



Shailaja

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

CRIMINAL WRIT PETITION NO.4248 OF 2024

Mr. Shoaib Richie Sequeira]
Aged 61 years, Occ: Business,]
permanently residing at Rustomejees]
Ozone CHSL, Tower No.3, Flat 1203]
Goregaon (W), Mumbai – 400 104] Petitioner

Versus

1. State of Maharashtra]
Through Police Commissioner]
and Jt. Commissioner, Economic]
Offences Wing, 3rd Floor, New]
Police Commissioner Office]
Building, Crawford Market,]
Mumbai – 400 001.]
2. Directorate of Enforcement]
Through its Director, 6th Floor,]
Lok Nayak Bhawan, Khan]
Market, New Delhi – 110003]
- And Through Jt. Director,]
(Western Region), Kaiser-I-Hind]
Building, 4th Floor, Currimbhoy]
Road, Ballard Estate, Mumbai]
400 001.]
3. Securities and Exchange Board of]
India, A statutory body set up]
under Section 3 of the Securities]
and Exchange Board of India Act,]
1992 having its headquarters at:]
SEBI Bhavan, Plot No. C4-A,]
'G' Block, Bandra-Kurla Complex,]

- Bandra (East), Mumbai – 400 051]
Maharashtra.]
4. The Joint Director]
Central Bureau of Investigation]
EOB, Mumbai, 11th/12th Floor,]
Plot No. C-35A, G Block,]
Bandra Kurla Complex BKC,]
Near MTNL Exchange, Bandra]
(E), Mumbai 400 098.]
5. The Joint Director]
Serious Fraud Investigation Office]
Mumbai]
Fountain Telecom Building – I,]
Near Central Telegraph Office,]
M.G. Road, Fort, Mumbai -]
400 001.]
6. Crime Investigation Department,]
Maharashtra Crawford Market,]
Lokmanya Tilak Road,]
Police Colony, Dhobi Talao,]
CST, Fort, Mumbai 400 001.] Respondents

a/w

INTERIM APPLICATION [STAMP] NO.24444 OF 2024
IN
CRIMINAL WRIT PETITION NO.4248 OF 2024

Multifaced Impex Limited] Applicant

IN THE MATTER BETWEEN:

Mr. Shoaib Richie Sequeira] Petitioner

Vs.

State of Maharashtra and others] Respondents

a/w

**INTERIM APPLICATION [STAMP] NO.24377 OF 2024
IN
CRIMINAL WRIT PETITION NO.4248 OF 2024**

Jai Corp Limited] Applicant

IN THE MATTER BETWEEN:

Mr. Shoaib Richie Sequeira] Petitioner

Vs.

State of Maharashtra and others] Respondents

a/w

**INTERIM APPLICATION [STAMP] NO.24376 OF 2024
IN
CRIMINAL WRIT PETITION NO.4248 OF 2024**

Anand Jaikumar Jain] Applicant

IN THE MATTER BETWEEN:

Mr. Shoaib Richie Sequeira] Petitioner

Vs.

State of Maharashtra and others] Respondents

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Mr. Aabad Ponda, Senior Advocate a/w Mr. Parth Jain, Mr. Puru Jain and Ms. Rutvi Soni i/b Jain Law Partners LLP, for Petitioner.

Mr. H.S. Venegavkar, P.P a/w Ms. P.P. Shinde, A.P.P, for Respondent – State.

Mr. H.S. Venegavkar, S.P.P a/w Mr. Ayush Kedia, for Respondent No.2 – Enforcement Directorate.

Mr. Rafique Dada, Senior Advocate a/w Mr. Bhushan Shah, Mr. Akash Jain a/w Mr. Abhishek Nair i/b Mr. Mansukhlal & Co., for Respondent No.3 (SEBI).

Mr. Kuldeep S. Patil, Special Public Prosecutor a/w Mr. Dhavalsinh Patil, Mr. Ashish Kumar Srivastava and Ms. Sampada S. Patil, for Respondent No.4 – CBI.

Mr. H.S. Venegavkar a/w Mr. Aayush Kedia a/w Ms. Divya Gontia i/b Mr. Pradeep Yadav, for Respondent No.5 – SFIO.

Mr. Ravi Kadam, Senior Advocate a/w Mr. Vikram Nankani, Senior Advocate a/w Mr. Vineet Naik, Senior Advocate a/w Mr. Ameet Naik, Mr. Abhishek Kale, Ms. Vaibhavi Bhure, Mr. Aditya Ajgaonkar, Mr. Harish Khedkar, Mr. Vivek Dwivedi, Mr. Nevil Chopra, Ms. Antara Kulkarni and Ms. Rebecca Singh i/b M/s. Naik Naik & Co., for Applicants in Interim Application [Stamp] No.24376 of 2024 and Interim Application [Stamp] No.24377 of 2024.

Mr. Pranav Badheka a/w Mr. Rajendra Barot, Mr. Dhirajkumar Totala a/w Ms. Vaibhavi Bhure, Mr. Vivek Shetty, Ms. Harsha Uppal, Mr. Prince Todi, Mr. Harsh Sethi i/b AZB & Partners, for Applicant in Interim Application [Stamp] No.24444 of 2024.

Mr. Nikhit Mishra Joint C.P. a/w Mr. Sangramsinh Nishandar and Mr. Nitin Gije, PI, EOW Unit VII, Mumbai present.

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CORAM	: REVATI MOHITE DERE & PRITHVIRAJ K. CHAVAN, J.J.
RESERVED ON	: 29 th November, 2024.
PRONOUNCED ON	: 31 st January, 2025.

JUDGMENT: [Per Prithviraj K. Chavan, J.]:

1. The petitioner, who is a public rights activist and founding member of a Non-Governmental Organizations involved in espousing public interests has approached this Court invoking writ jurisdiction under Article 226 of the Constitution of India, *inter alia*, seeking the following substantive prayers;

“A. That this Hon’ble Court be pleased to issue a Writ of mandamus or any other appropriate writ, order or direction to direct the Respondent No.1 and 2 to jointly and/or severally carry out a preliminary investigation on the basis of the Complaint dated 22nd December 2021 (Exhibit E and F) and the Complaint dated 3 April 2023 (Exhibit J) and submit a report to this Hon’ble Court within a period of 3 weeks from the date of the Order or any such other time as this Hon’ble Court may deem it fit and proper;

B. Ad interim reliefs in terms of prayer clause (A) above;

B-1. That this Hon’ble Court be pleased to transfer the investigation of the Complaints to the Crime Investigation Department, Maharashtra;

B-2. The petitioner submits that in light of the manner in which the investigation is being conducted by Respondent No.2 and Respondent No.4, it is necessary and in the interest of justice that the investigation be transferred to another investigating agency, namely the Criminal Investigation Department, Maharashtra for necessary action of the Petitioner’s complaints;

C. For costs;

D. For any other reliefs as this Hon’ble Court may deem fit and necessary in the facts and circumstances of the present matter”.

2. Before advertng to the facts, it is pertinent to note that this is not the first case in public interest that the petitioner has agitated, but previously he had filed a Public Interest Litigation (for short “PIL”) No.1942 of 2005 before this Court exposing scams of approximately Rs. 1,00,000/- Crores (Rupees one lac Crore) in incentive schemes in Import Export Policies. The PIL was admitted on 25th January, 2006.

3. The petitioner contends that in April, 2006, he has filed two PILs’ bearing Criminal Writ Petition No.3 of 2006 and Criminal Writ Petition No.13 of 2006 against M/s. Autoriders Finance Limited for;

(i) misappropriation of approximately Rs.50 Crores availed as a loan from United Trust of India; and

(ii) misappropriation of approximately Rs.76 Crores availed as loan from a consortium of six banks wherein Union Bank of India was the lead Bank.

