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

WRIT PETITION NO. 3631 OF 2024

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

Mr. Aabad Ponda, Senior Advocate with Mr. Manoj Mohite, Senior Advocate, Mr. Sajal Yadav, Ms. Sonam Gupta, Ms. Apporva 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, C.J. &
GAUTAM A. ANKHAD, J.**

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

JUDGMENT

Per, Shree Chandrashekhar, CJ :

The GTL Limited represented through its authorized representative is seeking quashing of the First Information Report registered by the Central Bureau of Investigation (in short, CBI) on 21st January 2023 against the GTL Limited, unknown directors of the GTL Limited, unknown bank officers and unknown private persons including the vendors and beneficiary group of the GTL Limited.

2. A Preliminary Enquiry *vide* PE 2192022E0001 was conducted into the allegation made in the complaint dated

14th July 2021 submitted to the CBI. After the inquiry, the CBI registered a crime *vide* RC2192023E0003 on 21st January 2023 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. This was the allegation against the GTL Ltd. that it fraudulently obtained various credit facilities from the consortium of banks and diverted/siphoned off major part of the loan amount to various vendor-companies which were created and operated with the *mala fide* intention in conspiracy with such vendors.

3. In brief, on conclusion of the Preliminary Enquiry a written complaint dated 16th January 2023 was submitted by the Inspector, CBI, EO-I, New Delhi and on that basis a First Information Report was registered. The allegation against the petitioner-company is that it generated Rs.1400 crores from capital non-convertible debentures and availed credit facilities from a consortium of 24 banks to the tune of Rs.4760.01 crores. A short-term loan was availed by the petitioner-company on a misrepresentation that the loan amount shall be utilized for the business activities. However, the petitioner-company cheated the lender banks and misappropriated the funds by providing advances to the purported vendors. A substantial part of such advances remained outstanding and a part of it was routed back to the petitioner-company by the vendor-entities. The petitioner-company utilized the working capital funds availed from the bank to acquire fixed assets from the vendors and investments were made by it in other companies through purchase of shares. According to the CBI, the inquiries revealed that the petitioner-company provided advances to the vendors year after year and

without supply of materials and eventually those advances were provisioned. The vendor-companies were not supplying the goods commensurate with the advances given to them and none of the vendor-companies supplied goods more than 16% of the advances given to it. There was supply of materials worth only Rs. 347.32 crores by M/s. Acuity Trading Pvt. Ltd., M/s. Lenity Trading Pvt. Ltd., M/s. Venerate Trading Pvt. Ltd. and M/s. Vinamra Multitrading Pvt. Ltd. but they were provided Rs.1213.97 crores as in advance. It is further alleged that the vendor-companies were incorporated within a short span of less than three months. The account of the petitioner-company was red-flagged by the IDBI Bank Ltd. pursuant to the advice received from the RBI for a Forensic Audit Report and M/s. NBS & Co. was appointed to conduct the forensic audit of the petitioner-company. In the complaint, there is a mention of part of the Forensic Audit Report to the effect that no material was received by the petitioner-company against the advance of Rs.1141.84 crores given to the vendors in FY 2010-11.

4. The petitioner-company states that the advances provided to the vendor-entities were recovered and reflected in the bank statements and Aircel agreement which were collected by the CBI in course of the Preliminary Enquiry *vide* PE 2192022E0001. The petitioner-company recovered Rs.639.47 crores from the vendor-entities and Rs.1118.01 crores from the Aircel but the CBI has made a completely baseless allegation of the provisioning of Rs.1420 crores. The special audit conducted by T.R. Chaddha & Co. LLP did not report any fraud or diversion of funds by the petitioner-company at any stage, but the CBI selectively used the said audit report pertaining to the period till November 2011 and ignored the events post-November 2011 such as supply of

