IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on	Pronounced on
04.08.2021	31.08.2021

CORAM

THE HONOURABLE MR. JUSTICE M.DHANDAPANI

CRL. O.P. NOS. 3730, 4227, 4095 & 11206 OF 2021
CRL. M.P. NOS. 6647, 6649, 2218, 2601, 2679, 3388, 6708 & 6709 OF 2021
W.P. NO. 1397 OF 2021
AND
W.M.P. NO. 5917 OF 2021

Ravi Parthasarathy .. Petitioner in Crl. OP 3730/21 and Crl. OP 11206/21

Hari Sankaran .. Petitioner in Crl. OP 4095/21

Ramchand Karunakaran .. Petitioner in Crl. OP 4227/21

- Vs -

1. State rep. By
   Deputy Superintendent of Police
   Economic Offences Wing-II
   1st Floor, Block – II, Garment Complex
   Corporate Office Building
   Thiru Vi. Ka. Industrial Estate
   Guindy, Chennai – 32. .. R-1 in all the petitions

2. Mr. John Dheepak
   rep. By its Authorised Signatory
   63 Moons Technologies Ltd.
   Shakti Tower-1, 7th Floor, E766
   Anna Salai, Thousand Lights
   Chennai 600 002. .. R-2 in Crl. OP 3370, 4095 and 4227/2021

W.P. NO.1397 OF 2021

63 Moons Technologies Ltd.
Rep. By its Authorised Signatory
Mr. John Dheepak
Shakti Tower – 1, 7th Floor, E766
Anna Salai, Thousand Lights
Chennai 600 002. .. Petitioner

- Vs -

1. Government of Tamil Nadu
   rep. By its Secretary
   Home Department
   Fort St. George, Chennai 600 009.

2. Economic Offences Wing-II
   (Financial Institutions)
   rep. By Addl. Director General of Police
   SIDCO, Alandur Road
   Thiru Vi. Ka Industrial Estate
   SIDCO Industrial Estate, Guindy
   Chennai 600 032. .. Respondents

Crl. O.P. Nos.3730, 4095 and 4227 and of 2021 filed u/s 482 Cr.P.C. praying this Court to call for the entire records connected with FIR in EOW, Chennai Crime No.13 of 2020 pending investigation on the file of the 1st respondent police and quash the same.

Crl. O.P. No.11206 of 2021 filed u/s 439 Cr.P.C. Praying this Court to enlarge the petitioner on bail pending investigation in FIR EoW Crime No.13 of 2020 on the file of the Deputy Superintendent of Police, OW, Chennai.

W.P. No.1397 of 2021 filed under Article 226 of the Constitution of India praying this Court to issue a writ of mandamus directing the 1st respondent to attach the schedule mentioned properties of the entities/persons and the group companies and such other properties as the Government of Tamil Nadu - 1st respondent and the EOW - 2nd respondent and transfer the control over the said money or property to the competent authority.

For Petitioners : Mr. B.Kumar, SC, for
Mr.Rahul Unnikrishnan in Crl. OP 3730/21
Mr.Manishankar, SC, for
Mr. A.Ashwini Kumar, in Crl. OP 4227/21
Mr. M.K.Kabir, SC, for
Mr. Sunder Mohan in Crl. OP 4095/21
Mr. Nithyesh Natraj in WP 1397/21

For Respondent : Mr. C.E.Pratap, GA (Crl. Side)

For Intervenors : Mr. P.S.Raman, SC, for Mr.Nithyesh Natraj
Mr. Sarath Chander for Mr. B.Vijay
Mr. Anand Sashidharan
Mr. Nithyesh Natraj
Mr.Abdukumar Rajarathnam

COMMON ORDER

Initially, Crl. O.P. No.11206/21 was listed before this Court on 6.7.2021 and during the hearing of the said petition for bail, it was fairly conceded by the learned senior counsel appearing for the respective petitioners as well as the intervenors that the bail petition is intrinsically connected with the quash petitions in Crl. O.P. Nos.3730, 4095 and 4227/21 and, therefore, the said petitions may be tagged together and listed for hearing so as to give a quietus to the issue. It was also informed on behalf of the intervenor that W.P. No.1397/2021 has been filed for a mandamus praying for certain directions and the said petition, too, being connected with the issue on hand, Registry was directed to place the matter before the Hon'ble Chief Justice as to the listing of the bail petitions, the quash petitions and the writ petition and upon orders of the Hon'ble Chief Justice, the petitions are listed before this Court for hearing.

2. Learned senior counsel appearing on either side fairly submitted that the quash petition may be taken up by this Court as the case that would fall out from the said quash petition, on a *prima facie* nature, would have a bearing in the disposal of the bail petition in Crl. O.P. No.11206/21. In view of the above fair

stand taken by the learned senior counsel for the parties, the quash petitions are taken up along with the petition of the intervenors to implead themselves as party respondents to the respective petitions.

3. In order to give a fair hearing, there being no objection made by the learned counsel for the petitioners, the implead petitions filed by the intervenors are ordered.

4. Shorn of unnecessary details, the issue before this Court could be summarised briefly as hereunder :-

The parent company Infrastructure Leasing & Financial Services Limited (for short 'IL & FS') has under its fold about 348 group companies. Due to liquidity crunch that engulfed the company, interference by the Central Government by filing appropriate petition before the National Company Law Tribunal (for short 'NCLT') led to the passing of various orders by NCLT on 1.10.18 and 9.10.18, which resulted in the nomination/appointment of Directors by the Central Government to manage the affairs of all the companies, including the company IL&FS Transportation networks India Limited (for short 'ITNL'). Further,

to the said orders, on appeal, National Company Law Appellate Tribunal (for short 'NCLAT') had passed certain orders, which includes grant of moratorium and further orders. The Central Government, in view of the enormity of the economic offence involved and also the fact that monies of various entities are at stake in the ill-fated IL & FS group companies, with a view to have a comprehensive investigation, ordered investigation under the Companies Act by Serious Fraud Investigation Office (for short 'SFIO') u/s 212 of the Companies Act and by virtue of the said orders, the investigation of the case stood assigned to SFIO.

5. In the meanwhile, due to the moratorium granted by NCLAT, the intervenors, being subsequent purchasers of the debentures from various other entities, having not received the interest as undertaken by the company while issuing the said debentures, lodged complaint by invoking the provisions of the Tamil Nadu Protection of Investment of Depositors (in Financial Establishments) Act (for short 'TNPID Act') against IL & FS and its group companies and more particularly against ITNL, which had issued the debentures and also against the petitioners, who were Directors in the said group for the default in payment of interest, which led to the registration of the above crime against ITNL, IL & FS and

also various other Directors of the IL & FS, ITNL and other group companies. Aggrieved by the said registration of the case against the petitioners, who are no longer Directors of the said group companies, the present criminal original petitions have been filed on the ground that the invocation of the provisions of TNPID Act would not stand attracted to the debentures floated by ITNL as the said debentures are not *"deposit"* and ITNL is not a *"financial establishment"* as defined u/s 2 (2) and 2 (3) of the TNPID Act.

6. It is the case of the petitioners that ITNL, which is a group company under the umbrella of IL&FS is involved in the infrastructural activities and not into finance and banking activities. ITNL had floated non-convertible debentures, to a select few, on which interest was to be paid. The petitioners were, till 21.01.2019 were paying interest on the said debentures, but in view of the moratorium issued by NCLAT, ITNL was not able to pay the interest, which default led to the registration of the complaint by the intervenors under the TNPID Act. Other intervenors also, due to non-receipt of interest on the said debentures, have filed separate complaints under the TNPID Act. In sum and substance, the instance of registration of the complaints under the TNPID Act is due to the non-

fulfilment of payment of interest by the company on the debentures held by the intervenors. The present batch of petitions by the petitioners for quashment of the complaint on the file of the respondent is on the ground that the company is not a 'Financial Establishment' as codified under the TNPID Act as the debentures issued by the company do not fall under the definition 'Deposit' prescribed under the TNPID Act.

7. The present petitions for quashment have been filed by the petitioners, who are arrayed as A-3, A-6 and A-7 in the complaints given by the intervenors registered by the respondent in Crime No.13/2020.

8. Mr. B.Kumar, learned senior counsel, leading the arguments for the petitioner in Crl. O.P. No.3730/21, which petitioner is arrayed as A-7, basically laid his submission that on the date when the complaint was lodged by the 2nd respondent, viz., 63 Moons Technologies, A-7 was not at the helm of the affairs of the company, as A-7 had resigned from the post of non Executive Director on 21.7.18 of all the companies under the umbrella of IL&FS. It is therefore the

submission of the learned senior counsel that the registration of the complaint on 21.1.2019 at the instance of the intervenor is wholly unsustainable.

9. It is the further submission of the learned senior counsel for A-7 that non Executive Director would not fall within the definition of 'Key Managerial Personnel', as provided under sub-section (51) of Section 2 of the Companies Act and such being the case, invocation of a case against A-7 on the basis of the complaint by the intervenor, when A-7 is no longer in the company on the date of the complaint, is wholly unsustainable.

10. Learned senior counsel appearing for A-7 further submitted that Section 149 (12) of the Companies Act prescribes the circumstances under which an action is permitted against a non-executive director of a company. It is the submission of the learned senior counsel that the non-payment of interest, pursuant to the moratorium, having happened after the date on which A-7 had demitted office as non-executive director, he cannot be mulcted with any responsibility for the lapse committed by the company. It is the submission of the learned senior counsel that in view of non-fulfilment of the circumstance

enumerated in Section 149 (12) of the Companies Act, the said provision would not stand attracted to the case of the petitioner.

11. It is the further submission of the learned senior counsel that A-7, being a non-executive director, permission of the Ministry of Corporate Affairs is necessary for launching any prosecution against him in view of the circular of the Ministry of Corporate Affairs dated 2.3.2020, wherein criminal or civil proceedings stood barred against non-executive directors and independent directors, when the decisions are attributable to the Board or the Committees constituted by the Board.