After filing the aforesaid two PILs’ sometime in the month of April, 2009, the banks have collectively recovered approximately Rs.14,00,00,000/- (Rs. Fourteen Crores only) from M/s. Autoriders Finance Limited. This Court, by a common order dated 9th July, 2009 disposed of the aforesaid two PILs’ by entrusting the

investigation of the subject matter therein to the State C.I.D, Pune, Maharashtra State under the overall supervision of Additional Director General of Police, C.I.D, Maharashtra State, Pune.

4. The present petition is filed seeking limited directions, *inter alia*, issuance of an appropriate writ of mandamus directing the respondent Nos.1 and 2 to jointly act upon the complaint dated 22nd December, 2021 (First EOW complaint) and the complaint dated 3rd April, 2023 (Second EOW complaint) filed by the petitioner wherein he has prayed for conducting preliminary investigation/inquiry into the fraudulent activities undertaken by one Anand Jaikumar Jain- the Director/Promoter of Jai Corporation Ltd (Jai Corp Ltd) which includes;

- (i) *misappropriation of public monies for personal enrichment;*
- (ii) *defrauding investors;*
- (iii) *round tripping of funds through shell companies based in tax havens;*
- (iv) *making unsecured advances to subsidiaries with the intention to launder public money and;*

- (v) *creation of dubious and fictitious invoices, all of which are predicate offences under the Indian Penal Code, 1860 (“IPC”) and the Prevention of Money Laundering Act, 2002 (“PMLA”)*

5. The petitioner further contends that the respondent No.1 failed to act upon the complaints filed by him, instead, on two occasions by communication dated 25th January, 2021 (First EOW reply) and 2nd May, 2023 (Second EOW reply) forwarded the complaints filed by him to Securities and Exchange Board of India (for short “SEBI”) for investigation on the ground, that the subject matter of the complaint is within the jurisdiction of SEBI. Hence, the petitioner has approached this Court.

6. The petitioner further contends that the first EOW complaint dated 22nd December, 2021 brings to the fore various economic offences committed by Anand Jaikumar Jain in his capacity as a Director/Promoter of Jai Corp Ltd and its subsidiary Companies in collusion with sister concerns, wholly owned subsidiaries, shell companies, associates, family members and Private Trust Funds based in India and abroad which are cognizable offences not only under the provisions of the PMLA Act but also under the I.P.C. The petitioner contends that reason for filing the complaints before

respondent Nos.1 and 2 arose from the fact, that he found out through the print media that vide order dated 1st January, 2021, the Adjudicating Officer of SEBI has imposed a hefty penalty of Rs.20,00,00,000/- (Rs. Twenty Crores only) and Rs.10,00,00,000/- (Rs. Ten Crores only) on two companies wherein, Mr. Anand Jaikumar Jain was the Chairman, viz: Mumbai Sez Ltd and Navi Mumbai Sez Pvt. Ltd for fraudulent futures trading in stocks of Reliance Petrochemicals Ltd. (for short “RPL”). Upon procuring copy of the SEBI order, he undertook an in-depth analysis of the *modus operandi* of Anand Jaikumar Jain in perpetuating the economic and investor fraud amounting to the tune of Rs.3000 Crore (Rs. Three Thousand Corers only) through various associates and subsidiaries. The petitioner further contends that he noticed the method adopted by Anand Jaikumar Jain to funnel and illegally route back public money for his personal gain by collecting, collating and analyzing voluminous data over a span of eleven months. Having analyzed the aforesaid, the petitioner filed the first EOW complaint with respondent No.1 and respondent No.2 disclosing various offences committed by Jai Corp Ltd and its subsidiary Companies at the behest of Anand Jaikumar Jain which attract the provisions of the PMLA and IPC. The respondent No.1

vide communication dated 25th January, 2021 replied to the First EOW Complaint stating therein that the contents of the complaint pertain to jurisdiction of SEBI and hence, the complaint was forwarded to SEBI for necessary action. No response was received from SEBI with reference to his first EOW complaint.

7. The petitioner contends that in 31st October, 2022, SEBI passed an order (UIVCF Winding Up Order) in the matter of Urban Infrastructure Venture Capital Fund (UIVCF) (registered with SEBI as a Venture Capital Fund) directing that UIVCF be wound up in the terms, more particularly, contained therein. Admittedly, Jai Corp Ltd, being a company promoted by Anand Jaikumar Jain and his related entities, own a 100% stake in Urban Infrastructure Venture Capital Limited (UIVCL) and Urban Infrastructure Trustees Limited (UITL) i.e the Settlor and Trustee of UIVCF respectively. In essence, the affairs and management of UIVCF were controlled by Anand Jaikumar Jain who was the sole beneficiary of the Fund. The Adjudicating Authority in paragraph 33 of it's order in the UIVCF Winding up, against Anand Jaikumar Jain held as under;

“I am constrained to hold that the aforesaid Noticees have abdicated their responsibility and duty as a Director of UIVCL and UTIL and

consequently were not diligent enough in managing the affairs of the Fund, which is not permissible in law”.

The petitioner noticed that the first EOW complaint made by him which was forwarded to SEBI was not adverted to or dealt with in the UIVCF Winding Up Order by SEBI.

8. The petitioner, therefore, once again filed a complaint dated 3rd April, 2023 with the respondent No.1 (second EOW complaint), *inter alia*, requesting the respondent No.1 to conduct a preliminary investigation into the cognizable offences disclosed in the first EOW complaint and the second EOW complaint against the Director/Promoter of Jai Corp Ltd. However, in abdication of their duties, the respondent No.1 vide communication dated 2nd May, 2023 has forwarded the second EOW complaint to SEBI stating that the subject matter pertains to SEBI jurisdiction.

9. The sum and substance of the first EOW complaint and the second EOW complaint is that Jai Corp Ltd controlled by Anand Jaikumar Jain along with the subsidiaries are responsible for colluding and fraudulently misappropriating;

(i) *Monies to the tune of Rs.4255 Crores availed by Jai Corp Ltd and its subsidiaries from financial institutions;*

(ii) *Rs.2434 Crores of investor money collected by Urban Infrastructure Opportunities Fund (UIOF) which is a scheme launched by UIVCF i.e wholly owned and controlled by Mr. Anand Jaikumar Jain;*

(iii) *Monies to the tune of Rs.513.12 Crores generated by fraudulent trading in the Futures of RPL shares;*

(iv) *Rs.98.83 Crores of financial assistance availed from Indian Banks which has been diverted to Mauritius and Sharjah, UAE and lastly,*

(v) *funneling funds for personal gain by creation of fabricated and dubious invoices.*

10. The petitioner further contends that Jai Corp Ltd alongwith its subsidiaries managed to launder public money by various methods *inter alia* routing funds from entities based in tax havens, diversion of funds by way of buy back of equity shares, round tripping of funds for personal gain, making unsecured advances to sister/subsidiary concerns, recording fictitious entries in books of accounts and writing off projects. As such, the first EOW complaint and the second EOW complaint disclose commission of cognizable

offences under the IPC and the PMLA which is within the exclusive jurisdiction of respondent No.1 and 2 to investigate and take necessary action in pursuance thereof.