materials, settlement with Aircel, recovery of outstanding advances etc. The petitioner-company contends that the consortium of banks took a decision to remove Red Flag Account ("RFA") tag from the account of the GTL Limited. The petitioner-company further states that if it had an intention to defraud at the inception it would not have made repayments to the tune of Rs.5543 crores against the principal borrowing of Rs.3164 crores. These repayments were made by the petitioner-company without any borrowings from the banks or financial institutions. The lender banks never made any allegation of fraud or diversion of funds or wrongful loss to them and no complaint has been lodged by the lender banks. The FIR has been lodged on the basis of vague and incomplete information. The CBI concealed the important information and did not refer to relevant documents which, if taken into consideration, shall reveal that all financial transactions were *bona fide* and the losses reflected in the balance-sheets etc. were for a transit period.

5. The petitioner-company further states that the allegation of non-payment of outstanding amounts to the extent of 86.84% has no basis and the records would reveal that all vendor advances were duly recovered before the FIR was lodged. 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 petitioner-company. The petitioner-company was not classified for the 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 27th November 2013 clearly held

that there was no bogus purchase nor any evidence was found of purchases by accommodation bills. The Income Tax Settlement Commission clearly held that the vendors were genuine and supplies were made. The entire edifice of lodging the FIR is built on assumptions, omissions and suppression of material information and documents. The audited balance-sheets of at least five vendors are available in public domain and it can be easily gathered therefrom that the aggregate sale of materials by them was for more than 1400 crores for the FY 2009 to FY 2012. All the vendors and suppliers have been issued PAN and CIN numbers and have identifiable addresses. They are registered with Service Tax and have been filing income tax returns. The advances were made by the petitioner-company after taking due approval from its shareholders through postal ballots dated 14th January 2010. The settlement agreements, copies of the letters dated 22nd May 2012 and 24th May 2014 with the Aircel and the bank statements were provided to the CBI. The investment in mutual funds was a part of prudent treasury management where funds are temporarily invested and then used for sanctioned purposes. The fixed assets were procured from the funds available to the petitioner-company and not from the working capital availed from the bank. The OTS proposals were submitted to the lender bank in December 2023 and were accepted in principle as communicated to the petitioner-company by the IDBI *vide* letter dated 20th January 2024 and loans have been repaid.

6. In the counter affidavit, the CBI states that the Special Auditor, namely, T. R. Chaddha & Co. LLP flagged the issue of advances to the vendors in its report dated 3rd March 2012 to the effect that an amount of Rs. 778.55 crores was outstanding for

more than one year and Rs. 329.62 crores was outstanding for more than six months. It is stated that the petitioner-company did not receive the materials against the purchase orders to M/s. Venerate Multitrading Pvt. Ltd., M/s. Acuity Trading Pvt. Ltd., M/s. Vinamra Multitrading Pvt. Ltd., M/s. Lenity Trading Pvt. Ltd. and M/s. Network Telelink Pvt. Ltd. and gave additional advances of Rs. 344 crores to these parties. The petitioner-company availed short-term loans for working capital but diverted the loan amount through vendors as advances. There is a reference of loan of Rs. 128.05 crores to M/s. Acuity Trading Pvt. Ltd. which, according to the CBI was reportedly a SME vendor of the petitioner-company. The CBI has pleaded as under:-

“24. That the averments made in para 5(Z) of the Writ Petition are denied. It is submitted that the sections of the Prevention of Corruption Act, 1988 were invoked in the FIR prima facie considering the role of the public servants. The offences u/s 420 IPC and that u/s 13(2) r/w 13(1)(d) of PC Act, 1988 are different. The offences u/s 120-B r/w 420 IPC and substantive offences thereof are under investigation getting substantiated. The role of public servant will depend on the evidences that may come forth during investigation. The lender banks did not declare the account as fraud as the Forensic Auditor could not detect the fraud as explained in the foregoing paras. However, there were sufficient evidences available even as per the letter dated 31.03.2017 of IDBI bank to RBI that the bank’s fund were diverted. Moreover, RBI did not agree with the submissions of the bank that there was no fraud and advised the bank. Now investigation has also established that there was fraud. Hence, why the bank had not declared the loan accounts of the borrower company as fraud is to be looked into during investigation.

