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Dated: 18.01.2021

To,

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Email ID: psfs@mea.gov.in
2. Secretary
Ministry of Finance,
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North Block, New Delhi- 110001
Email ID: RSECY@NIC.IN
3. Central Vigilance Commissioner
Central Vigilance Commission,
Satarkata Bhavan , A-Block
GPO Complex , INA
New Delhi - 110 023
Email ID: cenvigil@nic.dot.in
4. Director
Central Bureau of Investigation,
Plot No. 5-B, CGO Complex,
Lodhi Road, New Delhi - 110003
Email ID: hozdel@cbi.gov.in
5. Governor
Reserve Bank of India,
1st floor, Main Building,
Shahid Bhagat Singh Road,
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6. Chairman
State Bank of India,
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7. MD & CEO
Union Bank of India,
Union Bank Bhavan, 239,
Vidhan Bhavan Marg, Nariman Point,
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8. MD & CEO
Indian Overseas Bank,
763 Anna Salai, Chennai,
Tamil Nadu - 600002
Email ID: csd@iobnet.co.in

SUBJECT: Representation for seeking immediate registration of F.I.R./Regular Case by Central Bureau of Investigation against Mr. Anil Ambani's Reliance Group - Reliance Communication Ltd, Reliance Telecom Ltd and Reliance Infratel Ltd- whose banks accounts have been declared as "fraud" by State Bank of India & Other banks and further seeking immediate cancellation of Mr. Anil Ambani's passport

Dear Sir / Madam,

I am making the instant representation seeking immediate registration of F.I.R./Regular Case by Central Bureau of Investigation against Mr. Anil Ambani's Reliance Group - Reliance Communication Ltd (RComm), Reliance Telecom Ltd (RTL) and Reliance Infratel Ltd- whose banks accounts have been declared as "fraud" by State Bank of India. It is further requested that Mr. Anil Ambani's passport is immediately cancelled.

It may be noted that Mr. Anil Ambani had taken huge loans (running into tens of thousand of crores) from various banks and had apparently siphoned off large

chunk of that public money. Therefore, the banks were constrained to declare the bank accounts of his companies as “fraud”.

On 06.01.2021, the Hon’ble Delhi High Court passed an order in a Writ Petition filed by one Punit Garg (former Executive Director of RComm) against SBI’s action of declaring the aforementioned bank accounts as “fraud”. The order, dated 06.01.2021, inter alia, states:

*“7. In view of the above, it is directed that the respondents shall maintain status quo until the next date of hearing. The respondents are free to issue a show cause notice to the petitioners and respondent nos. 3 to 5, and to give them a hearing, through video conferencing, if necessary. The respondents may also pass a reasoned order in accordance with law. **The respondent nos. 1 and 2 are also at liberty to take any steps in the nature of investigation by filing complaint proceedings against the petitioners or respondent nos. 3 to 5, independent of the impugned action declaring the accounts of respondent nos. 3 to 5 as “fraud” accounts.***

10. List the present petition alongwith W.P.(C) 306/2019 and connected matters on 13.01.2021” [emphasis supplied]

A copy of the Hon’ble Delhi High Court’s order, dated 06.01.2021, passed in W.P.(C) 11179/2020 is annexed as **ANNEXURE A**.

As per the news report, dated 07.01.2021, published by Business Today, SBI informed the Delhi High Court that during audit, misappropriation, diversion and siphoning of funds came to light, after which they have classified the accounts as fraud. A copy of the news report, dated 07.01.2021, titled “*SBI declares accounts of Anil Ambani’s three Reliance Group firms fraud*”, published by Business Today, is annexed as **ANNEXURE B**.

Further, as per the news report, dated 07.01.2021, titled “*Accounts of Anil Ambani’s Reliance Companies Declared Fraud: SBI To Delhi High Court*”, published by NDTV: “*At the time of filing of bankruptcy, creditors had claimed Reliance Communications owed over 49,000 crore Reliance Infratel owed over 12,000 crore and Reliance Telecom owed it over 24,000 crore according the data made available on the website of the Rcom.*” A copy of the news report, dated

07.01.2021, titled “*Accounts of Anil Ambani’s Reliance Companies Declared Fraud: SBI To Delhi High Court*”, published by NDTV, is annexed as **ANNEXURE C**.

Earlier to this, the bank accounts of Reliance Communication Ltd (RComm) and Reliance Telecom Ltd (RTL) were also declared as “fraud” by Union Bank of India and Indian Overseas Bank. The Hon’ble Delhi High Court had passed another similar order, dated 28.12.2020, in a Writ Petition filed by same Punit Garg against Union Bank of India and Indian Overseas Bank. It was also clarified in the order that: ***“the respondents No. 1-3 are free to take any steps/investigation/file any complaint proceedings against the petitioners/respondents No. 4 & 5 independent of the aforesaid order declaring the account of the respondents No. 4 & 5 a fraud account.”*** A copy of the Hon’ble Delhi High Court’s order, dated 28.12.2020, passed in *W.P.(C) 11216/2020* is annexed as **ANNEXURE D**.

From the aforementioned two orders, dated 28.12.2020 and 06.01.2021, it is clear that the Hon’ble Delhi High Court has specifically clarified that the Banks are free to lodge complaints for investigations against Mr. Anil Ambani’s aforesaid companies. It is pertinent to note that both the above cases have been tagged with *W.P. (C) 306/2019*. This Writ Petition is being heard along with a number of other similar Writ Petitions which have been filed by certain other companies/entities against RBI and other banks. The common challenge in these Writ Petitions is to the RBI’s Circular, dated 01.07.2016. In an interim order, dated 15.02.2019, passed in *W.P.(C) No. 306/2019*, the Hon’ble Delhi High Court clearly observed that:

“That is to say, while a bank may most certainly report fraudulent transactions in an account to law enforcement agencies under the criminal law regime without issuing a show cause notice or hearing an affected party, but if an account is to be declared ‘fraud’ by an administrative decision in the framework of civil law, such action it appears on first principles, cannot be taken without giving to the affected party an opportunity of hearing to show cause against it.”

A copy of the Hon’ble Delhi High Court’s order, dated 15.02.2019, passed in *W.P.(C) No. 306/2019* is annexed as **ANNEXURE E**.

