHO of the concerned Police Station is directed to register an FIR forthwith against the proposed accused persons/borrowers for offences disclosed in the complaint, including but not limited to offences punishable under Sections 316/318/336(3)/340/61 Bharatiya Nyaya Sanhita, 2023 (Old Sections 406/420/465/468/470/471/120B of the Indian Penal Code, 1806) and other relevant provisions of law. He is directed to ensure a proper and expeditious investigation in accordance with law, including examination of fund flow, related business entities, and utilisation of the loan amount, apart from taking all consequential steps as permissible in law.**

14. Nothing stated herein shall be construed as an expression on the merits of the case. The investigating agency shall conduct the investigation independently and in accordance with law.



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(HARSHITA MISHRA)
CJM/(Central)/THC/Delhi

24.01.2026

मुख्य न्यायिक दण्डाधिकारी
Chief Judicial Magistrate
(केंद्रीय), दिल्ली
(Central) Delhi