11. The petitioner has enclosed the following documents;

*(a) A list of individuals who are associated with Anand Jaikumar Jain by virtue of being Directors in the sister/subsidiary concerns, annexed as “**Exhibit L**” to this petition;*

*(b) A list of subsidiary companies of Jai Corp Ltd incorporated in India having played a role in the entire conspiracy to defraud investors and launder public money, annexed as “**Exhibit M**” to this petition;*

*(c) A list of subsidiary companies of Jai Corp Ltd incorporated abroad having played a role in the entire conspiracy to defraud investors and launder public money, annexed as “**Exhibit N**” to this petition;*

12. The petitioner had given chronological events throwing light on the nature of the fraud committed by Anand Jaikumar Jain which is as under;

(i) On 5th April, 2004 and 15th May, 2004, Mumbai SEZ and Navi Mumbai SEZ are respectively incorporated. Anand Jaikumar Jain is the Chairman and Director for both Mumbai SEZ as well as Navi Mumbai SEZ;

(ii) Mumbai SEZ has availed loans to the tune of Rs.686 Crores from Public Sector Banks. (Rs.486 Crores from IDBI Bank and Rs.200 Crores from IDFC). The petitioner craves leave to refer and reply upon the copies of the Annual Reports/Balance Sheet of Mumbai SEZ;

(iii) Navi Mumbai SEZ has availed loans to the tune of Rs.3252.11 from Public Sector Banks. The petitioner craves leave to refer and reply upon the copies of the Annual Reports/Balance Sheet of Navi Mumbai SEZ;

(iv) On 17th July, 2007, Vinamra Universal Traders Pvt. Ltd (“Vinamra Traders”) was incorporated. One Mr. Sanjay Punkhia is the Director of Vinamra Traders. Pertinently, (i) Mr. Sanjay Punkhia is also a Director in Mumbai SEZ and Navi Mumbai SEZ and (ii) the registered address of Vinamra Traders, Mumbai SEZ and Navi Mumbai SEZ are the same;

(v) On 4th August, 2007 and 22nd September, 2007, Mumbai SEZ and Navi Mumbai SEZ, respectively, advanced unsecured loans to the tune of Rs.550 Crores at 6.5% p.a and Rs.2275 Crores at 8% to Vinamra Traders;

(vi) In turn, Vinamra Traders advanced unsecured loans in the form of Inter Corporate Deposits to 10 other agents as well as one Dharti Investment Holdings Ltd. (**Dharti Investment**) i.e a subsidiary of Jai Corp Ltd.

(vii) SEBI has vide Order dated 1st January, 2021 held that 12 agent Companies of RPL were manipulating the Futures of the RPL stock. A table showing the collective illegitimate profit of Rs.513.12 Crores earned by futures stock manipulation is provided hereinbelow;

Name of Company	Amt in (Rs.Crore)
Relpol Plastic Products Pvt. Ltd.	60.51
Aarthik Commercial Pvt Ltd	53.87
Gujarat Petcoke & Petro Product Supply Pvt. Ltd;	48.00
Fine Tech Commercial Pvt Ltd	33.76
Motech Software Pvt Ltd	38.56
LPG Infra Structure India Pvt Ltd	42.57
Darshan Securities Pvt. Ltd.	37.17
Relogistics (India) Pvt Ltd	10.94
Pipeline Infra Structure Indian Pvt. Ltd	54.42
Relogistics Rajasthan Pvt. Ltd.	00.49
Vinamra Universal Traders Pvt Ltd	60.30
Dharti Investments & Holding Ltd	72.53
Total	513.12

(viii) SEBI has imposed a penalty of Rs.20 Crores and Rs.10 Crores on Navi Mumbai SEZ and Mumbai SEZ respectively, for aiding and abetting in the fraud while stating in Paragraph 87 that, “Noticee No.3 and Noticee No.4 actively aided and abetted RIL by providing funds to Vinamra, which was ultimately used in providing margin money to stock brokers for taking the short positions by the Agents of RIL in RPL futures for earning illegitimate profits from the said positions.”

(ix) SEBI has held in Paragraph 82 that Vinamra Traders was incorporated on 11th July 2007 and immediately thereafter, on 4th August, 2007 and 22nd September, 2007, Navi Mumbai SEZ and Mumbai SEZ entered into unsecured facility agreements (ICDRs) with Vinamra Traders for staggering amounts of Rs.2775 Crores and Rs.550 Crores respectively days within it's incorporation. The relevant excerpt of Paragraph 82 is being reproduced hereinbelow;

“Therefore, I note that both Noticee No.3 and Noticee No.4 have advanced unsecured loans to vinamra at concessional rates of interest, despite their claims that they are not connected with Vinamra. However, I am of the view that placing of ICDs at such a low interest rate with a new company but unrelated entities is not in the normal course of business”.

(x) Hence, what evolves from the aforesaid is that a total profit of Rs.513.12 Crores has been generated by Vinamra Traders during the fraudulent trading of RPL futures. The mastermind behind the scheme is Anand Jaikumar Jain who is the Chairman/Director of Navi Mumbai SEZ and Mumbai SEZ i.e the Companies that forwarded the unsecured loans to Vinamra Traders days within its incorporation. Vinamra Traders in turn made unsecured advances to the 12 Agent Companies that used these funds as margin money for taking short positions and earning illegal profits.

(xi) From the amount of Rs.513.12 Crores that was generated by fraudulent trading in futures of RPL, an amount of Rs.387 Crores was advanced by Jai Corp

Ltd to Jai Realty Ventures Ltd (“Jai Realty”) as unsecured loans. Jai Realty is a 100% subsidiary of Jai Corp Ltd.

(xii) From the above Rs.387 Crores that was advanced by Jai Corp, an amount of Rs.330 Crores was advanced to 18 of Jai Realty’s subsidiary companies without any security.

(xiii) The 18 subsidiary companies of Jai Realty that have received unsecured loans have in their books of accounts shown the monies advanced as utilized for the purchase benami lands or benami development rights, constructions expenses pertaining to the benami lands or benami development rights, payment of Income Tax penalties, etc. The subsidiary Companies have shown the amounts received by them as losses over a period of years. This could only have been accomplished either by procuring fictitious bills for material/labour allegedly used for the alleged constructions or by executing forged and fabricated documents/agreements against advances paid for purchase of benami land and/or benami development rights. The Petitioner craves leave to refer to and rely upon the copies of the Annual Report/Balance Sheets of Jai Reality Venture Ltd;

(xiv) The table provided hereinbelow details the manner in which 330.71 Crores have been laundered by Anand Jaikumar Jain through his subsidiaries:

Name of Company	Date of Incorporation	Loan from / by Jai Realty Venture Ltd in (Rs Crore)	Amt paid/paid as advance for purchase of land/development rights in (Rs. Crore)	Amt spent on construction etc in Rs (Crore) and management	Amt syphoned /misappropriated in (Rs. Crore)
		A	B	C	B+C=
Multifaced Impex Ltd	21.11.1994	01.36	00.93	00.43	
Hill Rock Construction Ltd	13.10.2005	10.42	00.58	09.84	
Hari Darshan Realty Ltd	14.10.2005	07.86	01.06	06.80	
Vasant Bahar Realty Ltd	18.10.2005	00.25	00.80	01.14	
Welldone Real Estate Ltd	21.02.2006	04.72	00.12	04.60	
Hind Agri Properties Ltd	04.12.2006	09.44	09.44		
Yug Developers Ltd	03.02.2007	11.39	01.07	10.32	
Swar Land Developers Ltd	05.03.2007	31.00	00.38	30.62	
Swastik Land Developers Ltd	05.03.2007	08.76	08.76		
Krupa Land Ltd	06.08.2007	23.60	04.22	19.38	
Novelty Realty & Developers Ltd	20.08.2007	12.23	09.53	02.70	
Iconic Realtors Ltd	20.08.2007	119.41	30.35	89.06	

Krupa Realtors Ltd	21.08.2007	08.26	00.04	08.22	
Ekdant Realty & Developers Ltd	21.08.2007	16.80	14.00	02.80	
Rainbow Infraprojects Ltd	27.09.2007	15.00	11.50	03.50	
Rudradev Developers Ltd	01.10.2007	11.74	10.00	01.74	
Jailaxmi Realty & Developers Ltd.	09.01.2008	19.42	17.31	02.11	
Ashok Realty & Developers Ltd	09.10.2008	17.36	06.96	10.40	
Total		329.02	127.05	203.66	330.71

13. The petitioner, however, contends that Jai Reality advanced a loan of Rs.9.44 crore to Hind Agri Properties Limited and that Hind Agri Properties Ltd utilized the loan amount to purchase agricultural land and carry out construction on the said land. Subsequently, the land and constructions thereon were transferred to Nidhi Kanoj, Neha Bagaria and Ruchi Jain, the daughters of Satyapal Jain, Anand Jain and Virendra Jain respectively, the Directors and Promoters of Jai Corp Ltd.