25. That the averments made in para 5(AA) of the Writ Petition are denied. It is submitted that alleged recovery during the year 2010-2014 were not the recovery against the advances paid to the vendors. The claimed recovery of Rs. 343.57 Crores during June 201 to July 2020 cannot be taken for the outstanding advances as on 31.03.2012. For remaining alleged recoveries direct recovery from the four major vendors, namely M/s Acuity Trading Pvt Ltd., Lenity Trading Pvt. Ltd., Vinamra Multitrading Pvt. Ltd. and Venerate Trading Pvt. Ltd. direct receipts are only of approximately Rs 175 Crores instead of Rs 524.50 Crores as claimed in the instant Writ Petition. Remaining are from Aircel or its group companies. Hence, any receipt from Aircel and its group companies

cannot be considered as recovery from the vendors, because Aircel, itself was availing the services of the borrower company, therefore, the receipts from Aircel may be taken as the cost of services provided by the borrower company. If, any amount was received from Aircel, in the capacity of the Principal Contractor, under the garb of recovery on behalf of the alleged vendors that is another fraud on the lender banks of Aircel. Further most of the alleged recoveries were deposited in HDFC bank account or Standard Chartered Bank account of the borrower company and the same were fraudulently further utilized to make investments in group companies, mutual funds, and other payments etc. instead of adjusting the same against the outstanding loans in compliance with the terms and conditions of the CDR. Hence, the same were not recovery of the current assets rather were the receipts of the cost of services provided by the borrower company.

26. That the averments made in para 6 to 12 of the Writ Petition are denied except which are the matter of records. That in various judgments the Hon'ble Apex Court has held that the economic offences constitute a class apart and need to be visited with a different approach. The economic offences having deep-rooted conspiracies and involving huge loss of public funds need to be viewed seriously and considered as grave offences affecting the economy of the country as a whole and thereby posing serious threats to the financial health of the country. It is submitted that the instant writ petition may please be dismissed in the interest of justice, as the instant FIR is based on evidence of fraud of huge loan amount of Rs. 4760 Crores and the allegations made in the FIR are getting substantiated during the investigation which is continuing. The investigation is in progress and major evidences are surfacing on record"

7. Mr. Aabad Ponda, the learned senior counsel for the petitioner-company submitted that it is quite surprising that the offence of cheating has been committed by unknown directors of the petitioner-company, unknown bank officials and the unknown vendors and beneficiary group companies of the GTL Limited. The vendor-entities supplied materials worth about Rs.709 crores which are duly recorded in the complaint dated 16th January 2023. The Income Tax Settlement Commission recorded a finding in its order dated 27th November 2013 that the purchases were genuine and not bogus. The vendor-entities filed income tax return and their balance-sheets reflected revenue of approximately 4000 crores; the four vendors, namely, M/s. Acuity Trading Pvt.

Ltd., M/s. Lenity Trading Pvt. Ltd., M/s. Venerate Trading Pvt. Ltd. and M/s. Vinamra Multitrading Pvt. Ltd. generated revenue of more than Rs.1400 crores. The learned senior counsel further submitted that the important and relevant finding in the Forensic Audit Report and the conclusions of the auditors are not recorded in the complaint dated 16th January 2023 and the officer who conducted the Preliminary Enquiry selectively referred to a part of the report *dehors* the final conclusion.

8. The learned senior counsel further submitted that 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 allegation of collusion and fraud is made by the lender banks. The lender banks and financial institutions had full disclosures before them about the viability of the GTL Limited and there shall be an assumption of the commercial decision being taken *bona fide*. The learned senior counsel further submitted that no offence of cheating or conspiracy to cheat is made out and the investigation by the CBI is a misuse of the power to investigate.