Another order, dated 16.06.2020, passed by Hon’ble Delhi High Court in *W.P.(C) No. 306/2019* also makes it clear that the order will ***“not in any manner***

hamper any steps or investigations that are sought to be carried out by the concerned criminal investigating agencies including CBI.” A copy of the Hon’ble Delhi High Court’s order, dated 16.06.2020, passed in W.P.(C) No. 306/2019 is annexed as **ANNEXURE F**.

Thus, Central Bureau of Investigation is free to conduct investigation against Mr. Anil Ambani’s Reliance Group - Reliance Communication Ltd, Reliance Telecom Ltd and Reliance Infratel Ltd.

It is pertinent to mention herein that as per the RBI’s Circular [Master Directions on Frauds – Classification and Reporting by commercial banks and select FIs], dated 01.07.2016, (Updated as on 03.07.2017):

“6.1 In dealing with cases of fraud/embezzlement, banks should not merely be actuated by the necessity of recovering expeditiously the amount involved, but should also be motivated by public interest and the need for ensuring that the guilty persons do not go unpunished. Therefore, as a general rule, the following cases should invariably be referred to the State Police or to the CBI as detailed below.”

As per this RBI Circular, if the Amount involved in the fraud in Public Sector Banks is more than ₹500 million, then Complaint should be lodged with the Joint Director (Policy) CBI, HQ New Delhi.

The RBI Circular, dated 01.07.2016, also provides as follows:

“8.11.1 Banks are required to lodge the complaint with the law enforcement agencies immediately on detection of fraud. There should ideally not be any delay in filing of the complaints with the law enforcement agencies since delays may result in the loss of relevant ‘relied upon’ documents, nonavailability of witnesses, absconding of borrowers and also the money trail getting cold in addition to asset stripping by the fraudulent borrower.”

A copy of the relevant pages of RBI’s Circular, dated 01.07.2016 (Updated as on 03.07.2017) is annexed as **ANNEXURE G**.


Further, the Central Vigilance Commission’s Circular No. 04/05/18, dated 09.05.2018, on the Subject ‘Reporting of fraud cases to police/State CIDs/Economic Offences Wing of State Police by Public Sector Banks- clarifications reg.’, has

clarified that the monetary limits as prescribed in the RBI's Circular, dated 01.07.2016 (Updated as on 03.07.2017), should be followed for reporting financial frauds to Local/State Police and CBI by all Public Sector Banks. All the Public Sector Banks have been advised by the CVC to ensure compliance of the said Circular. A copy of the Central Vigilance Commission's Circular No. 04/05/18, dated 09.05.2018, is annexed as **ANNEXURE H**.

Thus, in view of the aforesaid facts and circumstances, it is clear that alleged misappropriation, diversion and siphoning of funds have come to light during audit of the bank accounts of Reliance Communication Ltd (RComm), Reliance Telecom Ltd (RTL) and Reliance Infratel Ltd. **The said fraud amounts to tens of thousand of crores which is a financial scam of much larger proportion than the scams which have been unearthed in the cases of Mr. Nirav Modi and Mr. Vijay Mallya.**

Thus, it is requested that an F.I.R./Regular Case is immediately registered by the CBI against Mr. Anil Ambani's Reliance Group - Reliance Communication Ltd, Reliance Telecom Ltd and Reliance Infratel Ltd and thorough investigation is initiated on that basis.

It is further requested that Mr. Anil Ambani's passport is immediately cancelled. This becomes all the more necessary in view of the past instances of Mr. Nirav Modi and Vijay Mallya fleeing the country in order to escape investigation and prosecution.



PRASHANT BHUSHAN

Enclosed:

ANNEXURE A: A copy of the Hon'ble Delhi High Court's order, dated 06.01.2021, passed in *W.P.(C) 11179/2020*

ANNEXURE B: A copy of the news report, dated 07.01.2021, titled "*SBI declares accounts of Anil Ambani's three Reliance Group firms fraud*", published by Business Today

ANNEXURE C: A copy of the news report, dated 07.01.2021, titled "*Accounts of Anil Ambani's Reliance Companies Declared Fraud: SBI To Delhi High Court*", published by NDTV

ANNEXURE D: A copy of the Hon'ble Delhi High Court's order, dated 28.12.2020, passed in *W.P.(C) 11216/2020*

ANNEXURE E: A copy of the Hon'ble Delhi High Court's order, dated 15.02.2019, passed in *W.P.(C) No. 306/2019*

ANNEXURE F: A copy of the Hon'ble Delhi High Court's order, dated 16.06.2020, passed in *W.P.(C) No. 306/2019*

ANNEXURE G: A copy of the relevant pages of RBI's Circular, dated 01.07.2016 (Updated as on 03.07.2017)

ANNEXURE H: A copy of the Central Vigilance Commission's Circular No. 04/05/18, dated 09.05.2018

ANNEXURE A

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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

+ W.P.(C) 11179/2020

PUNIT GARG & ORS. Petitioners

Through: Mr. J.J. Bhatt, Sr. Advocate with Ms.
Niyati Kohli, Advocate

versus

STATE BANK OF INDIA & ORS. Respondents

Through: Mr. Akshit Kapur, Adv. for R-1/SBI
Mr. Shantanu Tyagi, Advocate for
R-3, 4 and 5.

CORAM:

HON'BLE MR. JUSTICE PRATEEK JALAN

ORDER

% **06.01.2021**

The proceedings in the matter have been conducted through video conferencing.

CM APPLs. 34881-34882/2020 (exemption)

Exemption allowed, subject to all just exceptions.

The applications are disposed of.

W.P.(C) 11179/2020 with CM APPL. 34880/2020 (interim relief)

1. Issue notice. Mr. Akshit Kapur, learned counsel, accepts notice on behalf of respondent no.1. Mr. Shantanu Tyagi, learned counsel, accepts notice on behalf of respondent nos. 3, 4 and 5. Notice be issued to respondent no. 2, through Standing Counsel in addition.