12. Learned senior counsel appearing for A-7 further submitted that investigation of the issue has already been entrusted with SFIO u/s 212 of the Companies Act and once the investigation is entrusted with SFIO, the jurisdiction on the other investigating agencies stand ousted in view of the bar u/s 212 (2) and (3) of the Companies Act. It is the further submission of the learned senior counsel that by virtue of the powers vested u/s 212 of the Companies Act, on the basis of the report of the Registrar of Companies, the Central Government having

ordered the investigation of IL&FS and its group companies by the SFIO, the investigation by the 1st respondent stood barred u/s 212 (2) of the Companies Act.

13. Learned senior counsel further submitted that the complaint filed by SFIO before the Magistrate Court in Mumbai in Criminal Complaint No.20 of 2019 clearly reveals that the charge against the accused therein relates to Section 447 of the Companies Act and Section 417, 420 r/w 120-B IPC. It is the submission of the learned senior counsel that in view of the charge u/s 447 of the Companies Act, initiated against the accused/petitioners, no other agency is clothed with power to proceed with any parallel investigation so long as it relates to the affairs of the company, which falls under the Companies Act, as Section 212 of the Companies Act precludes investigation by any agency once SFIO is seized of the matter.

14. It is the further submission of the learned senior counsel for A-7 that the moratorium ordered by the NCLAT, resulted in the non-payment of interest to the intervenors, who were debenture holders, as the NCLAT had stayed the

payment of principal or interest or hedge liability or any other amount and NCLAT had also suspended payment of any other dues by the IL&FS and its 348 group companies, which had literally put the spokes on ITNL from paying the dues towards interest. It is therefore the submission of the learned senior counsel that the order of the NCLAT having stayed the payment, invocation of the provisions of the TNPID Act against the petitioners and the companies cannot be maintained.

15. It is the further submission of the learned senior counsel for A-7 that ITNL had taken up issuance of shares on private placement basis, as is provided u/s 42 of the Companies Act. It is the further submission of the learned senior counsel that the said private placement has been made only to select group of persons and that neither any public advertisements were given nor any media, marketing or distribution channels were utilised for informing the public about the issue. Such being the case, the issuance of debentures would not attract the provisions of the TNPID Act, as the issue was not meant for public and that no advertisement was made about the issue and no money was collected from the public.

16. It is the further submission of the learned senior counsel for A-7 that Entry 46 of the Union List pertains to Bills of exchange, cheques, promissory notes and other like instruments and the present case, the instrument, which is put in issue is the debentures issued by ITNL, which would squarely stand covered under Entry 46 of the Union List and, therefore, the jurisdiction vests with SFIO to continue with the investigation and insofar as the said instrument, viz., debentures is concerned, no other agency is vested with the power to investigate.

17. Mr. M.K.Kabir, learned senior counsel appearing for A-6, while adopting the arguments of Mr.B.Kumar, learned senior counsel appearing for A-7, further submitted that A-6 is also identically placed as A-7, in that A-6 was not only a non-executive director, but had also resigned from the company/Board on 1.10.18, much prior to the FIR dated 28.9.20. A-6 being a non-executive director and not a key managerial personnel, as prescribed under the Companies Act, cannot be fastened with any vicarious liability and, therefore, the complaint against A-6 cannot be allowed to survive.

18. It is the further submission of the learned senior counsel for A-6 that the non-convertible debentures, which were floated by ITNL, through private placement basis, was for a select few and the intervenor, viz., 63 Moon Technologies was not part of the select few. The said private placement non-convertible debentures were issued in favour of Trust Capital on the Mumbai Stock Exchange on 22.4.2016 and only on account of the moratorium issued by NCLAT, vide its order dated 15.10.2018, payment of interest was stopped. The case of the intervenor that the default committed by ITNL attracts the provisions of the TNPID Act is too far fetched, as the order stayed the payment of interest and it cannot be construed to be a default committed by ITNL.

19. It is the further submission of the learned senior counsel for A-6 that the respondent, viz., 63 Moons Technologies cannot invoke the provisions of the TNPID Act for the reason that the issue floated by ITNL were non-convertible debentures, which were not floated in the open market, but which were exclusively given only to select entities, of which Trust Capital was one of them. The select entities, after satisfying themselves as to the liquidity position of the

concern, which floats the debentures, and after proper investigation, has thought it fit to invest in the non-convertible debentures and the intervenor, being a subsequent purchaser cannot have any right to claim that he was misled into purchasing the debentures and has suffered a loss. In fact, the complainant cannot claim that he was lured into the transaction to deposit the amount and seek aid of the provisions of the TNPID Act when the complainant was not one among the select few, who were informed about the floating of the debentures.

20. It is the further submission of the learned senior counsel for A-6 that the non-convertible debentures were purchased by the 2nd respondent from Trust Capital, which has its office at Mumbai and through the Mumbai Stock Exchange and, therefore, the 2nd respondent has to only invoke the jurisdiction at Mumbai and not at Chennai. It is the submission of the learned senior counsel that only in view of the fact that the Maharashtra Protection of Interest of Depositors Act disallows invocation of the provisions of the said Act in relation to debentures, the 2nd respondent has invoked the jurisdiction at Chennai. In view of the fact that all the transactions having taken place within the jurisdiction of Mumbai and also the entities involved in the transactions are having offices at

Mumbai and that the trading has been done at the Mumbai Stock Exchange, no jurisdiction vests at Chennai and, therefore, invocation of jurisdiction at Chennai is not maintainable.

21. It is the further submission of the learned senior counsel that clause 9.14 of the Information Memorandum prescribes the entities, who could apply for the private placement debentures, which clearly prescribes that the said entities could be investors, only when specifically approached and they could apply for the purchase of the private placement debentures. However, the 2nd respondent is not one such entity, which was approached by ITNL, but the 2nd respondent had purchased the non-convertible debentures from open market from Trust Capital and, therefore, it cannot lay claim that ITNL has cheated the 2nd respondent. In this regard, it is the submission of the learned senior counsel for A-6 that even where there arises any default in payment of monies, accruing due on the respective date, default interest has been provided, which would be at the rate of 2% per annum over and above the coupon rate. Therefore, the 2nd respondent cannot claim that it has been robbed of its money when the payment

was not able to be made on account of the moratorium and further when the provision for default interest has been made in the information memorandum.

22. It is the further submission of the learned senior counsel for A-6 that the prospective private placement purchasers were provided with an information memorandum, which clearly enumerated the risk factors involved in investing in debentures and also the repayment of the amount by the issuer, which finds place in Section 4 of the Information Memorandum. Learned senior counsel drew the attention of the Court to Section 402 of the Information Memorandum, which specifically speaks about the illiquid secondary market for debentures, wherein categoric assertion has been made by the issuer that the debentures may be illiquid and that no secondary market may develop in respect thereof and also the associated liquidity problems associated therewith. More pointedly, learned senior counsel appearing for A-6 submitted that the information memorandum specifically imposed upon the potential investors to hold the debenture until redemption to realize any value.

23. It is the submission of the learned senior counsel for A-6 that when in categoric terms, the information memorandum has spoken about the risk factors associated with the debentures and also the illiquid state of the secondary market for the said debentures and the potential investors having been called upon to hold the debentures until redemption to realize any value thereof, the 2nd respondent, who was not an investor with ITNL, but is a subsequent purchaser from Trust Capital, the original investor, was bound by the risk factors enumerated in Section 4 of the information memorandum and it is not open to the 2nd respondent to turn back and claim that the amount invested in the debentures having not paid, the said default is liable to be proceeded with under the TNPID Act.

24. It is the further submission of the learned senior counsel for A-6 that the complaint was registered by the respondent EOW only due to the 2nd respondent invoking the jurisdiction of this Court, wherein as well, this Court had directed the 2nd respondent to register the complaint in accordance with law. It is submitted by the learned senior counsel that the 2nd respondent herein had filed two sets of petitions for registration of the case, which was ordered by this Court.

However, the 2nd respondent has not stated in the second petition that the first petition on which the complaint has been registered, was also at his instance, which shows that the 2nd respondent has not spoken in entirety about the issue even while the complaint was sought to be registered.

25. It is the further submission of the learned senior counsel for A-6 that the 2nd respondent had, even before the filing of the complaint, had approached the NCLAT by filing necessary application for securing the repayment on the debentures, pursuant to the grant of moratorium by NCLAT. However, the 2nd respondent, for reasons best known, omitted to mention about its knowledge and filing of the application before the NCLAT for securing its repayment, which has already been verified and admitted by the Auditors Grant Thornton. However, the said facts have not been brought to the notice of this Court, which is clear suppression on the part of the 2nd respondent.

26. Mr.Manishankar, learned senior counsel appearing for A-3, in all fairness submitted that A-3 was the Managing Director of the company. However, it is the submission of the learned senior counsel for A-3 that A-3 had

resigned from the company as on 28.10.18, much before the date of the complaint and that the resignation of A-3 has also been accepted by the Board. It is therefore the submission of the learned senior counsel for A-3 that A-3 not being a Director and a Key Managerial Personnel as mandated under the Companies Act, on the date of registration of the complaint, cannot be fastened with any vicarious liability.

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27. Insofar as the issues relating to applicability of the provisions of the TNPID Act and the jurisdiction of the EOW to investigate the case under the TNPID Act, learned senior counsel for A-3, conceded that the submissions advanced on the said aspect by the other learned senior counsel appearing of A-6 and A-7 would in all fours apply to the case of A-3 as well. It is therefore the submission of the learned senior counsel for A-3 that neither the provisions of the TNPID Act would stand attracted as INTL is not a 'financial establishment' within the meaning of Section 2 (3) of the TNPID Act nor the amount collected by way of non-convertible debentures could be stated to be a 'deposit' as defined u/s 2 (2) of the TNPID Act. It is the further submission of the learned senior counsel appearing for A-3 that in view of the investigation being carried out by

SFIO u/s 212 of the Companies Act, the jurisdiction of the other law enforcing agencies to conduct parallel investigations is barred and further all the cause of action having arisen within the juridical limits of Mumbai, the complaint filed before the respondent invoking TNPID Act is wholly without jurisdiction.