9. The CBI is a premier Investigating Agency and employs state of the art techniques of investigation [*vide*, “Yashwant Sinha”¹]. The source information dated 14th July 2021 which triggered the Preliminary Enquiry did not provide adequate materials to justify registration of a criminal case. The paragraph no.7.15 of the CBI Manual provides that a regular case should be registered when sufficient material is collected “and it is felt that outcome of investigation is likely to culminate in prosecution”. In course of the Preliminary Enquiry, the CBI gathered as many as 52 documents a description of which is given in a tabular chart filed

¹ *Yashwant Sinha & Ors. v. CBI Anr.*: (2020) 2 SCC 338.

in the present proceedings. The CBI collected the loan policy and delegation of lending power to a few lender banks, balance-sheets of M/s. Spruce Trading Pvt. Ltd., M/s. Venerate Trading Pvt. Ltd., M/s. Lenity Trading Pvt. Ltd., M/s. Acuity Trading Pvt. Ltd., M/s. Vinarma Trading Pvt. Ltd. and M/s. Adjuvant Trading Pvt. Ltd. etc.; auditor report and balance-sheet of M/s. Delphic Trading, approval of the assignment of debt to M/s. Edelweiss Asset Reconstruction Company, estimation of recoverability of loan to M/s. Chennai Network Infrastructure Limited and the GTL Infrastructure Limited by the TRC Corporate Consulting Pvt. Ltd. and ITCOT Consultancy & Services Limited, minutes of meetings of Joint Lender Forum, appraisal report in search and seizure under section 132 of the Income Tax Act, the replies received from E & Y, Canara Bank, Steve Lyols, Phoenix ARC, and Forensic Audit Report of the GTL Limited by NBS & Co. 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. Every director of the petitioner-company, the officials of the consortium of banks, the vendor-entities etc. are identifiable and their names are recorded in the records. Therefore, 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. There seems to be an inseparable obstacle in the stand of the CBI that unknown persons and bank officials were involved in the crime.

10. The CBI recorded the statements of Krishna Prasad, Amit Agarwal, S. K. Sachdeva, Bhagwat Patra, Chandan Churiwal, Abizer Diwan, Sushant Paralkar, Rajesh Vasant, Vineet Singh, Kshitij Goel and Jayesh Kulkarni. 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 petitioner-company. There is no statement in the First Information Report that the witnesses stated anything about the role played by the petitioner-company and a collusion or conspiracy between the petitioner-company and the vendor-entities or the bank officials. It was observed by this Court in the order dated 6th September 2024 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 that the investigation is still going on.

11. 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 were 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 a statutory bar. In "*P. Sirajuddin*"², the Hon'ble Supreme Court observed that there is a need for Preliminary Enquiry before proceeding against the public servant. However, 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

² *P. Sirajuddin v. State of Madras*: (1970) 1 SCC 595.

public servant should be kept in mind. The day when the CBI conducted the Preliminary Enquiry and lodged a crime bearing no. RC2192023E0003 on 21st January 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 offences by the police 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 unknown bank officials could not have come to the Court but this is relevant in the context of the allegation against the petitioner-company that unknown bank officials of 24 banks may be involved in the crime. Importantly, 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 was approved in the general body meeting and the Ministry of Finance has control over them. Against them, neither any inquiry or investigation has been sought to be conducted. In our opinion, this cannot be an argument that the purpose of present investigation is to ascertain the identity of the unknown accused. Such an exercise was to be conducted in the course of the Preliminary Enquiry. Surprisingly, not a single individual was identified by the CBI in course of the Preliminary Enquiry and the First Information Report seems to have been lodged only for making a roving and fishing inquiry.