2. The challenge in the present petition is to a circular dated 01.07.2016 (updated on 03.07.2017), issued by respondent no. 2/Reserve Bank of India (“RBI”) regarding declaration of accounts as “fraud accounts” by banks. The petitioners are erstwhile directors of respondent nos. 3 to 5 companies, in respect of which Corporate Insolvency Resolution Proceedings are pending before the National Company Law Tribunal. The petitioners submit that the accounts of respondent nos. 3 to 5 have been declared as “fraud” accounts pursuant to the aforesaid circular.

3. Pursuant to the order dated 24.12.2020, Mr. Kapur, learned counsel for respondent no. 1/bank, states that he has been instructed that the accounts have indeed been declared as “fraud” accounts.

4. Mr. J. J. Bhatt, learned Senior Counsel for the petitioners, points out that several writ petitions have been filed challenging the same circular of RBI. The challenge is primarily on the ground that the process of declaration of an account as a “fraud” account is violative of the principles of natural justice, as it does not require any prior notice or communication to the account holder. He submits that in similar circumstances, this Court has passed interim orders in several writ petitions, protecting the account holders. Copies of such orders have also been annexed with the writ petition (Annexure P-3 to the writ petition). Mr. Bhatt refers me to the detailed order dated 15.02.2019, passed in W.P.(C) 306/2019 [*Apple Sponge and Power Ltd. and Ors. vs. Reserve Bank of India and Anr.*], which has been followed in a further order dated 16.06.2020 passed in the same writ petition, and in petitions filed by other petitioners.

5. In fact, the petitioners themselves have challenged the very same circular and action taken by other banks in respect of the accounts of

respondent nos. 3 and 4 herein in those banks. In the said petition [W.P.(C) 11216/2020], an order dated 28.12.2020 has been passed, the operative portion whereof reads as follows:

“4. In the meantime, the respondents shall maintain status quo as of today till the next date of hearing. It is clarified that the respondents are free to issue a show cause notice to the petitioner and the respondents No. 4 & 5 and thereafter to give necessary hearing through video conferencing. A reasoned order be thereafter passed as per law which may be communicated to the affected parties. It is also clarified that the respondents No. 1-3 are free to take any steps/investigation/file any complaint proceedings against the petitioners/respondents No. 4 & 5 independent of the aforesaid order declaring the account of the respondents No. 4 & 5 a fraud account.”

6. Learned counsel for the respondents do not dispute that the circumstances prevailing in the present case are substantially similar to the cases in which the cited orders have been passed.

7. In view of the above, it is directed that the respondents shall maintain *status quo* until the next date of hearing. The respondents are free to issue a show cause notice to the petitioners and respondent nos. 3 to 5, and to give them a hearing, through video conferencing, if necessary. The respondents may also pass a reasoned order in accordance with law. The respondent nos. 1 and 2 are also at liberty to take any steps in the nature of investigation by filing complaint proceedings against the petitioners or respondent nos. 3 to 5, independent of the impugned action declaring the accounts of respondent nos. 3 to 5 as “fraud” accounts.

8. I am informed that W.P.(C) 306/2019 and other connected matters are heard in part before Hon’ble Jayant Nath, J and are next listed on

13.01.2021.

9. The respondents are at liberty to file their counter affidavits to the petition by 11.01.2021.

10. List the present petition alongwith W.P.(C) 306/2019 and connected matters on 13.01.2021.

PRATEEK JALAN, J

JANUARY 6, 2021

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<https://www.businesstoday.in/current/economy-politics/sbi-declares-accounts-of-anil-ambani-three-reliance-group-firms-fraud/story/427230.html>

SBI declares accounts of Anil Ambani's three Reliance Group firms fraud

SBI informed the Delhi High Court that during audit, misappropriation, diversion and siphoning of funds came to light, after which they have classified the accounts as fraud

Munish Chandra Pandey | **January 7, 2021** | Updated 02:54 IST

The State Bank of India (SBI) has informed the Delhi High Court that it has classified three bank accounts of Anil Ambani's Reliance Group - Reliance Communication, Reliance Telecom and Reliance Infratel - as fraud. The development can land Anil Ambani in serious trouble as now the bank can seek a banking fraud investigation by the Central Bureau of Investigation (CBI). The High Court has asked the state-run lender to maintain status quo on the accounts of Anil Ambani's firms.

A bank account is declared fraud after it turns into a non-profitable asset (NPA). The SBI informed the court that during audit, misappropriation, diversion and siphoning of funds came to light, after which they have classified the accounts as fraud.

As per the rule, once the bank has declared any account as fraud, the Reserve Bank of India (RBI) has to be informed in seven days. A complaint also has to be filed before the CBI within 30 days of informing the RBI about the action if the amount exceeds Rs 1 crore.

Sources said the total amount that the three firms of Anil Ambani owe to the banks is over Rs 49,000 crore, out of which Reliance Infratel has debt of Rs 12,000 crore and Reliance Telecom owns Rs 24,000 crore.

<https://www.ndtv.com/india-news/accounts-of-anil-ambanis-firms-declared-fraud-sbi-to-delhi-high-court-2348593>

Accounts of Anil Ambani's Reliance Companies Declared Fraud: SBI To Delhi High Court

Under Reserve Bank rules, an account can turn into a Non Performing Asset for default of payment for a period. Once an account is declared as "fraud", the matter has to be reported to the Reserve Bank and request made for a CBI inquiry if the amount involved in the fraud is above ₹ 1 crore

Reported by Arvind Gunasekar, Edited by Anindita SanyalUpdated:

January 07, 2021 10:10 am IST

New Delhi:

The bank accounts of Reliance Communication, Reliance Telecom and Reliance Infratel -- all owned by Anil Ambani -- have been classified as "fraud" the State Bank of India has told the Delhi High Court, opening up possibilities of a probe by the Central Bureau of Investigation. The court has asked the bank to maintain status quo on the accounts.

The former Director of Reliance Communication, Punit Garg, had gone to the High Court challenging the Reserve Bank's 2016 circular, regarding declaration of accounts as fraud. He had contended that the circular is against the principle of natural justice, as accounts can be declared as fraud without hearing the parties.

Today, the bank said its audit division has found evidence of diversion of funds, and other irregularities.

Under the Reserve Bank rule challenged, an account can turn into a Non Performing Asset for default of payment for a period.