14. The petitioner further contends that Jai Reality has advanced a loan of Rs.32.70 Crore to Swar Land Developers Ltd and Swar Land Developers utilized the above loan amount to purchase industrial plot at M.I.D.C *Dombivili, Maharashtra*. The industrial galas constructed on the Plot were sold/rented and the invested amount of Rs.32.70 Crore and profit earned on the investment by Swar Land Developers Ltd was transferred to Jai Corp Ltd by allotment and thereafter redemption of Optional Fully Convertible Debentures exchanged between Jai Corp Ltd and its subsidiaries i.e., Swar Land Developers Ltd, Swastik Land Developers Ltd and Jai Reality.

15. It is contended by the petitioner that Jai Reality advanced a loan of Rs.8.76 Crore to Swastik Land Developers Limited and Swastik Land Developers Limited utilized the loan to purchase development rights on a plot of land. Subsequently, the said Company terminated the development rights and earned a compensation of Rs.4 Crores. The loan amount of Rs.8.76 Crores and profits earned on the loan amount were transferred to Jai Corp Ltd by Swastik Land Developers Ltd by allotment and thereafter redemption of Debentures was exchanged between Jai Corp Ltd and its subsidiaries.

16. The petitioner further contends that Income Tax Department carried out search and seizure operations under section 132 of the Income Tax Act in the case of eleven of the aforesaid subsidiary companies of Jai Reality. It was for the assessment year 2008-2009. The penalty imposed by Income Tax Department on the companies is depicted in the following chart;

Name of Company	Penalty imposed by Income Tax in (Rs. Crore)	Penalty paid by company in (Rs. Crore)	Penalty disputed by Company in (Rs. Crore)
Iconic Realtors Ltd	20.20	14.30	05.71
Krupa Land Ltd	12.71	06.87	05.84
Jailaxmi Realty & Developers Ltd	08.94	02.12	06.82
Rudradev Developers Ltd	02.07	01.77	00.288
Krupa Realtors Ltd	01.33	01.04	00.29
Ekdant Realty & Developers Ltd	00.60	00.48	00.12
Yug Developers Ltd	00.48	00.374	00.1159
Welldone Real Estate Ltd	00.329	00.255	00.073
Vasant Bahar Realty Ltd	00.24	00.10	00.14
Novelty Realty & Developers Ltd	00.23	00.15	00.08
Krupa Land Ltd	00.13	00.07	00.06
TOTAL	47.259	27.529	19.73

17. The petitioner has contended about fraud through Real Estate Private Funds in India by Jai Corp Ltd being a company promoted by Anand Jaikumar Jain and his related entities who own a 100% stake in UIVCL and UITL. Between May, 2006 and June, 2008, an amount of Rs.2423 Crores was mobilized from the public at large for and on behalf of UIOF. An amount of Rs.555 Crores out of 2423 Crores was diverted to four Real Estate Companies, which are depicted in the chart below;

Name of Company	Amounts/ Inventories of UIOF diverted to the Company in (Rs. Crore)	Amounts spent on purchase of benami land/development rights and construction thereon in (Rs.Crore)	Loss to Investors/Contribu tors of UIOF in (Rs. Crore)
Vidhant Reality Pvt Ltd	72.92 +6.85 [A]	47.73	79.77
Urban Reality Pvt Ltd	59.27	65.27	65.27
Urban Kshetra Infrastructure Pvt. Ltd	114.86+259.87 [B]		374.73
Anacron Realtors Pvt Ltd	36.00	30.00	36.00
Total Loss			555.77

18. An amount of Rs.1995.40 Crores advanced as loans to construction companies by UIOF vide 33 Special Venture Project Agreements in 15 different cities as demonstrated in the table hereinbelow:

Company	Disbursed Amt in (Rs.Crore) upto 30.09.2014	Outstanding Amt (Rs Crore) with Profit as on 31.12.2016	Outstanding Amt (Rs Crore) with Profit as on 30.16.2021
Aditya Housing & Infrastructure Corp Pvt Ltd	264.00		00.01
Light House Developers Pvt. Ltd		10.00	
Neelkanth Township & Construction Pvt Ltd, Neelkanth Urban Developers Pvt Ltd & Neelkanth Ricelands Pvt Ltd	273.00	175.00	122.00
Ozone Projects Pvt Ltd & Ozone Propex Pvt Ltd	388.00	372.00	372.00
Skyline Mansions Pvt Ltd	111.00	81.00	
Ess Gee Realty Pvt Ltd			
Mayfair Urban Developers Ltd			
Sterling Urban Infraprojects Pvt Ltd	160.00	160.00	70.00
Goldbricks Infrastructure Pvt Ltd		54.00	
Mindspace Reality Pvt Ltd	63.00	64.00	63.00
Nirmal Infrastructure Pvt Ltd			
Prestige Construction Ventures Pvt Ltd		08.00	
Sun Infrastructure Pvt Ltd		94.00	
Joyce Realtors Pvt Ltd	186.00	187.00	186.00
Odyssey Developers Pvt Ltd		125.00	
Sanmati		44.00	

Infradevelopers Pvt Ltd			
Urban Akarsh Infrastructure Pvt. Ltd			
R.K. Group	95.40		54.00
Suyojit Group	94.00		94.00
Maker Group	178.00		
Raheja Universal	125.00		
Integrated Township near SEZ Puducherry	54.00		35.00
Panvel Residential Project	04.00		
Total	1995.40	1374.00	996.01

- a) An amount of Rs.1667 Crore of the principal amount has been recovered and distributed to Investors.
- b) An amount of Rs.240 Crore has been earned as income on the Rs.1995 Crore invested over a period of 14 years and has been distributed to Investors.
- c) Out of the Rs.996.01 Crore investment and profit to be received, Rs.732 Crore is under litigation. The documents showing the investment of Rs.1995.40 Crore in other companies and the amounts received and amounts pending are part of the Quarterly Reports of Urban Infrastructure Opportunities Fund.

d) A total of 1060 Crores is still to be paid to Investors of UIOF as on 30 June 2021.

(ix) Advisory and Management Fee of Rs.340.035 Crores earned by Anand Jaikumar Jain through UIVCL is demonstrated in the table hereinbelow;

Financial Year	Name of Entity paying Advisory/Management Fees	Amount in (Crore Rupees)
2007-08	Urban Infrastructure Opportunities Fund-India	00.07
2008-09	Urban Infrastructure Trustees Ltd – India & Urban Infrastructure Opportunities Fund – India	55.00 +00.10
2009-10	Urban Infrastructure Trustees Ltd – India & Urban Infrastructure Opportunities Fund – India	54.96 +00.10
2010-11	Urban Infrastructure Trustees Ltd – India & Urban Infrastructure Opportunities Fund – India	53.00 +00.10
2011-12	Urban Infrastructure Trustees Ltd – India & Urban Infrastructure Opportunities Fund – India	50.34 + 00.09
2012-13	Urban Infrastructure Trustees Ltd – India & Urban Infrastructure Opportunities Fund – India	51.36+00.085
2013-14	Urban Infrastructure Trustees Ltd – India & Urban Infrastructure Opportunities Fund – India	29.79+00.08
2014-15	Urban Infrastructure Trustees Ltd – India & Urban Infrastructure Opportunities Fund – India	06.28+00.08
2015-16	Urban Infrastructure Capital Advisors – Mauritius	12.15

2016-17	Urban Infrastructure Capital Advisors – Mauritius	11.85
2017-18	Urban Infrastructure Capital Advisors – Mauritius	08.68
2018-19	Urban Infrastructure Capital Advisors – Mauritius	08.18
2019-20	Urban Infrastructure Capital Advisors – Mauritius	04.09
TOTAL		340.035

(a) UIVCL is the Indian Investment Advisor to Urban Infrastructure Capital Advisors – Mauritius (“**UICA – Mauritius**”) which is under the control of Anand Jaikumar Jain.