28. Similarly, it is the submission of the learned senior counsel for A-3 that the 2nd respondent, viz., 63 Moons Technologies having already gone before the NCLAT by filing necessary application for repayment of the amount towards the debentures, without divulging the filing of the above petition before NCLAT, filing the present complaint is a clear suppression and, the 2nd respondent having come before this Court with unclean hands, necessarily, his case does not require any benevolent consideration.

29. It is the further submission of the learned senior counsel for A-3 that the intervenors, viz., 63 Moons Technologies, at whose instance the complaint has been registered, has no locus to prosecute the case, as the 2nd respondent is a purchaser of the non-convertible debentures, which was issued on private placement basis, from Trust Capital. It is for the 2nd respondent to have satisfied

itself by reading all the information provided in the information memorandum before proceeding to purchase the non-convertible debentures.

30. It is the further submission of the learned senior counsel for A-3 that the invocation of Section 420 IPC against the Directors of ITNL is wholly misconceived, as there is no intent shown on the part of ITNL to defraud the 2nd respondent. There is no element of cheating by ITNL and the default, as borne out by records is on account of the moratorium granted by NCLAT. It is the further submission of the learned senior counsel for A-3 that the ingredients of Section 420 IPC does not get satisfied in any way, as it is categorically evident from the provision that there should be a dishonest inducement to deceive the person, which is not established by the 2nd respondent. It is the submission of the learned senior counsel that the private placement of debentures were not issued to the 2nd respondent by the petitioners or ITNL and the 2nd respondent has purchased the said debentures from open market from Trust Capital. The 2nd respondent has applied its mind to the all the materials available and has made the investment and, therefore, the 2nd respondent cannot claim that there was

inducement by the petitioners or ITNL to part away with valuable consideration with a view to deceive the 2nd respondent of its money.

31. It is the further submission of the learned senior counsel for A-3 that the preamble to the enactment of TNPID Act clearly spells out that the said Act has been enacted to protect the deposits made by the public in the 'Financial Establishments' and ITNL not having received any deposits from public, but only on the basis of private placement as provided the Companies Act, the debentures issued by ITNL could in no way be termed to be 'deposits' within the meaning of Section 2 (2) of the TNPID Act.

32. It is the further submission of the learned senior counsel for A-3 that as on the date of complaint, the whole of the group of IL & FS, including ITNL, having been taken control of by the Central Government by appointment of Directors and replacing the Board with its members, ITNL cannot be said to be a 'Financial Establishment' as defined u/s 2 (3) of the TNPID Act.

33. Learned senior counsel drew the attention of this Court to sub-section (10) of Section 71 of the Companies Act and submitted that the failure to pay interest is not on account of any default committed by ITNL, but it is only on the basis of the moratorium granted by NCLAT and further ITNL has not failed to redeem the debentures on the date of its maturity, as the debentures held by the 2nd respondent are due for maturity only in the year 2024. Such being the case, the 2nd respondent having already filed petition before NCLAT for payment of its money as a creditor, giving the complaint as if the deposit amount was not paid by ITNL, more so, when the maturity is only in the year 2024, is wholly preposterous and does not merit consideration.

34. It is the further submission of the learned senior counsel for A-3 that the issue made by ITNL is private placement of debentures and no advertisement or marketing through print or digital media, was resorted to and, therefore, the provisions of TNPID Act would not be applicable to the money collected by ITNL, as the said collection could in no way be termed to be 'deposits' as defined u/s 2 (2) of the TNPID Act. It is the further submission of the learned senior counsel for A-3 that the prescription made under sub-sections (2), (7) and (8) of Section 42

have been duly complied with by ITNL and, therefore, the issue could in no way be said to be a deposit raised from the public.

35. It is the further submission of the learned senior counsel for A-3 that G.O. Ms. No.1697, Home (Courts IIA) Dept., dated 24.12.1999, constituting EOW-II specifically for the purpose of securing the money collected as deposits from public, on which defaults have been committed in repayment after maturity by non-banking financial companies and unincorporated financial institutions. The Government Order has clearly specified that the special wing is specifically constituted for the above purpose. However, ITNL, not being a non-banking financial company or a financial institution, which had collected money from the public, case cannot be investigated by the EOW-II, constituted for the aforesaid purpose.

36. Learned senior counsel appearing for A-3 drew the attention of this Court to the definition of 'deposit' under 2 (c) of the Companies (Acceptance of Deposits) Rules, 2014, wherein, in sub-clause (ixa) there is a specific exclusion with regard to amount raised by issue of non-convertible debentures. It is

therefore the submission of the learned senior counsel for A-3 that the amount raised by ITNL, being by way of non-convertible debentures under private placement basis, it cannot be said to be deposit within the meaning of the Companies Act and it cannot be brought within the deposit as defined under the TNPID Act.

37. In fine, it is the contention of the learned senior counsel appearing for the respective petitioners that the petitioners cannot be proceeded with under the TNPID Act in view of the bar u/s 212 of the Companies Act relating to investigation by SFIO and once investigation by SFIO is proceeded, all the other investigations would stand merged with the investigation conducted by SFIO and further the non-convertible debentures floated by ITNL not being a deposit within the meaning of the TNPID Act, the case registered by the 1st respondent is *per se* impermissible and unsustainable and, therefore, the same deserves to be quashed.

38. Learned senior counsel appearing for the respective petitioners placed reliance on the following decisions :-

"i) SSR Holdings Pvt. Ltd. - Vs – SEBI (2017 SCC OnLine SAT 88)

ii) Chintalapati Raju – Vs – SEBI (2018 (7) SCC 443)

iii) N.Magesh – Vs – State of Tamil Nadu (2019 SCC OnLine Mad 38922)

iv) Sunil Bharti Mittal – Vs – CBI (2015 (4) SCC 609)

v) G.Swaminathan – Vs – G.Antonie Radjou (Crl. OP No.5135/2011 – Dated 3.1.20)

vi) SFIO – Vs – Rahul Madi (2019 (5) SCC 266)

vii) Doraisamy – Vs – State (2019 SCC OnLine Mad 1354)

viii) Viswapriya (India) Ltd. - Govt. of T.N. (W.P. No.14229/15 – Dated 6.8.15)

ix) Helios & Matheson Information Technology Ltd. - Vs – State (2015 SCC OnLine Mad 7398)

x) S.Bagavathy – Vs – State of T.N. (2007 (2) CTC 207 (FB))

xi) Union of India – Vs – IL & FS (Comp. Appeal No.346/18 – Dated 15.10.2018)

39. Per contra, Mr.P.S.Raman, learned senior counsel, leading the arguments for the intervenors, submitted that the parent company, viz., IL & FS, the pivot in the group around which the other 348 companies revolve, including ITNL, had come to the adverse notice of the Union Government leading to the filing of a petition before the National Company Law Tribunal, Mumbai. Learned senior counsel drew the particular attention of this Court to the various

allegations raised by the Union Government against the entire IL & FS Group and submitted that only on account of the fact that all was not well with the conduct of the affairs of the group company, petition was moved by the Union Government before NCLT, in the interest of all the stakeholders in the group company, which necessitated in NCLT passing orders and pursuant to the said orders, the Board of the group was reconstituted with the appointment of members by the Union Government.

40. It is the further submission of the learned senior counsel that a specific averment is in the complaint filed by the Union of India pertaining to the affairs of the group companies under the IL & FS umbrella, whrein it has been stated that the suspended Directors constituted a Committee of Directors which was empowered to take decisions pertaining to the operations of the said companies, which clearly shows that the nomenclature in which the petitioners have been shown as non-executive directors is only for the purpose of wriggling out of any predicament, like the one, if arises and the real persons behind the affairs of the company were the petitioners.

41. It is the further submission of the learned senior counsel that even the affairs of the IL & FS group was red flagged by the Reserve Bank of India in its letter dated 22.3.2019, pursuant to the inspection carried out by the RBI. The Reserve Bank had pointed out very many deficiencies, which were observed in the credit appraisal and sanctioning of loans prior to the date of its inspection. This clearly shows that prior to the resignation of the petitioners, the functioning of the group entities were not proper, which not only resulted in the reconstitution of the Board by the Government, but also the inspection of the RBI enlisted the irregularities and deficiencies committed by the IL & FS Group.

42. It is the submission of the learned senior counsel that the petitioner in Crl. O.P. No.3370/21 has been the Chairman of the main entity, viz., IL & FS Group, who is the controlling head of the entire group of companies, since 1989. The other petitioners as well are in pivotal positions in the Board and they were managing all the affairs of all the group companies.

43. It is the further submission of the learned senior counsel that specifically ITNL has floated the non-convertible debentures under the private

placement scheme, but the debentures are open ended debentures, which could be transferred in the trading market, with the clear intention of making it a deposit scheme, but clothing it as a private placement issue. To further their nest, the petitioners even went to the extent of manipulating the rating given by the credit companies, with the connivance of the credit rating companies, which aspect is also under the scanner of the SFIO and other investigating agencies. It is therefore the submission of the learned senior counsel that merely because the petitioners have resigned from the Board prior to the initiation of the complaint and the registration of the case would not absolve them of the offence, as the offence is a continuous one, which dates back to 2014, when the petitioners were in the controlling positions in the group companies. Such being the case, the stand of the petitioners that they have resigned prior to the initiation of the complaint cannot be a ground to release them from the rigours of criminal prosecution.

44. It is the further submission of the learned senior counsel that in view of the *non obstante* clause found in Section 14 of TNPID Act, the operation of all the other Acts would be driven to a backseat and, therefore, merely because

investigation is being carried out by other agencies would not be a bar for the 1st respondent to continue with the investigation.