Banks then conduct forensic audit on these accounts and if the audit reveals misappropriation of funds, diversion, siphoning of funds etc, which are all illegal activities, the account is classified as "fraud".

Once an account is declared as "fraud", the matter has to be reported to the Reserve Bank within a week.

The rules also say the bank should file a complaint with the Central Bureau of Investigation if the amount involved in the fraud is above ₹ 1 crore. If the amount is less than one crore, the local police investigates the issue. This should be done within 30 days of the reporting to the Reserve Bank.

Though the court has ordered status quo on the accounts, the bank can continue with its investigation and the mandatory filing of complaints when an account is declared fraud.

At the time of filing of bankruptcy, creditors had claimed Reliance Communications owed over 49,000 crore Reliance Infratel owed over 12,000 crore and Reliance Telecom owed it over 24,000 crore according the data made available on the website of the Rcom.

Comment of the spokesperson is awaited.

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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

+ **W.P.(C).11216/2020**

PUNIT GARG & ANR

..... Petitioners

Through: Mr. Sandeep Sethi, Senior Advocate
with Mr. Mahesh Agarwal, Mr. Rishi Agrawala,
Ms. Niyati Kohli, Mr Ankit Banati and Mr. Ashish
Deshmukh, Advocates

versus

UNION BANK OF INDIA & ORS.

..... Respondents

Through: Mr. O. P. Gaggar, Advocate for R-1
Mr. Shantanu Tyagi, Advocate for R-4 and R-5.

CORAM:

HON'BLE MR. JUSTICE SUBRAMONIUM PRASAD

ORDER

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28.12.2020

HEARD THROUGH VIDEO CONFERENCING

CM.APPL 34994-995/2020(Exemption)

Allowed, subject to all just exceptions.

W.P.(C).11216/2020 & CM.APPL 34993/2020(Stay)

1. Issue notice. Mr. O. P. Gaggar, Advocate accepts notice for R-1 and Mr. Shantanu Tyagi, Advocate accepts notice for R-4 and R-5. On steps being taken, notice be issued to the respondent No.3/RBI through all permissible modes including Dasti Service.

2. The issue raised in the present petition is identical to the issue raised in a batch of writ petitions i.e. W.P.(C).306/2019 etc. wherein the *vires* of the Circular RBI/DBS/2016-17/DBS.CO.CFMC.BC.No.1/23.04.001/2016-17 dated 01.07.2016 updated as on 03.07.2017 issued by RBI has been challenged. Interim protection has also been granted by this court.
3. List along with W.P. (C) 306/2019 on 13.01.2021, the date already fixed, before the Roster Bench.
4. In the meantime, the respondents shall maintain *status quo* as of today till the next date of hearing. It is clarified that the respondents are free to issue a show cause notice to the petitioner and the respondents No. 4 & 5 and thereafter to give necessary hearing through video conferencing. A reasoned order be thereafter passed as per law which may be communicated to the affected parties. It is also clarified that the respondents No. 1-3 are free to take any steps/investigation/file any complaint proceedings against the petitioners/respondents No. 4 & 5 independent of the aforesaid order declaring the account of the respondents No. 4 & 5 a fraud account.

SUBRAMONIUM PRASAD
(VACATION JUDGE)

DECEMBER 28, 2020
hsk/rs

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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

+ W.P.(C) No. 306/2019 & CM APPL. No. 7039/2019

APPLE SPONGE AND POWER LTD AND ORS Petitioners

Through : Mr. Dayan Krishnan, Senior
Advocate with Mr. Saurabh Kirpal,
Mr. Sameer Rohatgi, Mr. Ashish Batra
and Mr. Manohar Malik, Advocates.

versus

RESERVE BANK OF INDIA AND ANR Respondents

Through : Ms. Swati Setia, Advocate for RBI.

CORAM:

HON'BLE MR. JUSTICE ANUP JAIRAM BHAMBHANI

ORDER

% **15.02.2019**

CM APPL. No. 7039/2019 (for interim relief)

On 16.01.2019 notice was issued in this petition; and pleadings were directed to be completed. On 04.02.2019 further time was given for compliance of the previous order and the matter was posted to 03.04.2019.

2. In CM APPL. No. 1491/2019 seeking interim relief filed alongwith the petition, the petitioners had prayed as follows :

“a) Stay the effect and operation of the any action taken, contemplated or threatened of the Respondent No. 2 of categorizing the petitioners’ account as ‘fraud’ till the pendency of the present petition;”

At that time however no interim relief was granted.

3. By the present application, the petitioners contend that they have learned from a third party that the accounts of the petitioners with respondent No. 2/Bank have been classified as ‘fraud’ under

circular dated 01.07.2016 issued by respondent No. 1/RBI, which circular contains “Master Directions on Frauds —Classification and Reporting by commercial banks and select FIs”. It is further stated that the said accounts have also been reported as ‘fraud’ in RBI’s Central Repository of Information on Large Credits (CRILC) platform. The petitioners state that they were so informed by letter dated 31.01.2019 received from IndusInd Bank Ltd., when the said bank declined to open the petitioners’ bank accounts stating that the petitioners’ accounts have been reported as ‘fraud’.

4. Earlier each of the five petitioners had approached this court by way of separate writ petitions being W.P.(C) Nos. 5461/2018, 5482/2018, 5492/2018, 5449/2018, 5491/2018 claiming relief against the proceedings taken by respondent No. 2/Bank to declare the petitioners as ‘wilful defaulters’ in accordance with the RBI’s Master Circular dated 01.07.2015; which petitions were disposed of by separate orders, all dated 21.05.2018, made in each of the said cases, setting aside order dated 10.08.2016 made by respondent No. 2 declaring the petitioners as ‘wilful defaulters’ on the ground that the order contained no reasons and that the conclusions drawn had no link with the material considered by respondent No. 2. By the said orders dated 21.05.2018, respondent No. 2 was however given an opportunity to re-consider the issue of declaring the petitioners as ‘wilful defaulters’, after granting a hearing to the petitioners and passing speaking orders.