(b) UICA – Mauritius is the Investment Manager to Urban Infrastructure Real Estate Fund LP – Mauritius (“**UIREF Mauritius**”) which is under the control of Anand Jaikumar Jain.

(c) The Petitioner states that huge sums of money have been usurped by Anand Jaikumar Jain towards management and advisory fee when a staggering amount of Rs.1060 Crores is outstanding and to be paid to the investors of UIOF. The details of the amount (which is in excess of Rs.400 Crore) earned by Anand Jaikumar Jain, his associates and family members through UIVCL as

management/advisory fees is detailed in the Balance Sheet/Annual Report of Urban Infrastructure Venture Capital Ltd hereinabove.

(x) What becomes clear is that Anand Jaikumar Jain has through the Fund embezzled public money through various channels viz. Unsecured loans to subsidiaries and related companies, diversion of funds as advisory/management fee and transfer of assets for their personal unlawful gain and interests. There has been a concerted effort to unlawfully divert the investor money from UIOF and usurp the same for personal gain. There is an urgent need to carry out a forensic audit to determine the exact amount that has been siphoned off from UIOF in light of the fact that, Rs.1060 Crores is yet to be collectively paid to unit holders/investors of UIOF. Hence, the intervention of Respondent No.1 and 2 is necessary to meet the ends of justice.

(xi) The *mala fide* intention of Anand Jaikumar Jain is further fortified by the fact although, he was statutorily and contractually obliged to wind-up the Scheme i.e UIOF on 8 May 2013 or on 8 May 2015 UITL elected to elongate the tenure of the Scheme.

(xii) Despite being mandatorily required to wind-up the Scheme within the timelines as stipulated above, the Fund continued to subsist as on 30 October 2022. Thus, due to the unlawful elongation of the Fund's tenure, SEBI conducted a forensic inspection of UIVCF's books, which was completed in February 2021, for the period 1 April 2019 till 31 March 2020 (**“the Inspection”**). The UIVCF Winding Up Order *inter alia* recorded that *“By not complying with the terms specified in PPM in respect of tenure of the scheme, not winding up of the Fund within the time specified in PPM, the Fund has violated provisions of Regulation 16 (1) (a) and 23 (1) (a) of VCF regulations”*.

(xiii) The Petitioner has also filed a Complaint with SEBI on 25 March 2023, whereby the various facts pertaining to the fraud perpetrated by Anand Jaikumar Jain *vis-a-vis* winding up of the Fund were demonstrated. The petitioner craved leave to refer to and rely upon a copy of the Complaint dated 25 March 2023 filed with SEBI.

C. FORMATION OF REAL ESTATE FUNDS IN MAURITIUS AND JERSEY – CHANNEL ISLANDS

I. Urban Infrastructure Capital Advisors-Mauritius (“**UICA Mauritius**”) is a private equity company registered in Mauritius. UICA Mauritius has made a filing before the competent authorities in the USA on 19 March 2019 which reveals that:

(i) UICA Mauritius is a real estate private equity fund and its activities are restricted to investment in the real estate sector in India.

(ii) UICA Mauritius is an advisor to Urban Infrastructure Real Estate Fund LP – Mauritius (**UIREF Mauritius**) and UIREF is the Master Fund.

(iii) UICA Mauritius has two “Feeder Funds” namely, (i) Urban Infrastructure Real Estate – Jersey Ltd. and (ii) Urban Infrastructure Real Estate Partnership LP- Jersey, Channel Islands.

(iv) Gross Asset Value of UICA Mauritius as on 19 March 2019 is USD 77,322,542 which is equivalent to Rs.541 Crores.

(v) UIVCF is the Investment Advisor as well as client of UICA Mauritius.

(vi) UICA Mauritius is being controlled by an individual that is not named in the filing before the competent authority.

(vii) On 27 June 2012, UIREF Mauritius sold assets worth USD 300,000,000/- which is equivalent to Rs.1710 Crores (as on 27 June 2012).

(viii) Importantly, the residential/commercial projects financed by Anand Jaikumar Jain using the funds of UIOF are the same as the projects claimed by UIREF Mauritius as “assets” valued at USD 486600000 which is equivalent to Rs.3406 Crores.

II. According to the petitioner, investment in real estate by foreign investors is regulated under the Foreign Exchange Management Regulations and the guidelines issued by RBI only permit foreign investors to invest in equity and thus, in these circumstances, there is an urgent need to ascertain how assets worth Rs.3404 Crores were apparently acquired by UIREF Mauritius and thereafter, how assets worth Rs.1710 Crores were sold on 27 May 2012. According to the petitioner, a forensic audit is required to be conducted by the Respondent Nos.1 and 2 to ascertain whether any

monies have been invested by Anand Jaikumar Jain in UIREF Mauritius and the nature of such transactions.

19. It is petitioner's case that there was fraudulent diversion of loans from India to Mauritius and Sharjah (UAE); that Anand Jaikumar Jain has diverted/laundered the public funds to the tune of Rs.98.83 Crores (Foreign Currency Loan) which were availed by Navi Mumbai SEZ, by funneling them into subsidiary companies of Anand Jaikumar Jain registered in Mauritius and Shahrjah, UAE. The structure through which the funds have been diverted is set out by the petitioner as under;

(i) On 4 June 2008, Belle Terre Realty Ltd. ("**Belle Terre**") was incorporated in Mauritius and is a 100% subsidiary of Jai Realty. Currently, Jai Realty has been merged with the Jai Corp Ltd on 21 August 2019. Hence, Belle Terre is a 100% subsidiary of Jai Corp Ltd.

(ii) Belle Terre is the parent company of (i) Searock Developers FZC (Sharjah UAE) ("**Searock Sharjah**") and (ii) Oasis Holding FZC (Sharjah UAE) ("**Oasis Sharjah**"). Hence, Belle Terre, Searock Sharjah and Oasis Sharjah are 100% subsidiaries of Jai Corp Ltd.

(iii) Between 4 June 2008 and 31 March 2020, Belle Terre transferred USD 1,56,42,554 to Searock Sharjah and USD 68,87,929 to Oasis Sharjah, for purchase of property in Sharjah.

(iv) Searock Sharjah and Oasis Sharjah collectively utilised USD 86,00,803 i.e approximately Rs.36,98,34,529/-, for purchase of land on a 50 year lease.

(v) Upto March 2020, a sum of USD 88,65,335 which is equivalent to approximately Rs.53,19,20,100/- has been utilised by Searock Sharjah and Oasis Sharjah for construction of labour accommodation camps in Sharjah, UAE and it seems that a total amount of Rs.90,17,54,629/- has been spent collectively on construction of these camps.

(vi) Importantly, neither Searock Sharjah nor Oasis Sharjah are involved in any business activities which require any form of labour.