45. It is the further submission of the learned senior counsel that NCLT has made a specific observation in its order, where it is observed that the present Board is neither the promoters nor hold any equity. They are merely feasting on the public funds, which they have misutilised by drawing hefty packages for themselves. It is therefore the submission of the learned senior counsel that from the above observation of NCLT, it is categorically clear that the petitioners, under the garb of being the directors of the company, were enjoying the comforts on the public money, to the detriment of the public, which has invited the interference by the Government. It is therefore the submission of the learned senior counsel that the acts of the petitioners in acting in detriment to the welfare of the public by misutilising the public money, which has been received as deposits, definitely attracts the provisions of the TNPID Act.

46. It is the further submission of the learned senior counsel that merely because ITNL was in the business of infrastructure and road development, would

not in any way preclude the Court from inferring that the activities carried on by ITNL would also squarely fall within the definition of 'Financial Establishment' as defined u/s 2 (3) of the TNPID Act. ITNL had received money from the public, by floating private placement issues, which had in turn come into the possession of the 2nd respondent herein, through subsequent purchase and whatever the rights of the purchaser, would stand enured to the subsequent purchasers as well and the utilisation of money by ITNL towards infrastructure and road development would not take away the veil of deposit under which the monies were received under the private placement scheme. Therefore, the receipt of money through private placement scheme by issuance of debentures would stand squarely attracted under the provisions of the TNPID Act.

47. It is the further submission of the learned senior counsel that the contention that on the SFIO taking up investigation, there operates a total bar on the other investigating agencies to proceed with such investigation is a mere figment of imagination, as the same stands axed on account f sub-section 17 (b) of Section 212 of the Companies Act. Drawing the attention of this Court to the said provision under the Companies Act, learned senior counsel submitted that

while sub-section 17 (a) provides the other investigating agencies to provide any material which would be of relevance in the matter investigated by SFIO, sub-section 17 (b) imposes upon SFIO to share any information or documents available with it with any investigating agency, State Government, police authority or income tax authorities, which may be of any relevance in such investigation undertaken by the said authority in respect of any offence under investigation by the said authority. Therefore, it is submitted that the contention of the petitioners that once SFIO takes up investigation, investigation by any other agency is barred, is wholly misconceived.

48. It is the further submission of the learned senior counsel that moratorium granted by NCLT will not put a freeze on any parallel proceeding, as SFIO investigation being conducted, any other investigation, in line with the SFIO investigation, for any other offence, attractable to any other provision of the Act would be equally proceedable, as trying to freeze the said investigation would, in effect, frustrate the said enactment.

49. Mr. Abdukumar Rajaratnam, learned counsel appearing for one another intervenor submitted that the definition of "deposit" u/s 2 (2) of the TNPID Act takes within its fold all the money deposited either in one lumpsum or by instalments with the Financial Establishment for a fixed period for interest or for return in any kind and it does not speak about the entity depositing the amount, be it in debentures or otherwise. Further, "Financial Establishment", as defined u/s 2 (3) of the TNPID Act clearly prescribes that any company, registered under the Companies Act, carrying on business of receiving deposits under any scheme or arrangement and, therefore, the mere fact that the deposit collected by ITNL being by way of debentures would in no way absolve ITNL of criminal culpability when the deposits have been collected by the company under the scheme of private placement.

50. Learned counsel placed heavy reliance upon the decision of the Hon'ble Apex Court in ***Iridium India Telecom Ltd. - Vs – Motorola Inc. & Ors. (2011 (1) SCC 74)*** and submitted that the degree of control exercised by the persons in-charge of the affairs of the company is *sine qua non* for deciding the culpability of the individual in the offence and *mens rea* of person or persons in

control is attributable to the corporation and he further submitted that the deception should produce inducement for the complainant to part with, which otherwise would not have been parted with. It is therefore the submission of the learned counsel that those are issues, which needs to be tested and proved at the time of trial and this Court, in exercise of its inherent power u/s 482 Cr.P.C. shall not quash the case, more so when the case relates to economic offences, where breath of trust, cheating, etc., are alleged.

51. Mr.Nithyaesh Natraj, learned counsel appearing for one of the intervenor submitted that the enormity of the financial fraud committed by ITNL, which was stage managed by the petitioners, has driven many of the depositors into financial lurch. It is the submission of the learned counsel that the the Board of IL&FS was suspended u/s 242 (k) of the Companies Act in view of the filing of the petitions under Sections 241 and 242 of the Companies Act by the Union of India. Not only the Government had initiated the said step, but the same was initiated not only at the behest of the Registrar of Companies, Mumbai, but on the basis of the very letter written by A-7 which was written even before the Registrar and the Reserve Bank of India had also stepped in with its report, which

shows that not only there was mismanagement, but the activities of the group companies was tainted with fraud.

52. It is the further submission of the learned counsel that the forensic auditor, M/s.Grant Thornton, who was appointed to submit report, had, in its interim report submitted that IL & FS was following the practise of evergreening of loans, which was done purely with a fraudulent intention for the purpose of screening certain accounts from becoming NPA.

53. It is the further submission of the learned counsel that SFIO had also filed a complaint, on its being appointed by the Central Government to investigate into the affairs of IL & FS and the SFIO had implicated the petitioners for many wrongful acts in the running of the company and its affairs, including decision making.

54. It is the further submission of the learned counsel that NCLT had categorically held that the affairs of the company were held in total contravention of public interest and the Directors of the Company had hid and

avoided possible defaults resulting in increasing indebtedness of the group companies.

55. It is the further submission of the learned counsel that even the credit rating companies had acted hand in glove with IL & FS and its subsidiary companies in inflating the credit worthiness of the group companies, which had resulted in SEBI taking penal action against the said credit rating companies. It is the submission of the learned counsel that only on account of the inflated credit worthiness, projected by the credit rating companies, at the instance of the petitioner and the group companies, the complainant was deceived to deposit in the group by purchasing the debentures and, therefore, the invocation of the provisions of the TNPID Act cannot be held to be bad.

56. Learned counsel drew the attention of this Court to the complaint filed by one of the depositors before the EOW, New Delhi, which has fructified in the registration of FIR in FIR No.0253 dated 6.12.2018 and submitted that the stand of the petitioners that investigation by SFIO will bar investigation by any other

agency is wholly unsustainable, as EOW, New Delhi, has registered a case against the petitioners and investigating the matter.

57. It is the further submission of the learned counsel that even in the complaint by the Central Government, requisition for audit by reopening the accounts under the relevant provisions of law dating back to five years has been made and at the crucial point of time, A-3, A-4 and A-7 were the Directors of the Group and, more so, were the core persons, managing the group and, therefore, merely because they have given their resignation and had come out of the company would not give them any immunity from prosecution claiming that on the date when the 2nd respondent herein lodged the complaint under the TNPID Act, the petitioners were not the Directors of the company, as the fraud perpetrated by the Committee of Directors of which the petitioners formed a part, had been spoken to in great detail in the order of NCLT.

58. Mr.Sharath Chandran, learned counsel appearing for one other intervenor, while adopted the submissions advanced by the respective learned counsel for the intervenors, further submitted that the term *"deposit"*, as defined

under the TNPID Act would take within its fold the debentures floated by ITNL under private placement basis, relied on the decisions in *i) 2019 (1) LW (Crl.) 197.*

59. Respective learned counsel appearing for the intervenors placed reliance on the following decisions to drive home the point that the registration of the case is wholly maintainable and that the investigation could very well be carried out under the TNPID Act, simultaneous to the investigation carried out by SFIO and that the registration of the case within the jurisdiction of this Court is wholly permissible :-

i) Deputy Commissioner – Vs – Jaspal Singh Gill (1984 (3) SCC 555)

ii) Directorate of Enforcement – Vs – Ashok Kumar Jain (1998 (2) SCC 105)

iii) Vedi Ram – Vs – State of UP (2003 (Crl. LJ 1084)

iv) Bibhuti Nath Jha – Vs – State of Bihar (2005 (12) SCC 286)

State of Gujarat – Vs – Mohanlal Jitamalji Porwal (1987 (2) SCC 364)

Puran – Vs – Rambilas (2001 (6) SCC 338)

Y.S.Jagan Mohan Reddy – Vs – CBI (2013 (7) SCC 439)

Nimmagadda Prasad – Vs – CBI (2013 (7) SCC 466)

State of Bihar – Vs – Amit Kumar (2017 (13) SCC 751)

P.Chidambaram – Vs – Directorate of Enforcement (2019 (9) SCC 24)

SFIO – Vs – Nittin Johari (2019 (9) SCC 165)

Helios & Matheson IT Ltd. - Vs – The State (2015 SCC OnLine Mad 7398)

K.K.Baskaran – Vs – State (2011 (3) SCC 739)

Viswapriya (India) Ltd. - Vs – govt. of Tamil Nadu (W.P. No.14229/15 – Dated 5.8.15)

60. This Court paid its undiminished attention to the eloquent and elaborate submissions advanced by the respective learned senior counsel and the other learned counsel appearing for the parties and also paid its concerted attention to the materials referred to with regard to the said submissions and also the various decisions brought to the notice of this Court by the learned counsel in support of their vociferous and passionate submissions.

61. On a holistic and conscious consideration of the submissions put forth by the learned counsel on either side, the following issues emerge for consideration in these petitions :-

i) Whether entrustment of investigation to SFIO by the Central Government u/s 212 of the Companies Act bars the

jurisdiction of other investigating agencies to proceed with investigation into any matter concerning the affairs of the company.

ii) Whether the default committed by ITNL on account of non-payment of interest in view of the moratorium granted by NCLAT could be held against ITNL and the petitioners, thereby making them liable for penal prosecution under the TNPID Act.

iii) Whether the amounts received by ITNL could be held to be "deposits" within the meaning of Section 2 (2) and whether ITNL could be held to be a "financial establishment" as defined u/s 2 (3) of the TNPID Act.

iv) Whether the provisions of the TNPID Act could be enforced against ITNL for the debentures issued by it on private placement basis u/s 42 of the Companies Act.

ISSUE NO.1

Whether entrustment of investigation to SFIO by the Central Government u/s 212 of the Companies Act bars the jurisdiction of other

investigating agencies to proceed with investigation into any matter concerning the affairs of the company.