12. Previously, there was an inquiry into the matter and the CBI had taken a decision not to conduct a Preliminary Enquiry. This has been brought on record that the Department of Financial Services, Ministry of Finance has communicated the decision of the CBI to the IDBI Bank that the competent authority of the CBI had ordered closure of the matter because the account of the GTL Limited was not classified as fraud. A copy of the letter dated 5th September 2018 communicating the said decision of the CBI is reproduced herein below :

*“F. No. 5/7/2015/Vig
Government of India
Ministry of Finance
Department of Financial Services*

*3rd Floor, Jeevan Deep Bldg.,
Parliament Street, New Delhi
Dated 5th September 2018*

*To,
The Chief Vigilance Officer
IDBI Bank*

*The Chief Vigilance Officer
Union Bank of India*

*Subject: Preliminary Enquiry to be conducted into the account of M/s
GTL Ltd with Union Bank of India and IDBI Bank-Reg.*

Sir,

Please refer the subject matter and find enclosed herewith a copy of CBI letter No.SI/CBI/BSFC/Mum/2013/05/518 dated 07.08.2018 wherein CBI has informed that the competent authority of CBI has ordered closure of the said matter, as the account of M/s. GTL Ltd. has not been classified as fraud by JLF.

Encl: as above

*Yours faithfully
sd/-
(Gurdeep Singh)
Under Secretary (Vigilance)
Tel: 23748709”*

13. The afore-mentioned decision was taken by the CBI in the background of the inquiries made against the petitioner-company under the supervision of the Ministry of Finance. Through the communication dated 9th October 2015, the details of the GTL

Limited, GTL Infrastructure Limited and M/s. Chennai Network Infrastructure Limited were provided to the Ministry of Finance. The Union Bank of India which was the lead bank for GTL Infrastructure Limited stated in the said communication that the petitioner-company had been dealing with the bank since 2002 and availed credit facilities since 2003. It was sanctioned a term loan of Rs. 100 crores for establishing Passive Telecom BPO Infrastructure. The said loan amount was not availed of during the valid period as the Union Bank of India had taken shares of Rs. 100 crores in the project. A loan of Rs. 200 crores was also sanctioned by the Union Bank for the project and there are references of further loans provided to the petitioner-company. In conclusion, it was stated that the revenue projections by the petitioner-company were based on long term commitment of the Aircel Group on existing tower portfolio for 15 years and future tenancy based on tenancy study report of KPMG. Most importantly, in the letter dated 9th October 2015 the Union Bank of India provided its opinion to the Ministry of Finance that the petitioner-company was generating profit and was not fit to be declared as fraudulent. 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 aforementioned inquiries were closed after the thorough check and discussions with the competent authorities and no foul play was observed in the working of the petitioner-company. The RBI was also involved in the inquiries made by the lender banks and the decisions taken by the JLF were duly communicated to the RBI. One of the most important and crucial decisions was taken in the JLF meeting held on 11th January 2017. This decision was communicated to the Central Fraud Monitoring Cell of the RBI through a communication dated 1st April 2017. In the said meeting, a decision was taken to remove the red flag *qua* the petitioner-company from CRILC data. The letter dated 1st April 2017 is reproduced herein below :

“April 1, 2017

*Ref No: GTL/2017-18/RBI/
General Manager
Central Fraud Monitoring Cell,
Department of Banking Supervision,
Reserve Bank of India,
10/3/8, Nrupathunga Road, P.B.No. 5467,
Bangalore-560 001*

14/22

Dear Sir,

*Preliminary Enquiry to be conducted into the account of M/s GTL Ltd.
with Union Bank of India and IDBI Bank*

Please refer to your letter Ref. DBS. CO. CFMC/11492/23.02.012/ 2015-16, dated April 01, 2016, and the subsequent correspondence on the captioned subject. As advised, IDBI Bank had classified the account of GTL Ltd as Red Flagged and instituted Forensic Audit. A copy of the Forensic Audit Report was forwarded to your office vide our letter no. GTL/2016-17/RBI/748, dated December 28, 2016. Further, on the observations contained in your letter no. BS. CO. CFMC/6815/ 23.02.012/2016-17 dated March 3, 2017, IDBI Bank has already submitted its clarifications vide letter dated March 31, 2017.