5. By order dated 21.05.2018 respondent No. 2 was granted eight weeks’ time to re-consider the matter of declaring the petitioners as

‘wilful defaulter’. Subsequently respondent No. 2 approached this court in some cases seeking enlargement of time to comply with orders dated 21.05.2018; which enlargement of time was granted; and it is stated that the process of declaring the petitioners as ‘wilful defaulters’ *is still under way*. Petitioners state that applications seeking enlargement of time have been filed in all cases but all such applications have not yet come-up before court ; in any case it is accepted by respondent No. 2 that the *proceedings for declaring the petitioners as wilful defaulters are still pending with the bank in all cases*.

6. Mr. Dayan Krishnan, learned Senior Counsel appearing for the petitioners states that while the process for re-considering the issue of declaring the petitioners as ‘wilful defaulters’ is still going on, respondent No.2/Bank has proceeded to declare the petitioners’ accounts as ‘fraud’ under the RBI Circular dated 01.07.2016.

7. Mr. Krishnan submits that : firstly, RBI’s Circular dated 01.07.2016 aforesaid deserves to be quashed *inter alia* for the reason that it provides a mechanism whereby an account can be declared ‘fraud’ without following the principles of natural justice; and furthermore, in the facts of this case, respondent No. 2 could not have declared the petitioners’ account as ‘fraud’ while the process for reconsidering the issue of petitioners being declared wilful defaulters was still underway.

8. Mr. Krishnan further submits that for each of the petitioners there are forensic audit reports which exonerate the petitioners from any wrongdoing.

9. The contentions and counter-contentions notwithstanding, in my *prima facie* view there clearly appears to be something amiss inasmuch as RBI's Master Directions dated 01.07.2016 relating to classification and reporting of 'fraud' does not contain any provision for issuance of show-cause notice or affording a hearing to the affected party, even though a decision by a bank, whether taken individually or collectively with other banks, to classify an account as 'fraud' is a significant administrative decision taken in the commercial realm, having serious consequences for the account holder. That is to say, while a bank may most certainly *report* fraudulent transactions in an account to law enforcement agencies under the criminal law regime *without* issuing a show cause notice or hearing an affected party, but if an account is to be *declared* 'fraud' by an administrative decision in the framework of civil law, such action it appears on first principles, cannot be taken without giving to the affected party an opportunity of hearing to show cause against it.

10. Upon a conspectus of the scheme established by the RBI, it transpires that declaring an entity as 'wilful defaulter' is covered by Circular dated 01.07.2015 issued by the RBI which defines 'wilful default' under clause 2.1.3 as under :

"2.1.3 Wilful Default : A 'wilful default' would be deemed to have occurred if any of the following events is noted:

(a) The unit has defaulted in meeting its payment/repayment obligations to the lender even when it has the capacity to honour the said obligations.

(b) the unit has defaulted in meeting its

payment/repayment obligations to the lender and has not utilised the finance from the lender for the specific purposes for which finance was availed of but has diverted the funds for other purposes.

(c) The unit has defaulted in meeting its payment/repayment obligations to the lender and has siphoned off the funds so that the funds have not been utilised for the specific purpose for which finance was availed of, nor are the funds available with the unit in the form of other assets.

(d) the unit has defaulted in meeting its payment/repayment obligations to the lender and has also disposed off or removed the movable fixed assets or immovable property given for the purpose of securing a term loan without the knowledge of the bank/lender.

The identification of the wilful default should be made keeping in view the track record of the borrowers and should not be decided on the basis of isolated transactions/incidents. The default to be categorised as wilful must be intentional, deliberate and calculated.” ;

(Emphasis supplied)

On the other hand classification of an account as ‘fraud’ is covered by Master Directions on Frauds dated 01.07.2016 issued by the RBI. Clause 2.2 of these directions, which defines and deals with the classification of frauds recites as under :

“2.2 Classification of Frauds

2.2.1 In order to have uniformity in reporting, frauds have been classified as under, based mainly on the provisions of the Indian Penal Code:

- a. Misappropriation and criminal breach of trust.*
- b. Fraudulent encashment through forged instruments, manipulation of books of account or through fictitious accounts and conversion of property.*
- c. Unauthorised credit facilities extended for reward or for illegal gratification.*
- d. Cash shortages.*
- e. Cheating and forgery.*
- f. Fraudulent transactions involving foreign exchange*
- g. Any other type of fraud not coming under the specific heads as above.*

2.2.2 As regards cases under d) and f) above cash shortages resulting from negligence and fraudulent forex transactions involving irregularities / violation of regulations have also to be reported as fraud if the intention to cheat/defraud is suspected or proved. Notwithstanding the above, the following cases shall be treated as fraud and reported accordingly:

- a. cases of cash shortage more than ₹10,000/-, (including at ATMs) and*
- b. cases of cash shortage more than ₹5,000/- if detected by management/auditor/inspecting officer and not reported on the day of occurrence by the persons handling cash”*

(Emphasis supplied)

11. It is noteworthy that while the RBI circular dealing with ‘wilful defaulters’ provides a mechanism whereby a hearing is given to the affected party, no opportunity of hearing appears to be available in the circular that deals with declaring an account as ‘fraud’, which latter is a much more serious matter.
12. Issue notice on this application, returnable 26.04.2019.

13. Mr. Rajender Wali, learned counsel for respondent No. 2/Bank appear on advance copy and accepts notice.
14. He contends that the matter of declaring an entity as ‘wilful defaulter’ is different and distinct from that of declaring an account as ‘fraud’, the two matters are covered by different master circulars; and the mechanisms therefor cannot be compared. Counsel for respondent No. 2 draws attention to Clause 8.9.4 of RBI’s Master Directions dated 01.07.2016, which reads as under :-

“8.9.4 The initial decision to classify any standard or NPA account as RFA or Fraud will be at the individual bank level and it would be the responsibility of this bank to report the RFA or Fraud status of the account on the CRILC platform so that other banks are alerted. In case it is decided at the individual bank level to classify the account as fraud straightaway at this stage itself, the bank shall then report the fraud to RBI within 21 days of detection and also report the case to CBI/Police, as is being done hitherto. Further within 15 days of RFA/Fraud classification, the bank which has red flagged the account or detected the fraud would ask the consortium leader or the largest lender under MBA to convene a meeting of the JLF to discuss the issue. The meeting of the JLF so requisitioned must be convened within 15 days of such a request being received. In case there is a broad agreement, the account should be classified as a fraud; else based on the majority rule of agreement amongst banks with at least 60% share in the total lending, the account should be red flagged by all the banks and subjected to a forensic audit commissioned or initiated by the consortium leader or the largest lender under

MBA. All banks, as part of the consortium or multiple banking arrangement, shall share the costs and provide the necessary support for such an investigation.”