62. The pivotal contention raised by the petitioners is that once SFIO is entrusted with the investigation u/s 212 (2) of the Companies Act, in respect of offences committed under the Companies Act, investigation by other agencies stood barred. On the contrary, it is the contention of the 2nd respondent/complainant that sub-section 17 (a) and (b) clothes the other investigative agencies with powers to proceed with parallel investigation and the only requirement is that the materials collected in such investigation should be shared with SFIO by the said investigating agency and *vice versa.* Very many decisions have been referred on this aspect by the learned counsel on either side.

63. Before adverting to the same, this Court for the purpose of brevity, would extract hereunder the relevant provision of law, viz., sub-sections (2) and 17 (a) and (b) of Section 212 of the Companies Act for better appreciation of the issue.

64. Sub-section (2) of Section 212 of the Companies Act deals with the power of the Central Government to assign a case to SFIO, which provision, is quoted hereunder :-

> ***"212. Investigation into affairs of Company by Serious Fraud Investigation Office***
>
> * * * * * * * *
>
> *(2) Where any case has been assigned by the Central Government to the Serious Fraud Investigation Office for investigation under this Act, no other investigating agency of Central Government or any State Government shall proceed with investigation in such case in respect of any offence under this Act and in case any such investigation has already been initiated, it shall not be proceeded further with and the concerned agency shall transfer the relevant documents and records in respect of such offences under this Act to Serious Fraud Investigation Office.*
>
> * * * * * * * *
>
> *(17) (a) In case Serious Fraud Investigation Office has been investigating any offence under this Act, any other investigating agency, State Government, police authority, income-tax authorities having any information or documents in respect of such offence shall provide all such information or documents available with it to the Serious Fraud Investigation Office;*
>
> *(b) The Serious Fraud Investigation Office shall share any information or documents available with it, with any*

investigating agency, State Government, police authority or income-tax authorities, which may be relevant or useful for such investigating agency, State Government, police authority or income-tax authorities in respect of any offence or matter being investigated or examined by it under any other law."

65. Learned senior counsel for the petitioners drew the attention of this Court to the decision of the Hon'ble Apex Court in ***Serious Fraud Investigation Office – Vs – Rahul Modi & Anr. (2019 (5) SCC 266)*** to impress upon the Court that once SFIO is seized of the matter on investigation being assigned to it by the Central Government, no other authority has power to conduct and complete the investigation. For better clarity, the relevant portion is extracted hereunder :-

"28. ..... Section 212 empowers the Central Government to assign the investigation into the affairs of a Company to SFIO. Upon such assignment the Director SFIO may designate such number of inspectors Under Sub-section (1) and shall cause the affairs of the Company to be investigated by an Investigating Officer Under Sub-section (4). The expression used in Sub-section (1) is "assign the investigation". Sub-section (2) incorporates an important principle that upon such assignment by the Central Government to SFIO, no other investigating agency of the Central Government or any State Government can proceed with investigation in respect of any offence punishable under 2013

Act and is bound to transfer the documents and records in respect of such offence under 2013 Act to SFIO.

* * * * * * * *

33. The very expression "assign" in Section 212 (3) of 2013 Act contemplates transfer of investigation for all purposes whereafter the original Investigating Agencies of the Central Government or any State Government are completely denuded of any power to conduct and complete the investigation in respect of the offences contemplated therein. The idea Under Sub-section (2) is complete transfer of investigation. The transfer Under Sub-section (2) of Section 213 would not stand revoked or recalled in any contingency. If a time limit is construed and contemplated within which the investigation must be completed then logically, the provisions would have dealt with as to what must happen if the time limit is not adhered to. The Statute must also have contemplated a situation that a valid investigation undertaken by any Investigating Agency of Central Government or State Government which was transferred to SFIO, must then be re-transferred to said Investigating Agencies. But the Statute does not contemplate that. The transfer is irrevocable and cannot be recalled in any manner. Once assigned, SFIO continues to have the power to conduct and complete investigation2. If that be so, can such power stand curtailed or diminished if the investigation is not completed within a particular period. The Statute has not prescribed any period for completion of investigation. The prescription in the instant case came in the

order of 20.06.2018. Whether such prescription in the Order could be taken as curtailing the powers of SFIO is the issue."

66. It is to be pointed out that Chapter XXVII of the Companies Act, 2013, provides for establishment of Special Courts and offence triable by said Courts u/s 435 and 436 of the Companies Act. It is not in dispute that the complex nature of the economic transactions, due to digital explosion has led to financial ramifications, and any fraud or mala fide act committed by an entity, would have a cascading effect not only on the interest of the different types of investors, but also on the economic growth and stability of the country.

67. The Central Government, only with the far-sighted vision and also taking into account the complex web of the digital transactions that are being undertaken day-in and day-out, which has left only a digital trail, has thought it fit to form a comprehensive investigative unit, viz., the SFIO, which could probe into the affairs of the company and to that end, the investigative unit is clothed with the requisite powers to carry on the investigation.

68. A careful perusal of sub-section (2) of Section 212 of the Companies Act, it is predominantly clear that once the case has been assigned by the Central Government to SFIO for investigation under the Companies Act, the other investigating arms of the Central Government and the State Government have been denuded of its powers to proceed with investigation in respect of any offence under the companies Act. It further mandates that even if any such investigation has been set in motion, it shall not be proceeded further with and the concerned agency is required to transfer the relevant documents and records in respect of such offences under this Act to SFIO.

69. However, emphasis is laid on sub-section 17 (b) of Section 212 of the Companies Act by the 2nd respondent to contend that parallel investigation by any other State or Central investigation agency is permissible and if such investigation is underway, sub-section 17 (b) mandates SFIO to share any information or documents available with it to the other investigation agency for the purpose of investigation of the offence under any other law.

70. There is no quarrel with regard to the provision encapsulated u/s 17 (b) of Section 212 of the Companies Act. However, what is patently apparent from sub-section (2) of Section 212 of the Companies Act is that once the case stands assigned by the Central Government to the SFIO to proceed against the company under the Companies Act, an explicit bar is imposed on any agency of the Central Government or the State Government to proceed with any type of investigation under the Companies Act and, if at all, any other investigation is mooted out by the Central or the State Governments under the Companies Act, the said investigation stands merged with the investigation conducted by the SFIO.

71. In the case on hand, relating to the irregularities in the functioning of the group companies under the umbrella of IL & FS, the Central Government, invoking the provisions of the Companies Act had filed necessary petitions before the NCLT, Mumbai for suspension of certain Directors and for appointment of new nominee Directors and for other relief, which was acceded to by NCLT.

72. Thereafter, invoking the power vested u/s 210 of the Companies Act, with a view to investigate into the affairs of the company, the Central Government had set in motion investigation by assigning the case to the SFIO. In pursuance thereof, the Ministry of Corporate Affairs, has issued order in No.03/679/2018-CL.II (WR) dated 30.9.2018 in exercise of powers conferred u/s 212 (1) (a) and (c) of the Companies Act by assigning investigation to SFIO into the affairs of IL & FS and its subsidiary companies to be carried out by the officers of the Serious Fraud Investigation Office and vested on the persons to be assigned by the Director, SFIO, all powers to investigate into the affairs of the above mentioned company. From the above sequence of events, it is abundantly clear that the investigative mechanism has been mooted out under the Companies Act and other penal provisions and in such a backdrop, no other investigative agency is empowered to investigate into the affairs of IL & FS and its subsidiary companies for any offences under the Companies Act.

73. It is further to be pointed out that sub-section 17 (b) of Section 212 of the Companies Act pertains to continuance of investigation by any other investigating agency for offences relating to any other law. In fact, for such of

those investigation relating to any other law, being conducted by any other investigating agency, sub-section 17 (b) clothes the said investigating agency to proceed with the investigation and further casts a duty upon SFIO to share information or documents relating to investigation conducted by it, which has a relevance to the investigation conducted by any other investigating agency in relation to any other law. The bar u/s 212 (2) of the Companies Act relates only insofar as investigation being carried out by SFIO under the Companies Act and in case of such investigation, no other agency, be it of the Central Government or the State Government could proceed with any type of investigation under the Companies Act. But, if the Central or State investigative agency proceeds with investigation relating to any other law, which is in no way concerned with the Companies Act, there exists no bar on such agency to proceed with the investigation. The decision of the Hon'ble Apex Court in *Rahul Modi's case (supra)* enunciates the said ratio succinctly and, there is no ambiguity and this Court is in respectful agreement with the proposition of law laid down therein.

74. From the above, it clearly transpires that the jurisdiction of SFIO is vast, in that, in addition to the assignment of investigation under the Companies Act by

the Central Government, the SFIO could investigate the issue relating to any other law; however, the other investigating agencies are barred from investigating any matter which is already seized of by SFIO under the Companies Act; rather, the other investigating agencies could only investigate matters which are not within the realm of the Companies Act. To that extent the powers of the SFIO is multifold to that of the other investigating agencies.

75. *Therefore, for all purposes, only when an investigation is mooted out by the Central Government under the Companies Act and the investigation is assigned to SFIO, the bar operates for the other investigating agencies to proceed with investigation under the Companies Act and not insofar as it relates to any other offences under any other law for which investigation is being carried out by any other agency under the aegis of the Central Government or the State Government. However, SFIO could investigate the matter not only on assignment by the Central Government under the Companies Act, but even under any other law, be it enacted by the State or the Central Government. Therefore, it is clear that the power of SFIO in the matter of investigation is inclusive of all enactments in addition to the Companies Act, whereas the power of the other investigating*

agencies to investigate the matter is in exclusion to any issue under the Companies Act. Therefore, there exists a complete bar for other investigating agencies to investigate into the matter under the Companies Act once it is assigned to SFIO by the Central Government. Issue No.1 is answered accordingly.

ISSUE NO.2

Whether the default committed by ITNL on account of non-payment of interest in view of the moratorium granted by NCLAT could be held against ITNL and the petitioners, thereby making them liable for penal prosecution under the TNPID Act.