The Forensic Audit Report was discussed by lenders at two JLF Meetings, held on January 11, 2017 and March 18, 2017. At the last JLF Meeting, held on March 18, 2017, the lenders concluded that based on the findings of the Forensic Audit Report, clarifications received from the company and further clarifications given by the Forensic Auditors, there was no conclusive evidence of diversion of funds and hence the Forensic Audit could be closed without classifying the account as "Fraud". All the lenders agreed that IDBI Bank, as MI, would inform this decision to RBI and could also consider removing the 'Red Flag' from CRILC data (copy of the JLF Minutes circulated amongst the lenders on March 18, 2017 is enclosed).

Submitted for your information and guidance please.

Yours Faithfully

*SK Sachdev
Chief General Manager
Large Corporate Group"*

15. Thereafter, the Under Secretary (Vigilance), Ministry of Finance, Government of India by its letter dated 25th April 2017 forwarded the report of the petitioner-company to the CBI. It has also referred to the JLF meeting held on 11th January 2017 and 18th March 2017 which decided not to classify the account of the petitioner-company as fraud. With these comments, a copy of the Forensic Audit Report and the minutes of the JLF meeting were forwarded to the Joint Director of the CBI for taking a further view in the matter. A copy of the said letter is reproduced herein below :

“F. No. 5/7/2015/Vig
Government of India
Ministry of Finance
Department of Financial Services

3rd Floor, Jeevan Deep Bldg.,
Parliament Street, New Delhi
Dated: 25 April, 2017

To,
Sh. A.K. Sharma
Joint Director
Central Bureau of Investigation.
Bank Securities & Fraud Zone,
5-B, 10th Floor, CBI Building,
CGO Complex, Lodhi Road,
New Delhi-110003

Subject: Preliminary Enquiry to be conducted into the account of M/s
GTL. Ltd with Union Bank of India and IDBI Barik-Reg

Sir,

In continuation to this Department's letter dated 17.08.2016 and CBI letter no. 47/SL/077/2013/E/0005 dated 30.05.2016 on the subject cited above. I am directed to inform that IDBI Bank being the lead Bank has got a Forensic Audit conducted into the accounts of M/s.GTL Ltd. IDBI Bank vide letter no. 605/Vig. GTL dated 21.01.2017 has forwarded a copy of the Forensic Audit Report (FAR) to this Department. The same is enclosed for your perusal.

2. IDBI Bank vide letter 766/Vig.G-8 dated 01.04.2017 (copy enclosed) has also informed that FAR was discussed in the JLF Meeting held on 11.01.2017. As many lenders had various queries on the observations made by the auditor, another JLF meeting was convened on 18.03.2017. The lenders in the meeting have concluded that based on the findings of the Forensic Audit Report, clarifications received from the company and further clarifications given by the auditors, there was no conclusive evidence of funds and hence the lenders close the Forensic Audit, without classifying the account as 'Fraud'. Copy of the minutes of the JLF held on 18th March, 2017 is enclosed.

3. CBI may take a further view in the matter.

Encl: as above

Yours faithfully

Mritunjay Singh
Under secretary (Vigilance)”

16. In “Rashmi Kumar”³, the Hon’ble Supreme Court observed that the power of quashing a criminal proceeding should be sparingly and cautiously exercised and only when the Court is of

³ Rashmi Kumar v. Mahesh Kumar Bhada: (1997) 2 SCC 397.

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 High Court may while taking into consideration the special facts of the case quash the criminal proceedings at a preliminary stage. The power under section 482 of the Code of Criminal Procedure is a wholesome power. It saves the High Court's inherent power both in civil and criminal matters. Similarly, the power of the writ Court seeks to achieve a public purpose and a criminal proceeding ought not to be permitted where there will be miscarriage of justice. The registration of the First Information Report affects the petitioner-company in many ways. In a case like the present one, this is a duty of the High Court to 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 petitioner-company, many of which were collected by the CBI in the course of the Preliminary Enquiry, if it is found that the allegations in the First Information Report are substantially wiped out then this Court should interfere in the matter and quash the First Information even if minor issues remain unresolved.