(Emphasis supplied)

15. Mr. Wali accordingly contends that there is no requirement of a show cause notice or hearing before declaring an account as ‘fraud’ in the afore-stated RBI Master Circular.

16. Considering the submissions made, I see merit in the petitioners’ contention that when the case of the petitioners being declared *wilful defaulters* is still under consideration by respondent No. 2, since the bank’s earlier decision in that behalf was set-aside by this court, the bank cannot *straightaway* declare the petitioners’ accounts as ‘fraud’ without so much as a show cause notice and without giving a hearing.

17. To me it *prima facie* appears that declaring an account as ‘fraud’ would arise in a case of egregious default on the part of an account holder, something more than the account holder being a ‘wilful defaulter’. For an account to be declared as ‘fraud’ must entail an element of *criminality* on the part of the account holder, which ought to be inferred *only* on the basis of some substantial material which must be put to the errant account holder; and after considering any explanation such account holder has to offer; and not unilaterally by a stroke of the pen.

18. Considering the past proceedings in this case, the hasty manner in which the bank has proceeded to classify the petitioners’ accounts

as ‘fraud’ also appears to be an effort to over-reach the orders of this court and nullify the pending process of declaring the petitioners ‘wilful defaulters’.

19. In the circumstances, without prejudice to the rights and contentions of the parties, all of which are kept open, it is directed that respondent No. 2/bank shall *not* take any further steps or actions prejudicial to the petitioners based upon the petitioners’ account being declared ‘fraud’ until the next date of hearing.

20. Let notice be issued to respondent No.1/RBI by all permissible modes, returnable on the next date.

21. Let pleadings in the matter be completed and reply/ies be also filed in this application within four weeks; rejoinder/s thereto if any, be filed within three weeks of receiving the reply/ies.

22. Re-list on 26.04.2019.

23. The date of 03.04.2019 given earlier in the matter stands cancelled.

Dasti.

ANUP JAIRAM BHAMBHANI, J

FEBRUARY 15, 2019

j

ANNEXURE F

\$~A-1

* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

+ W.P.(C) 306/2019

APPLE SPONGE AND POWER LTD
AND ORS

... Petitioners

Through Mr. Daya Krishnan, Sr. Adv. with
Mr. Manohar Malik, Adv.

versus

RESERVE BANK OF INDIA AND ANR

... Respondents

Through Ms. Nisha Sharma, Adv. for RBI/R-1.
Mr. Rajiv Kapur and Mr. Akshit
Kapur, Advs. for Respondent No. 3
(SBI)

CORAM:

HON'BLE MR. JUSTICE JAYANT NATH

ORDER
16.06.2020

%

This hearing is conducted through Video-Conferencing.

CM APPL. 12568/2020 (*impleadment*)

Issue notice.

Learned counsel for the respondent-SBI accepts notice.

Reply be filed within ten days. Rejoinder, if any, be filed before the
next date of hearing.

List on 01.07.2020.

CM APPL. 12569/2020 (*interim relief*)

1. Issue notice.
2. Learned counsel for the respondent-SBI accepts notice. SBI may file

reply within 10 days.

3. This application is filed on behalf of the petitioner Nos. 3 to 5 seeking interim relief to restrain the proposed respondent No.3/SBI from taking any coercive action pursuant to declaring them as 'fraud' in terms of the impugned circular dated 01.07.2016.

4. The case of the petitioners/applicants is that they were availing the credit facilities from PNB/Respondent No.2 and SBI and other consortium bank. The present petition is filed challenging the circular of RBI dated 01.07.2016 being violative of Article 14 of the Constitution of India as it does not provide an opportunity of representation or hearing to an aggrieved party before declaring it as a fraud.

5. It is further stated that the applicants got knowledge of the order declaring the applicants as fraud passed by SBI when an authorized representative of the petitioner Companies visited the branch office of SBI on 05.06.2020. It was then, petitioners 3 to 5 were informed that they have been declared as fraud and have been reported as fraud upon CRILC platform of respondent No.1. It is pleaded that drastic consequences follow on account of the same. Reliance is placed on the order of this Court dated 15.02.2019 stating that the said interim order was also passed on identical facts and circumstances and on identical orders passed by Respondent No.2 Bank.

6. Learned counsel has entered appearance for SBI. He has pointed out that SBI has already in terms of the circular of RBI dated 01.07.2016 reported the matter to CBI and that nothing further remains to be done by SBI. He further submits that there is a material distinction between the case of SBI and respondent No.2-Bank.

7. I may first look at the order of this court dated 15.02.2019. Relevant paras of the said order read as follows:-

“9. The contentions and counter-contentions notwithstanding, in my *prima facie* view there clearly appears to be something amiss inasmuch as RBI's Master Directions dated 01.07.2016 relating to classification and reporting of 'fraud' does not contain any provision for issuance of show-cause notice or affording a hearing to the affected party, even though a decision by a bank, whether taken individually or collectively with other banks, to classify an account as 'fraud' is a significant administrative decision taken in the commercial realm, having serious consequences for the account holder. That is to say, while a bank may most certainly *report* fraudulent transactions in an account to law enforcement agencies under the criminal law regime *without* issuing a show cause notice or hearing an affected party, but if an account is to be *declared* 'fraud' by an administrative decision in the framework of civil law, such action it appears on first principles, cannot be taken without giving to the affected party an opportunity of hearing to show cause against it.

xxx

11. It is noteworthy that while the RBI circular dealing with 'wilful defaulters' provides a mechanism whereby a hearing is given to the affected party, no opportunity of hearing appears to be available in the circular that deals with declaring an account as 'fraud', which latter is a much more serious matter.

xxx

17. To me it *prima facie* appears that declaring an account as 'fraud' would arise in a case of egregious default on the part of an account holder, something more than the account holder being a 'wilful defaulter'. For an account to be declared as 'fraud' must entail an element of *criminality* on the part of the account holder, which ought to be inferred *only* on the basis of some substantial material which must be put to the errant account holder; and after

considering any explanation such account holder has to offer; and not unilaterally by a stroke of the pen.

xxx

19. In the circumstances, without prejudice to the rights and contentions of the parties, all of which are kept open, it is directed that respondent No. 2/bank shall *not* take any further steps or actions prejudicial to the petitioners based upon the petitioners' account being declared 'fraud' until the next date of hearing.”