76. It is the admitted case of the parties that prior to 15.10.2018, the date on which moratorium was granted by NCLAT, the 2nd respondent was in receipt of its dues on account of the debentures held by it. On and from the order passed by NCLAT granting moratorium, the interest to be paid on the debentures stood stayed and on and from 21.1.2019 disbursement towards the debentures was not honoured as is evident from the letter written by the Company Secretary, ITNL. It is also borne out by record that the 2nd respondent has also been one of the parties, which had approached NCLAT relating to the investments it has in IL & FS Group, which has been taken note of by NCLAT as well. That being the

undisputed position, though a default has arisen in payment of interest to the 2nd respondent herein on the debentures that are in his possession, however, the stand of the 2nd respondent that the default was only with a view to defraud the investors, cannot be taken at face value since the whole corporate wheel is being tried to be oiled by NCLAT not only by granting moratorium, but also by issuing a slew of directions with a view to safeguard the investments made to the maximum extent possible.

77. Further, it is also the admitted case that the Central Government had intervened in the whole episode by filing the petition before the NCLT and, thereafter, assigning the investigation to SFIO. That being the factual position, though the default has occurred, it can safely be concluded, at the present point of time, as being due to the moratorium granted by NCLAT and the culpability of the petitioners in the complex web of the economic offence, which is the subject matter of investigation by SFIO, will entangle itself only after full fledged investigation by SFIO. Therefore, this Court, at this point of time is not inclined to give a finding one way or the other as to the culpability of the petitioners in the default committed in payment of interest. **Issue No.2 is answered accordingly.**

ISSUE NO.3 & 4

Whether the amounts received by ITNL could be held to be "deposits" within the meaning of Section 2 (2) and whether ITNL could be held to be a "financial establishment" as defined u/s 2 (3) of the TNPID Act.

Whether the provisions of the TNPID Act could be enforced against ITNL for the debentures issued by it on the private placement basis u/s 42 of the Companies Act.

78. As issues 3 and 4 go hand in hand, they are taken up together for the purpose of convenience and being answered.

79. The criminal law has been set in motion by the 2nd respondent and certain other intervenors by filing petitions before the 1st respondent under the provisions of the TNPID Act, which has, in turn, culminated in the registration of Crime No.13 of 2020.

80. Though the case has been registered and the 1st respondent has taken up investigation, the petitions for quashment of the said complaint have been

filed on the ground that the provisions of the TNPID Act would not stand attracted to the case of ITNL and consequently no criminal liability can be fastened on the petitioners, as ITNL is not a *"financial establishment"* as defined u/s 2 (3) of the TNPID Act and the amounts received by way of debentures under the private placement scheme would not partake the character of *"deposits"* as defined u/s 2 (2) of the TNPID Act.

81. To address the above issues, it is necessary to have a careful perusal of the definition of *"deposit"* and *"financial establishment"* as defined u/s 2 (2) and 2 (3) of the TNPID Act, which are extracted hereunder :-

> *"2. .....*
>
> *(2) "deposit" means the deposit of money either in one lump sum or by instalments made with the Financial Establishment for a fixed period, for interest or for return in any kind or for any service;*
>
> *(3) "Financial Establishment" means an individual, an association of individuals, a firm or a company registered under the companies Act, 1956 (Central Act 1 of 1956) carrying on the business of receiving deposits under any scheme or arrangement or in any other manner but does not include a corporation or a co-operative society owned or controlled by any State Government: or the Central Government, or a banking company*

as defined in section 5(c) of the Banking Regulation Act 1949 (Central Act X of 1949).”

82. ITNL, a subsidiary company under IL &FS against which the present allegation is made, is an infrastructure company, which is mainly involved in the development of roads and other infrastructural facilities. The said fact is not disputed. However, the ground of attack is that merely because the company is said to be an infrastructure company, it cannot be a ground to hold that it is not a financial establishment as defined under the TNPID Act, as any deposits received by ITNL would clothe it with the colour of a financial establishment and attract Section 2 (3) of the TNPID Act. In support of the said submission, the decision of the Division Bench of this Court in ***M/s.Helios & Matheson Information Technology Ltd. - Vs – The State (2015 SCC OnLine Mad 7398)*** has been placed before this Court by the 2nd respondent to contend that any deposits received by ITNL would give ITNL the character of a financial establishment as defined u/s 2 (3) of the TNPID Act.

83. The Division Bench of this Court in *Helios & Matheson's case (supra)* had formulated the following as one of the point for consideration :-

"Whether the company which is not in the business of receiving deposits, but which received deposits in terms of the provisions of the Companies Act, 1956, can be prosecuted for an offence under Tamil Nadu Protection of Interests of Depositors (in Financial Establishments) Act, 1997, hereinafter referred to as the TNPID Act, especially when there is a specific provision under Section 74 (2) of the Companies Act, 2013, enabling the company to approach the Company Law Board for extension of time to repay the deposits?"

84. In the said case, the company, which was the appellant, had, on its own, admitted that they were accepting deposits from the public as well as the shareholders for over 10 yeas in terms of Section 58-A of the Companies Act, as is evident from para-4 of the said judgment.

85. Further, in the said case, due to non-repayment of the deposits to the depositors, and due to liquidity crunch, the company had filed winding up petitions and, thereafter, pending the winding up petition, invoking Section 74 (2) of the Companies Act, had filed petition before the Company Law Board seeking extension of time to repay.

86. On the above facts, which stood undisputed and borne out by record, the Division Bench, relying upon the ratio laid down by the Hon'ble Apex Court, held as under :-

> *"58. Again, in paragraph 33, the Supreme Court held that while Section 58-A of the Companies Act prescribes the conditions under which deposits may be invited or accepted by the companies, the aim and object of the TNPID Act is totally different. The Court pointed out in paragraph 35 that the field occupied by the Companies Act was completely different from the field sought to be occupied by the TNPID Act. Therefore, it is clear that the appellant cannot now be heard to contend that in view of the nature of the business carried on by them, the provisions of the TNPID Act, 1997 are not attracted.*
>
> *59. The same conclusion can be arrived at even by a different method. The definition of the expression "financial establishment" under Section 2(3) of the TNPID Act, 1997, after its amendment in 2003 reads as follows:*
>
> *Section 2 (3):*
>
> *"financial establishment" means an individual, an association of individuals, a firm or a company registered under the Companies Act, 1956 (central Act 1 of 1956) carrying on the business of receiving deposits under any scheme or arrangement or in any other manner but does not include a corporation or a co-operative society owned or controlled by any State Government or the Central Government or a banking company*

as defined in Section 5 (c) of the Banking Regulation Act, 1949 (Central Act X of 1949)".

60. In simple terms, the definition of the expression "financial establishment" under TNPID Act, 1997, covers a company incorporated under the Companies Act, 1956 "carrying on the business of receiving deposits under any Scheme or Arrangement or in any other manner". The question as to whether a company is carrying on the business of receiving deposits under any Scheme or Arrangement or in any other manner, is a question of fact into which this Court exercising jurisdiction under Article 226 cannot go, especially when the relief sought is to quash a First Information Report. It is needless at this distance of time to cite any authority for the proposition that a First Information Report cannot be quashed by a Court under Article 226, on the basis of any evidence or material other than what is reflected in the First Information Report itself.

61. The question as to whether the appellant is carrying on the business of receiving deposits under any Scheme or Arrangement or in any other manner is a question of fact, which needs to be proved with evidence. It may not even be proper, merely to look into the Memorandum and Articles of Association of a company and come to a conclusion on the basis of the "objects clause" contained therein. Whether a company is carrying on the business as per the objects clause contained in the Memorandum and Articles of Association would itself be a question of fact to be decided on the basis of evidence.

62. To satisfy his conscience as to whether or not there was prima facie material to show that the appellant is carrying on the business of receiving deposits, the learned Judge has looked into the website and found out that they were also rendering banking and financial services. What is vertical and what is horizontal in a website information, cannot become the subject matter of a controversy, to be adjudicated in a writ petition under Article 226 for quashing a FIR.

63. Either during the course of investigation or at the worse during the trial, the appellant can always establish that they never carried on the business of receiving deposits under any Scheme or Arrangement or in any other manner, so as to come within the purview of the definition of the expression "financial establishment" under Section 2(3) of the TNPID Act, 1997. The FIR cannot be quashed on the basis of an assertion in an affidavit filed before the Court that the appellant is not carrying on the business of receiving deposits. The Investigating Officer has found at least prima facie (i) that the appellant had engaged the services of 8 or 9 finance brokers, and (ii) that through them and even directly, the appellant had collected deposits from about 6540 depositors throughout the country, to the total tune of more than Rs.55 Crores."

87. From the above, it is implicitly clear that on the facts predicated upon, which clearly showed that the company was into banking and financial service

and was receiving deposits from the public, the Division Bench held that the definition of *"financial establishment"* found in Section 2 (3) of the TNPID Act would stand attracted to the company therein and the money received from the public would fall within the definition of *"deposit"* as found in Section 2 (2) of the TNPID Act.

88. However, it is to be pointed out that the Division Bench in *Helios & Matheson case (supra),* on the facts of the said case, held that the monies collected by the appellant/company therein would amount to deposit within the definition of *"deposit"* as defined u/s 2 (2) of the TNPID Act. The Division Bench, had not, *carte blanche,* held that monies collected in any form by any company would be deposit within the meaning of *"deposit"* as defined under the TNPID Act. The facts of the aforesaid case warranted the Division Bench to confirm the findings rendered by the learned single Judge in the said case that the amounts collected by the appellant are in effect deposits collected from public for attracting the provisions of the TNPID Act.

89. The definition of the terms *"deposit"* and *"financial establishments"* as defined in Sections 2 (2) and (3) are self-explanatory and in a catena of judgments, the literal interpretation to be given to the aforesaid words have been portrayed and this Court needs no necessity to amplify on its interpretation any further.