17. There is no allegation of misrepresentation by the petitioner-company to avail loan from the lender banks. The petitioner-company 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 Forensic Audit Report covered the period between 2012–2018 and also examined the advances provided to the vendors during 2009–2011. The Forensic Audit Report made a categoric

observation that the verification of some of the vendors was carried out through 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 Forensic Audit Report examined the advances provided to the vendors as on 31st December 2012 and did not detect any fraud or diversion of any funds. The learned senior counsel submitted that 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 and the dissenting banks have accepted the offer of the petitioner-company under OTS Scheme.

18. 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 subsequently accepted one time settlement proposal for the petitioner-company, there was unanimity in the consortium of banks which accepted the proposal of the petitioner-company. 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 Preliminary Enquiry continued for 18 months but no specific allegation of conspiracy between the bank officials and the petitioner-company is recorded in the First Information Report.

This is unimaginable that the private/public sector banks joined hands and hatched conspiracy with the petitioner-company to cover up siphoning of funds. The allegation of not proceeding against the petitioner-company under the statutory regime for recovering the loan amount is merely *ipse dixit* of the Investigating Agency.

19. The counter affidavit dated 3rd September 2024 filed by the CBI refers to selective portions of different documents and reports but does not indicate any evidence collected in course of the investigation so far. In paragraph no. 4.5 of the counter affidavit, it is stated that the forensic auditor did not report any fraud or diversions of the loan amount and the consortium of lender banks did not declare the loan amount as fraud or diversion of funds but the investigation has revealed that the loan amount was siphoned off through group companies and vendors; but without any reference to any material, documentary or oral gathered in course of the investigation. There are no details provided by the CBI as to investment in the shares, debentures and fixed deposits. The entire counter affidavit filed by the CBI simply refers to certain letters, documents, reports etc. The order dated 5th December 2025 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. 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.”

20. The CBI has taken a specific stand that the matter is still under investigation and it has a right in law to investigate the case which *prima-facie* discloses commission of cognizable offence. 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 petitioner-company. 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 registration of an FIR after the Preliminary Enquiry against unknown bank officials and unknown directors of the petitioner-company indicates the fluid state of affairs. The continuance of criminal proceedings against the petitioner-company 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.

21. 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 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. Such a decision was taken after due deliberations and the dissent by a few lender banks was on the ground that a fresh evaluation of the assets and liabilities of the petitioner-company was not made. Pertinently, a dissent by itself cannot impute criminality to the collective business decision taken by the majority of the lender banks and financial institutions. The CBI collected 52 documents in course of the investigation and, as stated by the Investigating Officer during the Court proceedings that he has yet to make up his mind whether or not to file a charge-sheet.

22. 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*"⁴, 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. In the present case, there was no

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

deception at the inception or subsequently by the petitioner-company. There is no allegation of any favor extended to or by the petitioner-company which was all the time insisting on a resolution plan for its revival. The alleged loss of public exchequer does not fall within the meaning of wrongful loss in absence of any evidence of intentional and fraudulent act on the part of the petitioner-company. The CBI could not detect any illegal act or deceit in the entire transaction played by any of the directors of the petitioner-company. Their identity is known but there is no allegation against any of them. 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 offender has yet been identified.

23. As a result of the above discussions, we have formed an opinion that the investigation in RC2192023E0003 registered on 21st January 2023 cannot be permitted to continue any further. This First Information Report requires interference by this Court and is, accordingly, quashed.

24. Writ Petition No.3631 of 2024 filed by the GTL Limited is allowed.

[GAUTAM A. ANKHAD, J.]

[CHIEF JUSTICE]

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