II. According to the petitioner, a collective reading of the information gathered regarding the advances made by Belle Terre Mauritius to Searock Sharjah and Oasis Sharjah, all three of which

are 100% subsidiaries of Jai Corp Ltd suggests that (i) fictitious bills and invoices were raised to claim expenses for alleged labour and construction activities undertaken by Searock Sharjah and Oasis Sharjah, and (ii) the sole beneficiaries of these dubious transactions is Anand Jaikumar Jain and his subsidiary companies.

E. FICTITIOUS INVOICES RAISED FOR EXPORTS TO NEW SOUTH WALES, AUSTRALIA AND CALIFORNIA, USA

1. SARBAGS, NSW

(i) The Petitioner has collated information regarding a company that was registered in New South Wales, Australia by the name of Sarbags PTY Ltd. (**Sarbags, NSW**) on 25 October, 2010, which Sarbags NSW was later shut down on 1st November 2017.

(ii) Sarbags NSW was in the business of sale and distribution of rope, bags and geo textiles which were imported from Jai Corp Ltd. Furthermore, the Director of Sarbagas NSW i.e Mr. Vasudev Shrinivas Pandit is also a director in Jai Corp Ltd and other subsidiary companies of Jai Crop Ltd.

(iii) Between 2012 and 2017, Sarbags NSW has sold products imported from Jai Corp Ltd to the tune of Rs.17,28,46,980/- (AUD 31,39,692).

II. ASSURENE PRODUCTS CORPORATION, USA.

(i) The Petitioner has collated information regarding a company that was registered in California USA by the name of Assurene Products Corporation (**Assurene**) on 13 March 2014, which is as under;

(ii) Assurene was wound up on 2 May 2015. Assurene was in the business of sale and distribution of rope, bags and geo textiles which were imported from Jai Corp Ltd. Furthermore, the Director of Assurene i.e Mr. Pramod Kumar Jaiswal is also a director in Jai Corp Ltd and other subsidiary companies of Jai Corp Ltd.

(iii) That between 2014 and 2016, Assurene had sold products imported from Jai Corp Ltd to the tune of Rs.268,28,05,358/- (USD 4,03,89,441).

20. This Court from time to time passed various orders in this petition which read as under;

Order dated 18th September, 2024 reads as under;

“1. We heard learned Senior Counsel appearing for the petitioner for some time. We also heard learned Special Public Prosecutor and the learned APP appearing for the respondent nos. 1 and 2.

2. Learned Senior Counsel has invited our attention to a communication dated 25.01.2022 addressed to the Chairman, SEBI, by the Assistant Commissioner of Police, Economic Offences Wing, Mumbai. Learned Senior Counsel would submit that the copy of the said communication has also been forwarded to the petitioner, however, the petitioner is unaware with regard to steps, if any, being taken by the respondents’ in respect of the allegations levelled by the petitioner as well as in respect of the complaints dated 22.12.2021 and 03.04.2023.

3. Looking to the enormity of the alleged fraud / misappropriation involved in this case, learned Senior Counsel seeks directions to the respondent nos. 1 and 2 to place on record a report in that respect.

4. Learned Special P.P. and the learned APP seek two weeks time to place on record an inquiry report or investigation, if any, carried out by them.

5. Meanwhile, liberty to the petitioner to implead the SEBI as a party respondent. Necessary amendment shall be carried out within one week. After amending

the petition, a notice be issued to the newly added respondent, which shall be made returnable on the next date.

6. *List on 7th October, 2024”*

Order dated 7th October, 2024 reads as under;

“1. Pursuant to our order dated 18th September 2024 issuing notice to SEBI, Mr. Daruwala states that he has instructions to appear for SEBI. MR. Daruwala learned Counsel seeks time to file an affidavit-in-reply. Time granted. The same to be filed in the Registry before the next date with an advance copy to the learned Counsel for the petitioner.

2. Mr. Ponda, learned Senior Counsel has tendered an additional affidavit of the petitioner and a copy thereof is served on the learned Counsel for the respective respondents. The same is taken on record.

3. Since no officer from EOW is present, we direct a responsible officer, well versed with the facts to be present on the next date.

4. *Stand over to 16th October, 2024”.*

Order dated 16th October, 2024 reads thus;

1. Ms. Shinde, learned APP appearing on behalf of the Economic Offences Wing (EOW), on instructions states, that the petitioner’s statement will be recorded by the EOW any time on or before 27th October 2024. Statement accepted.

2. *After the petitioner's statement is recorded, the police to take appropriate steps, in accordance with law.*

3. *Stand over to 18th November 2024.*

4. *Mr. Daruwalla, learned counsel for the respondent No.3- SEBI has tendered an affidavit-in-reply of the said respondent. The same is taken on record and a copy thereof is served on the Counsel for the petitioner.*

5. *Mr. Ponda, learned senior counsel appearing on behalf of the petitioner seeks time to file an affidavit-in-rejoinder. The same to be filed in the Registry on or before 12th November 2024 with an advance copy to the other side”.*

Order dated 18th November, 2024 reads thus;

1. *Pursuant to our order dated 16th October, 2024, Ms.Shinde, learned APP has tendered a letter dated 7th November, 2024 addressed by the Deputy Commissioner of Police, EOW-I, Mumbai to the Joint Director, CBI, EOB, Mumbai as well as the Joint Director of SFIO, Mumbai.*

2. *From the said letters, it appears that the EOW, Mumbai, has forwarded the complaint of the petitioner for further action to the CBI, EOB, Mumbai. The said letters dated 8th November, 2024 are taken on record. In the last paragraph of the said letters, it is stated as under :*

“Upon perusal of the petitioner’s statement and the documents submitted, it is revealed that the alleged offences involved significant sums amounting to thousands of crores of rupees, span multiple jurisdictions, and implicate nationalized banks, a Mauritius-based private equity fund, and trans- boarder transactions with the USA, Australia, and the UAE. Therefore, these matters carry substantial financial implications at both national and international levels.

In the best interest of conducting a through inquiry /investigation, we are forwarding this matter to your esteemed office for appropriate action.”

3. In view of the aforesaid, learned Senior Counsel for the petitioner seeks leave to amend to implead the CBI and SFIO as party respondents. Leave granted. Amendment to be carried out forthwith, during the course of the day.

*4. On amendment being carried out, issue notice to the newly added respondents i.e. the Joint Director, CBI, EOB, Mumbai as well as to the Joint Director, SFIO, Regional Office, Mumbai, returnable on **25th November, 2024**. In addition to Court notice, learned Senior Counsel for the petitioner to ensure that the private notice is served on the newly added respondents and affidavit of service is filed in the Registry before the next date.*

*5. Stand over to **25th November, 2024**. To be listed under the caption ‘Due Admission’.*

Order dated **28th November, 2024** reads thus;

- “1. Considering what transpired during the hearing of the aforesaid petition i.e disclosure made by the learned A.P.P as well as Mr. Patil, learned Special Public Prosecutor appearing for the C.B.I, we deem it appropriate to direct the Joint C.P, EOW, Mumbai to remain present tomorrow i.e on 29th November, 2024.
 2. Stand over to **29th November, 2024 at 1.00 p.m**”.
 3. In the meantime, Mr. Ponda, learned Senior Counsel appearing for the petitioner seeks leave to amend the petition to implead State C.I.D as respondent. Leave granted. Amendment to be carried out forthwith.
 4. Issue notice to the newly added respondent – State C.I.D. Ms. Shinde, learned A.P.P waives notice on behalf of the newly added respondent – State C.I.D.
 5. Considering the peculiar facts of the present case, we direct our Sheristedar to take xerox copies of the internal notings shown to us by Ms. Shinde, the learned A.P.P and keep the same in the sealed envelope. The letter tendered by Mr. Patil, learned Special Public Prosecutor also be kept in the sealed envelope”.
21. We have perused the petitioner’s statement as well as the affidavit-in-reply filed by the respondent No.3 as well as internal notings of EOW. We are surprised and shocked to learn that the

EOW Mumbai had forwarded the complaint of the petitioner for further action to the CBI, EOB, Mumbai wherein, EOW has stated as under;

“ Upon perusal of the petitioner’s statement and the documents submitted, it is revealed that the alleged offenses involved significant sums amounting to thousands of crores of rupees, span multiple jurisdictions, and implicate nationalized banks, a Mauritius-based private equity fund, and trans-border transactions with the USA, Australia, and the UAE. Therefore, these matters carry substantial financial implications at both national and international levels.