90. In the present case, it is the case of the petitioners that ITNL had floated a private placement scheme as provided u/s 42 of the Companies Act, rather than floating a scheme for accepting deposits under Section 76 of the Companies Act from the public. Further, it is the case of the petitioners that under the private placement scheme, as per the mandate of Section 42, no advertisement was made, but only select group of persons, identified by the Board, were called upon to show their intent in participating in the said private placement process for issue of debentures. Further, by way of private placement, the company had issued debentures to the select group, who had shown interest in investing in the said debentures. It is therefore the stand of the petitioners that mere acceptance of money from the select group of persons, and from

whom the 2nd respondent had purchased the debentures, would not classify the said investment as a deposit as defined u/s 2 (2) of the Act.

91. For better appreciation as to whether the amounts received by ITNL could be said to be deposits within the definition of Section 2 (2) of the TNPID Act, Section 42 of the Companies Act by which provides for private placement and under which the private placement scheme was floated are extracted hereunder for better understanding and appreciation :-

> *"**42. Offer or invitation for subscription of securities on private placement.**—(1) Without prejudice to the provisions of section 26, a company may, subject to the provisions of this section, make private placement through issue of a private placement offer letter.*
>
> *(2) Subject to sub-section (1), the offer of securities or invitation to subscribe securities, shall be made to such number of persons not exceeding fifty or such higher number as may be prescribed, [excluding qualified institutional buyers and employees of the company being offered securities under a scheme of employees stock option as per provisions of clause (b) of sub-section (1) of section 62], in a financial year and on such conditions (including the form and manner of private placement) as may be prescribed.*
>
> * * * * * * * *

(ii) "private placement" means any offer of securities or invitation to subscribe securities to a select group of persons by a company (other than by way of public offer) through issue of a private placement offer letter and which satisfies the conditions specified in this section."

92. It is not in dispute that neither the 2nd respondent nor any of the intervenor was not one of the select few who were called upon by ITNL for the purpose of investment in the private placement scheme. It is admitted by the 2nd respondent that the debentures were purchased from Mumbai Stock Exchange from one Trust Capital by the 2nd respondent. Therefore, from the above, it is clearly evident that neither the 2nd respondent nor any of the intervenor was one of the select few, who were called upon to invest in the debentures.

93. It is also not the case of the 2nd respondent that pursuant to advertisement, the 2nd respondent had purchased the debentures. But it is the contention of the 2nd respondent that the credit ratings were manipulated in such a manner by the petitioners and ITNL which led the 2nd respondent to purchase the debentures. However, it is to be borne in mind that for the said complicity, necessary investigation has been taken by SFIO and the matter is also *sub judice*

before the NCLAT. Further, action has also been taken against the credit rating companies by the appropriate authority. In the above backdrop, it is clear that those are the issues, which are under investigation of SFIO under the Companies Act, which does not require any deliberation at the present point of time, as the same is not an issue before this Court.

94. Coming to the substratum of the case as to whether the debentures purchased by the 2nd respondent would partake the character of deposit, it is but necessary to understand the meaning of the word *"debenture".* The word *'debenture'* has been derived from a Latin word *'debere'* which means to borrow. Debenture is a written instrument acknowledging a debt to the Company. It contains a contract for repayment of principal after a specified period or at intervals or at the option of the company and for payment of interest at a fixed rate payable usually either half-yearly or yearly on fixed dates.

95. Debenture includes debenture stock, bonds and any other securities of a company whether constituting a charge on the assets of a company or not as defined in the Companies Act. This is an inclusive definition and amounts to

borrowing of monies from the holders of debentures on such terms and conditions subject to which the debentures have been issued. Basically it is a document or certificate signed by the authorized officers of a company acknowledging money lent and guaranteeing repayment with interest and creating security on the assets of the company for due performance of its obligation.

96. Monies have been borrowed by the company from a select few persons by issuance of debentures, which has ultimately landed on the lap of the 2nd respondent. There may have been manipulation of credit ratings by the petitioners and ITNL for gains, but those are under investigation by SFIO and this Court cannot give any affirmative opinion on the same. But, it could safely be concluded, on the materials available before this Court, that the private placement scheme floated by ITNL for issuance of debentures cannot be said to be deposits as defined u/s 2 (2) of the TNPID Act. Neither ITNL nor the petitioners have caused any advertisement soliciting deposits from the public to invest in ITNL. The issuance of debentures are purely on private placement basis

and following the provisions envisaged for floating the scheme under private placement.

97. The Information Memorandum, which forms part of the typed set of documents clearly portrays that what is circulated among the select few persons is only a private placement scheme in and by which debentures for a particular term is floated on certain conditions. That being the case, the investment made by the select few persons in debentures could by no stretch of imagination be termed to be *"deposits"* within the meaning of Section 2 (2) of the TNPID Act. Neither there was any advertisement nor collection of any money from the public which are the necessary ingredients to term a particular receipt of money as deposit. Neither ITNL nor the petitioners have lured the public to invest in the private placement scheme; rather the private placement scheme is for a select few, who are members of the corporate community, who are within the outer periphery of knowing the position of the company floating the said debentures and in good sense and as a good business proposition, have taken the step to invest in the said debentures.

98. It is the ancillary contention of the respondents that though ITNL has floated the private placement scheme, however, the monies earned through the said scheme are distributed among all the entities within the IL & FS group tree and, therefore, it cannot be said that the money collected by ITNL was not *"deposit"*. The decision in *Helios & Matheson case (supra)* is taken in aid of to emphasise that the money collected by ITNL should be deemed to be deposit within the meaning of Section 2 (2) of TNPID Act.

99. Though such a contention is placed before this Court by the respondent, this Court, even at the very outset could safely hold that the said contention is too far fetched to accept. The decision in *Helios & Matheson case (supra)* could in no way be taken in aid to support the case of the respondent in the present case for the simple reason that in the said case, it is the admitted case, as already stated above, that the company was *accepting deposits from the public.* Though ancillary contention was raised that the company is not into banking and financial service and was involved only in information technology related services, and, therefore, it cannot be termed to be a financial establishment under the TNPID Act, however, the said contention was negatived

on the ground that not only the company is involved in information technology related services, but was also involved in accepting deposits from public, as is evident from their own admission and also the details found in their website. The learned single Judge, adverting to materials found in the website of the appellant therein, has come to the conclusion that the company was involved in accepting deposits and would therefore squarely fall within the ambit of *"financial establishment"* and the amounts having been received from the public, the same would be *"deposit"* as defined under the TNPID Act.

100. However, in the case on hand, no material whatsoever is placed before this Court by the learned counsel for the intervenors to impress upon this Court that ITNL was in the business of receiving deposits from public and was involved in banking and financial services, except for voracious arguments to justify that the act of ITNL would fall within the broad parameters of banking and financial service to attract the definition of *"financial establishment"*. There is no whisper in any of the material placed before this Court that deposits were accepted from public by ITNL and even it is the case of the intervenors that what they have purchased from Trust Capital is debentures, which were floated on

private placement basis by ITNL to a select few, as per the mandate of Section 42 of the Companies Act.

101. As stated above, the information memorandum in and by which the private placement scheme was floated by ITNL broadly reveals that what is floated is rated, listed, unsecured, redeemable non-convertible debentures, each having a face value of Rs.10,00,000/- (Rupees Ten Lakhs only) of the aggregate nominal value of upto Rs.250,00,00,000/- (Rupees Two Hundred and Fifty Crores only) (the "Debentures") on a private placement basis (the "Issue"). Further, it is the stand of ITNL and the petitioners that no advertisement was caused for the purpose of publicizing the issuance of debentures, but for the information circulated among the select few. The respondents too have no material to show any advertisement was caused which led them to purchasing the said debentures and further it is not the case of the intervenors that they were lured by the petitioners and ITNL to deposit in the debentures floated by ITNL; on the contrary, the 2nd respondent, based on the credit ratings given for the said debentures, had purchased the same from open market. Though the credit rating system is alleged to have been rigged by the petitioners and ITNL in their

favour for which action has been taken by the appropriate authority against the credit rating agencies, that cannot be a ground to hold that the debentures issued under private placement scheme should be deemed to be in the nature of deposits by covering it with a thin veil for protection so as to categorize the said deposits as debentures.

102. Once this Court has come to the conclusion that the debentures floated by the company are not *"deposits"* within the meaning of Section 2 (2) of the TNPID Act, the associated issue that requires to be addressed is whether ITNL could be held to be a *"financial establishment"* as defined u/s 2 (3) of the TNPID Act.

103. A perusal of the Information Memorandum, which has been circulated by ITNL pursuant to the floating of private placement scheme outlines the activities of ITNL, which shows that ITNL is a surface transportation company incorporated under the provisions of the Companies Act, 1956 by IL & FS for the purpose of consolidating their existing road infrastructure projects and to pursue various new project initiatives in the area of surface transportation

infrastructure. The said aspect of the activities of ITNL is not disputed by the 2nd respondent. However, the stand of the 2nd respondent is that the debentures through which monies were mobilised by ITNL are not exclusively used by ITNL and that it has been spread over all the group companies and that it is not the case of the petitioners and ITNL that the group companies were/are not into finance and banking and, therefore, citing the information memorandum, which shows ITNL to be an infrastructural road project company and expanding into surface transportation is only a cloak with which ITNL is trying to cover its finance and banking activities.

104. This Court is oblivious of the fact that the amount involved in the present case is to the tune of more than Rs.91,000 Crores, which was the reason the Central Government had invoked its powers and changed the members on the Board by filing appropriate petitions before NCLT. Further, the materials placed in that regard not only entailed NCLT to accede to the request for replacement of persons on the Board of the group companies, but equally, NCLAT had also granted moratorium so as to safeguard whatever resources were in the coffers of the said group companies. It is also to be noted at this juncture that

due to the enormity of the economic offence involved in the present case, the Central Government had stepped in and assigned the investigation to SFIO, in view of the complex nature and the diversity of the investigation required to be carried out and also the need for having a specialised investigating agency to investigate the entire issue.