8. Clearly, the court while passing the said order dated 15.02.2019 was prima facie of view that RBI's master directions dated 01.07.2016 relating to Classification and Recording of 'fraud' does not contain any provision for issuance of show cause notice or affording a hearing to an affected party, even though a decision by a bank to classify an account as a 'fraud' is a significant administrative decision which has serious consequences. The court also held that reporting of fraudulent transactions to law enforcement agencies under the criminal law regime would not require issuing of a show cause notice or hearing of an affected party. However, the present decision is an administrative decision in the framework of civil law.

9. In my opinion, the facts of the case pertaining to respondent No. 2 against whom the order dated 15.02.2019 was passed and facts as stated in this application are identical. The aforesaid order would clearly apply to the facts and circumstances of the present case also.

10. Without prejudice to the rights and contentions of the parties, all of which are kept open, SBI will not take any further steps or actions prejudicial to the petitioners based on the petitioners' account being declared fraud till the next date of hearing.

11. It is clarified that this interim order does not prevent SBI from issuing a show cause notice to the petitioners and passing a reasoned order after giving a personal hearing to the petitioners. They are free to pass a reasoned order in terms of the circular dated 01.07.2016. This order will also not in any manner hamper any steps or investigations that are sought to be carried out by the concerned criminal investigating agencies including CBI.

12. The main matter is coming up on 01.07.2020 on the main list. List this matter also on the said date on the main list.

JAYANT NATH, J

JUNE 16, 2020/st

ANNEXURE G



भारतीय रिज़र्व बैंक
RESERVE BANK OF INDIA
www.rbi.org.in

RBI/DBS/2016-17/28

DBS.CO.CFMC.BC.No.1/23.04.001/2016-17

July 01, 2016

(Updated as on July 03, 2017)

The Chairmen & Chief Executive Officers of all
Scheduled Commercial Banks (excluding RRBs)
and All India Select Financial Institutions

Dear Sir,

Master Directions on Frauds – Classification and Reporting by commercial banks and select FIs

Please refer to our letter [DBS.CO.CFMC.BC.No.1/23.04.001/2015-16 dated July 01, 2015](#) forwarding the Master Circular on 'Frauds – Classification and Reporting'. These Master Directions, being issued under Section 35 A of the Banking Regulation Act, 1949, consolidate and update all the instructions issued on the subject up to June 30, 2016, and have been placed on the web-site of the Reserve Bank of India ([www.rbi.org.in](#)).

Yours faithfully

(Manoj Sharma)

Chief General Manager

Reserve Bank of India (Frauds classification and reporting by commercial banks and select FIs) Directions 2016.

(Updated up to June 30, 2017)

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5.5 The banks are required to follow the guidelines relating to seeking prior approval for closure of such cases from the SSM and follow up of such cases after closure as mentioned below.

5.6 The banks shall have to submit their proposals, case wise, for closure to the SSM of the bank. The cases may be closed after getting the approval of the SSM. The banks should maintain the record of details of such cases in a separate ledger. Even after closure of the fraud cases for limited statistical purposes, banks should vigorously follow up with the investigating agencies (CBI / Police) to ensure that the investigation process is taken to its logical conclusion. Similarly, the banks should continue to ensure that they are regularly and appropriately represented in the court proceedings as and when required. All the relevant records pertaining to such cases must be preserved till the cases are finally disposed of by CBI / Police or Courts, as the case may be.

5.7 The banks shall, with the approval of their respective Boards, frame their own internal policy for closure of fraud cases, incorporating the above norms and other internal procedures / controls as deemed necessary.

5.8 Notwithstanding the fact that banks may close cases of fraud even when Police / CBI investigation is in progress or cases are pending in the court of law, they should complete, within the prescribed time frame, the process of examination of staff accountability or conclude staff side actions.

5.9 For closing frauds of Rs 0.1 mn and above, banks, on being guided by the above points, have to submit their closure proposals to the SSM of the bank and the closure of the fraud in the database will be done by the SSM of the bank. In the case of frauds below Rs 0.1 mn, banks can close the frauds by using the FMR update application supplied to them.

CHAPTER VI

6. Guidelines for Reporting Frauds to Police/CBI

6.1 In dealing with cases of fraud/embezzlement, banks should not merely be actuated by the necessity of recovering expeditiously the amount involved, but should also be motivated by public interest and the need for ensuring that the guilty persons do not go unpunished. Therefore, as a general rule, the following cases should invariably be referred to the State Police or to the CBI as detailed below:

Category of bank	Amount involved in the fraud	Agency to whom complaint should be lodged	Remarks
Private Sector/ Foreign Banks	₹10000 and above	State Police	If committed by staff
	₹0.1 million and above	State Police	If committed by outsiders on their own and/or with the connivance of bank staff/officers.
	₹10 million and above	In addition to State Police, SFIO, Ministry of Corporate Affairs, Government of India. Second Floor, Paryavaran Bhavan, CGO Complex, Lodhi Road, New Delhi 110 003.	Details of the fraud are to be reported to SFIO in FMR Format.
Public Sector Banks	<u>Below ₹30 million</u> 1. ₹10,000/- and above but below ₹0.1 million	State Police	If committed by staff. ²
	2. ₹0.1 million and above but below ₹30 million	To the State CID/Economic Offences Wing of the State concerned	To be lodged by the Regional Head of the bank concerned
	₹30 million and above and up to ₹250 million	CBI	To be lodged with Anti Corruption Branch of CBI (where staff involvement is

² In this regard, CVC has issued a circular No.06/06/17 dated June 14, 2017 to the PSBs.

			prima facie evident) Economic Offences Wing of CBI (where staff involvement is prima facie not evident)
	More than ₹250 million and up to ₹500 million	CBI	To be lodged with Banking Security and Fraud Cell (BSFC) of CBI (irrespective of the involvement of a public servant)
	More than ₹500 million	CBI	To be lodged with the Joint Director (Policy) CBI, HQ New Delhi

6.2 All fraud cases of value below ₹10,000/- involving bank officials, should be referred to the Regional Head of the bank, who would scrutinize each case and direct the bank branch concerned on whether it should be reported to the local police station for further legal action.