In the best interest of conducting a thorough inquiry /investigation, we are forwarding this matter to your esteemed office for appropriate action.”

22. In view of the stand taken by EOW, learned Senior Counsel appearing for the petitioner sought to amend the petition to implead Central Bureau of Investigation (CBI) and Serious Fraud Investigation Office (SFIO) as party respondents. Accordingly, they were impleaded as party respondents. We even permitted the learned Senior Counsel appearing for the petitioner to implead State Crime Investigation Department (CID) as party respondent.

23. The Deputy Commissioner of Police, EOW, Mumbai vide his communication dated 7th November, 2024 forwarded the complaint of the petitioner to the Joint Director Central Bureau of Investigation EOB, Mumbai as well as to the Joint Director, Serious Fraud Investigation Office, Regional Office, Mumbai by informing both the Authorities as regards;

- (a) Misappropriation of public funds for personal enrichment;
- (b) Defrauding investors;
- (c) Round-tripping of funds through shell companies to evade taxes;
- (d) Misappropriation of public funds by granting unsecured advances to subsidiary companies;
- (e) Creation of dubious and fictitious invoices.

24. Admittedly, detailed statement of the petitioner came to be recorded by the EOW on 28th October, 2024. Looking to the enormity of the offences and the fact that it involves thousands of crores of rupees, spans multiple jurisdictions and implicate nationalized Banks as well as foreign entities based in Mauritius, USA, Australia and UAE involving substantial financial implications, at both, national and international levels, the D.C.P, EOW, Mumbai

requested the aforesaid Authorities for taking appropriate action. Shockingly, Superintendent of Police, CBI, EOW, Mumbai has sent a communication dated 26th November, 2024 to the Deputy Commissioner of Police, EOW, Mumbai which is extracted below;

“1. It is observed that complaint pertains to fraudulent trading in futures of stocks and utilization of profit and also violation of Indian Securities Law Matters and SEBI regulations/guidelines which is within the purview of SEBI to take appropriate action;

2. Further, it is observed that the Petitioner has gathered information that Prima Facie suggests a large scale operation has been undertaken by Jai Corp Ltd through Anand Jaikumar Jain and its subsidiaries to launder public money and defraud investors that is in the purview of Enforcement Department.

In view of the above facts and circumstances, the matter cannot be taken up on these allegations and the instant same complaint as received is returned herewith. For further n/a at your end, CBI did not conduct any enquiry in the instant complaint”.

25. It can thus be seen, that both the EOW as well as the CBI, for the reasons best known to these Agencies, are reluctant to inquire/investigate into the complaints made by the petitioner having such large scale alleged misappropriation of public funds as

well as laundering, by Mr. Anand Jaikumar Jain, who is the Promoter and Director of Jai Corp Ltd along with its subsidiary companies and others.

26. We have no words to demonstrate the conduct of the Investigating Agencies viz: EOW as well as CBI. We may say, we are disappointed. We feel that there will be no fair and impartial investigation into the alleged crimes either by the EOW or by the Superintendent of Police, CBI, EOW and hence, a special team needs to be constituted by the Zonal Director CBI to ensure efficient investigation into the offences of such magnitude. The need to instill confidence in the investigations and consequently, in the administration of justice, is of utmost concern. The case in question, has national and international ramifications. No doubt, the EOW in its internal notings which were placed before us for perusal, observed, that considering the magnitude of the alleged scam which runs into thousands of crores of rupees, multiplicity of jurisdictions, the role of nationalized Banks (Union Bank, IDBI Bank, IDFC Bank) and Mauritius based private equity fund plus trans-border transactions with USA, Australia and UAE, it is in the best interests of investigation that the matter be handled by CBI, SFIO. This is

the noting by the Joint Commissioner of Police EOW on 4th November, 2024. The reluctance to inquire/investigate was writ large during the hearing of the petition.

27. Looking to the conduct of both the EOW and CBI, we as Constitutional Court cannot remain a mute spectator when it becomes apparent that the Agencies are passing the buck from each other. We must clarify, that transferring the investigation to SIT does not mean that we have ruled on the guilt of the person/persons named as that is not the scope of the petition. In the case of **State of West Bengal and others Vs. Committee for Protection of Democratic Rights and others**¹, an issue was referred to the opinion of the Constitution Bench as to whether in exercise of jurisdiction under Article 226 of the Constitution of India, the High Court could direct the CBI established under Delhi Special Police Establishment Act, 1946 to investigate into a cognizable offence alleged to have taken place within the territorial jurisdiction of the State, without the consent of the State Government. The Constitution Bench laid down the following legal position. In exercise of its jurisdiction under Article 226 of the Constitution of

¹ (2010) 3 SCC 571

India has power to direct the CBI to investigate a cognizable offence alleged to have been committed within the territory of a State without the consent of that State and such direction will not entrench upon the federal structure of the Constitution. The direction to transfer the investigation to the CBI also does not violate the doctrine of separation of power. The Superior Courts are the protectors of civil liberties and have not only the power and jurisdiction but also an obligation to protect the fundamental rights, more particularly those guaranteed under Article 21 of the Constitution. There are, however, certain self-imposed limitations on the exercise of these Constitutional powers, but no inflexible guidelines can be laid down to decide whether to transfer the case or not. The power of transfer should not be exercised as a matter of routine or merely because a party has leveled some allegations against the local police. The power to transfer the investigation can be used when it becomes necessary to provide credibility and instil confidence in the investigation or where the incident may have national and international ramifications or where such an order may be necessary for doing complete justice and enforcing the fundamental rights.

28. This Court (Coram: N.M. Jamdar & Prithviraj K. Chavan, JJ.) in Criminal Writ Petition No.134 of 2017 (**Minna Pirhonen Vs. The State of Goa and another**) while transferring the investigation to the Central Bureau of Investigation in case of death of 22 year old Finish National namely Felix Dahl has made following observations in paragraphs 19 and 20, which read thus;

“19. In the case of State of West Bengal and others Vs. Committee for Protection of Democratic Rights and others (2010) 3 SCC 571 an issue was referred to the opinion of the Constitution Bench as to whether in exercise of jurisdiction under Article 226 of the Constitution of India, the High Court could direct the CBI established under Delhi Special Police Establishment Act, 1946 to investigate into a cognizable offence alleged to have taken place within the territorial jurisdiction of the State, without the consent of the State Government. The Constitution Bench laid down the following legal position. In exercise of its jurisdiction under Article 226 of the Constitution of India has power to direct the CBI to investigate a cognizable offence alleged to have been committed within the territory of a State without the consent of that State and such direction will not entrench upon the federal structure of the Constitution. The direction to transfer the investigation to the CBI also does not violate the doctrine of separation of power. The Superior Courts are the protectors of civil liberties and have not only the power and

jurisdiction but also an obligation to protect the fundamental rights, more particularly those guaranteed under Article 21 of the Constitution. There are however certain self-imposed limitations on the exercise of these Constitutional powers, but no inflexible guidelines can be laid down to decide whether to transfer the case or not. The power of transfer should not be exercised as a matter of routine or merely because a party has leveled some allegations against the local police. The power to transfer the investigation can be used when it becomes necessary to provide credibility and instil confidence in the investigation or where the incident may have national and international ramifications or where such an order may be necessary for doing complete justice and enforcing the fundamental rights.