105. Turning the attention back to the definition of *"financial establishment"* as defined u/s 2 (3) of the TNPID Act, it clearly reveals that it is defined as an association of individuals, a firm or a company registered under the Companies Act and carrying on the business of receiving deposits under any scheme or arrangement or in any other manner. It is the stand of the 2nd respondent that the words *"under any scheme or arrangement"* would take within its fold *"debentures"* and, therefore, ITNL would squarely fall within the definition of *"financial establishment"*.

106. Though such a contention is advanced, it is to be pointed out that the said argument is preposterous and is nothing but putting the cart before the horse. By means of private placement, *"debentures"* have been issued by ITNL.

Debenture is a term which is codified under the Companies Act and the manner in which it can be floated and the legal necessities to be complied with it are spelt out under Section 71 of the Companies Act. Once any infraction is noticed with regard to any act performed under the Companies Act and the same brought to the knowledge of the Central Government, the Central Government could step in to set right the same and even entrust the such investigation to SFIO and once such entrustment of investigation is made to SFIO under the Companies Act, investigation by any other agency stood barred, even if the establishment is a *"financial establishment"*, which is evident from Section 212 (2) of the Companies Act as also the decision of the Hon'ble Apex Court in ***Rahul Modi's case (supra)***.

107. It is further to be pointed out that the words *"under any scheme or arrangement"* would have a lien on the words preceding it, viz., *"business of receiving deposits"*. In the case on hand, as aforesaid, the amounts realised by ITNL through private placement, by issuance of *"debentures"* have been held to be not *"deposits"* as defined under the TNPID Act. Such being the case, the act of the company issuing debentures for realising monies could in no way be termed to be business of receiving deposits from public as provided u/s 2 (3) of the TNPID

Act and, therefore, ITNL cannot be said to be a company fulfilling the requirements of Section 2 (3) of the TNPID Act to be adjudged as a *"financial establishment"*.

108. Further a perusal of the statement of objects and reasons leading to the enactment of the TNPID Act clearly delineates that due to the mushrooming growth of financial establishments not covered by the Reserve Bank of India Act, 1934 and with the sole object of grabbing money received as deposits from the public, mostly middle class and poor, on the promise of unprecedented high rates of interest and without any obligation to refund the deposits to investors on maturity, acts were being perpetrated, which crystallized in the need for an enactment to safeguard the interest of the poor and middle class people resulting in the enactment of TNPID Act by the State.

108. From the above objects and reasons for enactment, it is predominantly clear that the State was intent upon safeguarding the middle class and poor from the clutches of the money grabbers under the guise of higher interest rates. Not that the State was not inclined towards the higher economic

strata of the society. But the intention behind the enactment was that the higher economic strata of the society were in a position to safeguard themselves and only the middle class and the poor were the vulnerable entities, who were being taken for a ride by money grabbers under the guise of higher returns in the form of interest. With the avowed object in mind, the TNPID Act was enacted to safeguard the public, more especially the middle class and poor from being made the victims of return of fanciful interest on their deposit.

109. However, in the case on hand, the private placement scheme envisaged investment only from a select group of persons and the face value of each debenture was fixed at Rs.10,00,000/- (Rupees Ten Lakhs). The said private placement debentures were floated aimed only towards the corporates, who were well aware of all the nuances of such business transactions and the risks associated therewith. From the above, it is pointedly clear that what is floated could never be classified as *"deposit"* as defined u/s 2 (2) nor the company floating the private placement scheme could be termed to be a *"financial establishment"* as defined u/s 2 (3) of the TNPID Act. If any such construction is given, the meaning of debentures would stand wiped out and every money

received by any company could only be termed to be a deposit and in such a situation, many of the provisions of the Companies Act would get diluted. Therefore, giving any other interpretation to the above definitions would be nothing but importing something into the words which the Legislature had no intention to add. Further, giving an enlarged interpretation would defeat the very purpose of the Act, more so, when the act of ITNL is not what has been codified under the Act for it to be labelled as a *"financial establishment"* or the investment received by it to be termed a *"deposit"* with the meaning of Section 2 (2) and 2 (3) of the TNPID Act.

110. *Once this Court has come to the conclusion that neither ITNL could be termed to be "financial establishment" and the amount collected by it through private placement by issuance of debentures could be termed to be "deposit" with the meaning of Sections 2 (3) and 2 (2) of the TNPID Act, necessarily it has to follow that the provisions of TNPID Act cannot be made applicable to the case of ITNL in the facts of the present case, as the acts of ITNL are in no way within the parameters codified under the TNPID Act. Therefore, this Court is of the firm and clear opinion that TNPID Act is not applicable to the present case and the act of*

ITNL relating to issuance of debentures under the private placement scheme cannot be termed to be receipt of deposit from public and, therefore, the consequential registration of the case for investigation by the 1st respondent against ITNL and the petitioners herein is beyond its legal dominion and, necessarily the crime registered against the petitioners and ITNL deserves to be quashed. Issue Nos. 3 and 4 are answered accordingly.

111. *This Court has quashed Crime No.13 of 2020 only as against ITNL and the petitioners and this Court is not expressing any opinion relating to the registration of the crime as against IL & FS, which is arrayed as A-2 in the FIR in Crime No.13 of 2020 and it is made clear that this Court has dealt only with the debentures issued under the private placement scheme by ITNL, which is alleged to have been purchased by the intervenors and whether the said debentures could be held to be a "deposit" and whether ITNL could be held to be "financial establishment" under the TNPID Act and has rendered a finding as above and has not adverted to any facts or actions relating to IL & FS or any of its other group companies, as those entities are not before this Court.*

112. Once this Court has held that the registration of crime under the TNPID Act against the petitioners and ITNL is not sustainable for the foregoing discussions, the consequential relief prayed by the intervenor/petitioner in the writ petition for an ad-interim order of attachment of the scheduled mentioned properties of the entities/persons by the 1st and 2nd respondent in the writ petition does not arise. However, in the larger interest of all the stakeholders who have association with the IL & FS and group companies in one form or the other, the Central Government having already assigned investigation with SFIO, which investigating agency, as stated above, is vested with jurisdiction and wider powers of investigation to deal with infraction under any law in addition to its exclusive jurisdiction under the Companies Act, it is well open to the intervenors to approach SFIO and submit appropriate representation for the relief aforesaid in accordance with law.

113. **In the result**

i) Crl. O.P. Nos.3370, 4095 and 4227 of 2021 are allowed and the case in Crime No.13 of 2021 on the file of the 1st respondent/Deputy Superintendent of Police, EOW-II,

Chennai, is quashed insofar as the petitioners in the above petitions and ITNL are concerned;

ii) In view of the order of quashment passed above, no further orders are required to be passed in Crl. O.P. No.11206 of 2021 and, accordingly, the said petition is closed;

iii) W.P. No.1397 of 2021 is disposed of granting liberty to the intervenors as aforesaid;

iv) All the connected miscellaneous petitions for permitting the intervenors to intervene are allowed; and

v) All other connected miscellaneous petitions are closed.

114. Before parting with the case, it is to be impressed upon that the economic offence committed by IL & FS and its group companies is to the whooping tune of Rs.91,000 Crores and above, which has a spiraling and cascading effect on the economic growth of the country, which has resulted in the Central Government interfering in the administration of IL & FS and its group

companies by filing petition before NCLT for reconstitution of the Board, which was been discussed above. The various orders passed by the Tribunal at the interference of the Central Government clearly show that all is not well with IL & FS and its group companies and also the persons, who were manning the said companies, of which the petitioners also formed a part then. Though the petitioners had come out of the post of Directors, it is not to be forgotten that the action by the Central Government in filing petition before the NCLT and ordering of investigation by SFIO clearly show the economic imbalance which the group companies had created in derailing the economy of the country. Finding has been rendered by NCLT that the petitioners were within the Committee of Directors who were at the helm of affairs in running IL & FS and its group companies. This Court, by quashing the case relating to TNPID Act, by no stretch, is giving a clean chit to the petitioners herein, as persons who are beyond a pale of doubt. This Court has only quashed the case against the petitioners on the ground that the investigation under the TNPID Act by the 1st respondent is not sustainable for the reasons and discussions aforesaid.

115. The petitioners, as the Committee of Directors, have created a economic crisis for the whole group of companies and the persons, who were shareholders in the said companies. It is the assertion of the intervenors that the petitioners have siphoned off huge sums of money, in the form of salary and perquisites by holding the post of Directors and with the aid of it, had purchased very many immovable properties across the globe. The intervenors also submitted through their oral arguments certain materials, which the intervenors claim are properties purchased by the petitioners in many of the foreign countries. However, this Court is not entering into the said domain to find out the truth or otherwise in the said submissions. It is borne out by record that investigation has been assigned to SFIO by the Central Government and that SFIO is seized of the matter and investigation is being carried out by SFIO. As already pointed out above, the jurisdiction of the SFIO is vast and SFIO is clothed with powers to investigate into matters not only related to the Companies Act, but concerning any law, be it enacted by the State or the Central Government, so long as there seems to be an infraction of the said law. Such being the case, the intervenors, if in possession of information, which would be valuable to SFIO in their on-going investigation, could very well provide the information available

with them relating to the immovable properties, which are alleged to be held by the petitioners, which, according to the submission of the intervenors are the result of the siphoning off money from the group companies to enrich themselves and any additional material provided by the intervenors would be a material on which SFIO could investigate and try to find the truth and veracity of the very many transactions.

31.08.2021

Index : Yes / No

Internet : Yes / No

GLN

To

1. The Secretary to Government
   Home Department
   Fort St. George
   Chennai 600 009.

2. The Public Prosecutor
   High Court, Madras.

3. Deputy Superintendent of Police
   Economic Offences Wing-II
   1st Floor, Block – II, Garment Complex
   Corporate Office Building
   Thiru Vi. Ka. Industrial Estate
   Guindy, Chennai – 32.

M.DHANDAPANI, J.

GLN

PRE-DELIVERY ORDER IN
CRL. O.P. NOS. 3730, 4095
& 4227 OF 2021
W.P. NO.1397 OF 2021

Pronounced on
31.08.2021