CHAPTER VII

7. Cheque Related Frauds, Precautions to be taken and Reporting to RBI and the Police

7.1 In view of the rise in the number of cheque related fraud cases banks were advised to review and strengthen the controls in the cheque presenting/passing and account monitoring processes and to ensure that all procedural guidelines including preventive measures are followed meticulously by the dealing staff/officials. ([DBS.CO.CFMC.BC.006/23.04.001/2014-15 dated November 5, 2014](#)). Banks were also given an illustrative list of some of the preventive measures they may follow in this regard viz.

- I. Ensuring the use of 100% CTS - 2010 compliant cheques.
- II. Strengthening the infrastructure at the cheque handling Service Branches and bestowing special attention on the quality of equipment and personnel posted for CTS based clearing, so that it is not merely a mechanical process.
- III. Ensuring that the beneficiary is KYC compliant so that the bank has recourse to him/her as long as he/she remains a customer of the bank.
- IV. Examination under UV lamp for all cheques beyond a threshold of say, ₹0.2 million.

period of six months. It is emphasised that banks should strive to complete the staff accountability exercise within six months as clearing the air on the staff members concerned in a shorter time frame is appropriate and desirable.

8.10.3 In cases involving very senior executives of the bank, the Board / ACB/ SCBF may initiate the process of fixing staff accountability. It is clarified that very senior executives include the EDs and MD & CEOs of banks.

8.10.4 Staff accountability should not be held up on account of the case being filed with law enforcement agencies. Both the criminal and domestic enquiry should be conducted simultaneously.

8.11 Filing Complaints with Law Enforcement Agencies

8.11.1 Banks are required to lodge the complaint with the law enforcement agencies immediately on detection of fraud. There should ideally not be any delay in filing of the complaints with the law enforcement agencies since delays may result in the loss of relevant 'relied upon' documents, non-availability of witnesses, absconding of borrowers and also the money trail getting cold in addition to asset stripping by the fraudulent borrower.

8.11.2 It is observed that banks do not have a focal point for filing CBI / Police complaints. This results in a non-uniform approach to complaint filing by banks and the investigative agency has to deal with dispersed levels of authorities in banks. This is among the most important reasons for delay in conversion of complaints to FIRs. It is, therefore, enjoined on banks to establish a nodal point / officer for filing all complaints with the CBI on behalf of the bank and serve as the single point for coordination and redressal of infirmities in the complaints.

8.11.3 The complaint lodged by the bank with the law enforcement agencies should be drafted properly and invariably be vetted by a legal officer. It is also observed that banks sometimes file complaints with CBI / Police on the grounds of cheating, misappropriation of funds, diversion of funds etc., by borrowers without classifying the accounts as fraud and/or reporting the accounts as fraud to RBI. Since such grounds automatically constitute the

basis for classifying an account as a fraudulent one, banks should invariably classify such accounts as frauds and report the same to RBI.

8.12 Penal measures for fraudulent borrowers

8.12.1 In general, the penal provisions as applicable to wilful defaulters would apply to the fraudulent borrower including the promoter director(s) and other whole time directors of the company insofar as raising of funds from the banking system or from the capital markets by companies with which they are associated is concerned, etc. In particular, borrowers who have defaulted and have also committed a fraud in the account would be debarred from availing bank finance from Scheduled Commercial Banks, Development Financial Institutions, Government owned NBFCs, Investment Institutions, etc., for a period of five years from the date of full payment of the defrauded amount. After this period, it is for individual institutions to take a call on whether to lend to such a borrower. The penal provisions would apply to non-whole time directors (like nominee directors and independent directors) only in rarest of cases based on conclusive proof of their complicity.

8.12.2 No restructuring or grant of additional facilities may be made in the case of RFA or fraud accounts. However, in cases of fraud/malfeasance where the existing promoters are replaced by new promoters and the borrower company is totally delinked from such erstwhile promoters/management, banks and JLF may take a view on restructuring of such accounts based on their viability, without prejudice to the continuance of criminal action against the erstwhile promoters/management.

8.12.3 No compromise settlement involving a fraudulent borrower is allowed unless the conditions stipulate that the criminal complaint will be continued.

8.12.4 In addition to above borrower- fraudsters, third parties such as builders, warehouse/cold storage owners, motor vehicle/tractor dealers, travel agents, etc. and professionals such as architects, valuers, chartered accountants, advocates, etc. are also to be held accountable if they have played a vital role in credit sanction/disbursement or facilitated the

ANNEXURE H

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केन्द्रीय सतर्कता आयोग
CENTRAL VIGILANCE COMMISSION



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Satarkta Bhawan, G.P.O. Complex,
Block A, INA, New Delhi-110023

सं./No.....007/VGL/050-379286

दिनांक / Dated..9th May 2018.....

Circular No.04/05/18

Subject: Reporting of fraud cases to police/State CIDs/Economic Offences Wing of State Police by Public Sector Banks – clarifications reg.

Reference is invited to Commission's Circular No.12/06/12 dated 12th June 2012 prescribing the monetary/threshold limits for reporting Bank fraud cases by various agencies. The Commission would clarify that the monetary limits, as prescribed in Chapter VI of RBI's Master Directions dated 01.07.2016 (as updated on 03.07.2017), should be followed for reporting financial frauds to Local/State Police and CBI by all Public Sector Banks.

2. All Public Sector Banks are advised to ensure compliance as clarified above.


(J. Vinod Kumar)
Director

To

CMDs/CEOs of all Public Sector Banks
Chief Vigilance Officers of all Public Sector Banks

Copy for information to:

- i. CVO, Department of Financial Services, Jeevan Deep Building, Sansad Marg, New Delhi.
- ii. The Executive Director, Reserve Bank of India, Department of Banking Supervision, Mumbai.
- iii. The Joint Director (Policy), CBI, North Block, New Delhi