*20. The contour of the jurisdiction of the High Court to transfer the investigation to the CBI came up for consideration of the bench of three Judge in the case of **Mithilesh Kumar Singh Vs. State of Rajasthan and others**². It was a case where a young college student had fallen from the fourth floor of a hostel where she was staying with her sister. Her father had called for a fair and proper investigation as to whether there was a case of ragging by the seniors as alleged by the father or she had committed suicide. The father had invoked the jurisdiction of Apex Court under Article 32 of the Constitution of India. Allowing the petition, the Court held that the decision whether a transfer*

² (2015) 9 SCC 795

should or should not be ordered depends on the satisfaction of the Court that the facts and circumstances of a given case require such an order. No hard-and-fast rule has been or can be prescribed. Though transfer is not ordered just because a party seeks to lead the Investigating Agency to a given conclusion, the sensibility of the victims of the crime or their next of kin, is not wholly irrelevant. Further the transfer of investigation to an outside agency does not necessarily mean that the transferee agency will implicate anyone in the commission of the crime. The Apex Court took note of the fact that local influences, pressures and pulls are commonplace when State Police matters of some significance. It was observed that unless the Court sees any design behind the prayer for transfer, the same must be seen only an attempt to ensure that the truth is discovered and the transfer is the perceived on the independence of the transferee more than any other consideration. The Court underscored a basic proposition that the Court has rarely, viewed at the threshold the prayer for transfer of investigation to CBI with suspicion. It is not necessary for the person seeking a transfer to make out a cast-iron case of abuse or neglect on the part of the State Police, before ordering a transfer. Transfer can be ordered once the Court is satisfied on the available material that such a course will promote the cause of justice, in a given case”.

21. The aspect of transfer to CBI was elaborately dealt with by the Apex Court in two decisions rendered in the year 2016. The first

being Pooja Pal Vs. Union of India and others³ and second in Dharam Pal Vs State of Haryana and others⁴. Both these decisions reiterated a duty on the Superior Court to ensure complete justice. The decision took a review of the earlier law on the subject.

22. The gist of the legal position expounded in the decision of Pooja Pal and Dharam Pal, which will serve as a guideline in the present case, is as follows. Crimes affect the entire society and thus the interest of the society in the investigation is not to be entirely ignored. The society at large, the victims or their family members and relatives have a right to be dealt with fairly in a criminal trial. Denial of fair investigation thereof is as much injustice as to the victim and the society as to the accused. A victim cannot be treated as an alien or a total stranger in the criminal trial. With the passage of time, there is a greater emphasis on victimology, and the crime has to be viewed from the perspective of the criminal as well as the victim when judged in the social context. The justice system will acquire credibility only when the people will be convinced that justice is based on the foundation of truth. The Courts are meant for imparting justice, and if a negligent or biased investigation is not effectively rectified, the faith and confidence of the people in the law enforcing agency and in the institution for the administration of justice would be shaken. The power vested in the Superior Court to transfer the investigation has

³ (2016) 3 SCC 135

⁴ (2016) 4 SCC 160

to be invoked sparingly, cautiously. But when it becomes necessary to provide credibility and to instil confidence in the investigation or where the incident may have national and international ramifications or where such an order may be necessary for doing complete justice. The Superior Courts can exercise the power. In a given case, even if charge-sheet is filed, it is open for the High Court to direct investigation of the case to be handed over to CBI or to any other agency or to direct investigation de novo in order to do complete justice, in the facts of the case. In a given case the investigation could be transferred even after considering time period has elapsed. The State has a duty to safeguard human rights by providing for fair and impartial investigation. Grave responsibility lies upon the investigating agency, not to conduct an investigation in a manner prima facie indicative of a biased mind and every effort should be made to bring the guilty to law. A fair investigation is a part of the constitutional rights guaranteed under the Constitution of India and the investigating agency cannot be permitted to investigate in a tainted or biased manner. Fair trial includes a fair investigation. Any criminal offence is one against the society. The State is a guardian of human rights and protector of law. The concept of "fair and proper investigation" means that investigation must be unbiased, honest, just and in accordance with law. The primary purpose of an investigation is to bring out the truth by conducting a fair and proper investigation, in accordance with law and to ensure that the guilty are punished. It is necessary to ensure a

fair and proper investigation and to prevent misdirecting or hijacking of the investigation by outside influences. Where non-interference of the court would result in failure of justice, the court must interfere and in the interest of justice choose an independent agency to make a fresh investigation. Paramount consideration for directing the transfer of investigation is the advancement of the cause of justice and to instil confidence in the mind of the victims as well as the public. If the investigation is neither effective nor purposeful or fair, it would be the duty of the courts, if considered necessary, to order further investigation or reinvestigation to prevent the miscarriage of justice”.

29. Investigating Agency will do well keeping in mind the words of the Supreme Court in the case of **Dharam Pal** (supra);

“2. Cry for fair trial by the accused as well as by the victim sometimes remains in the singular and individualistic realm, may be due to the perception gatherable from the facts that there is an attempt to contest on the plinth of fairness being provoked by some kind of vengeance or singularity of “affected purpose”; but, irrefutably a pronounced and pregnant one, there are occasions when the individual cry is not guided by any kind of revengeful attitude or anger or venom, but by the distressing disappointment faced by the grieved person in getting his voice heard in proper perspective by the authorities who are in charge of conducting investigation and the frustration of a victim gets more aggravated when he is impecunious, and mentally shattered owing to the situation he is in and

thereby knows not where to go, the anguish takes the character of collective agony. When the investigation, as perceived by him, is nothing but an apology for the same and mirrors before him the world of disillusionment that gives rise to the scuffle between the majesty and sanctity of law on one hand and its abuses on the other, he is constrained to seek intervention of the superior courts putting forth a case that his cry is not motivated but an expression of collective mortification and the intention is that justice should not be attenuated.”

30. Our justice system will acquire credibility only when the people at large will be convinced that the justice is based on the foundation of truth, provided the investigation is carried out impartially, fairly and in an unbiased manner. It is also equally important to strengthen the faith and confidence of the people in the law enforcing agency and also in the institution for administration of justice, else, it would be shaken.

31. Crimes affect the entire society and thus interest of the society in the investigation cannot be entirely ignored. We are hopeful and confident that the Special Investigation Team (SIT) which would be constituted will make every endeavour to uncover the truth and examine the allegations/material and thereafter, take the case to its logical end.

32. In the result, we pass the following order by making the rule absolute.

: ORDER :

- (a) Petition is allowed.
- (b) Zonal Director, CBI, Mumbai shall form a Special Investigation Team comprising of officers as are required for conducting thorough investigation into the two complaints dated 22nd December, 2021 and 3rd April, 2023 of the petitioner.
- (c) Joint Director of the Central Bureau of Investigation, Mumbai (Anti Corruption Bureau) shall supervise the investigation.
- (d) All the papers and documents to be handed over to the SIT by EOW within one week from today.
- (e) Rule is made absolute in the aforesaid terms.

(f) Petition is disposed of in terms of the aforesaid directions.

33. We make it clear that these are our *prima facie* observations and that the SIT shall conduct the investigation impartially from all possible angles uninfluenced by anyone on its own merits.

34. In view of disposal of the petition, Interim Applications also stand disposed of.

35. All concerned to act on the authenticated copy of this order.

[PRITHVIRAJ K. CHAVAN, J.] [REVATI MOHITE DERE, J.]